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9–3–03 Wednesday
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Presidential Documents

Title 3—

The President

Proclamation 7697 of August 28, 2003

Family Day, 2003

By the President of the United States of America

A Proclamation

Children thrive in loving families where they are taught, nurtured, and comforted. By spending time with our children and stressing the importance of making the right choices, parents and other family members help them develop into confident, successful individuals.

Families can help secure a healthy tomorrow for their children by providing guidance, staying involved, and serving as role models. I am committed to supporting strong families and strong marriages to help ensure that every child grows up in a safe, loving family. Statistics show that children from two-parent families are less likely to end up in poverty, drop out of school, become addicted to drugs, have a child out of wedlock, suffer abuse, or become a violent criminal. Because stable families should be the central goal of American welfare policy, I have proposed spending up to $300 million a year to find the most effective programs to strengthen marriage.

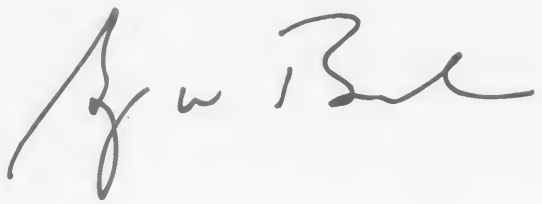
Parents play a critical role in discouraging harmful behavior such as experimenting with alcohol, drugs, and tobacco. Research shows that teens often listen to their parents when it comes to decisions about harmful substances and risky behaviors. Regular family activities provide opportunities for parents to communicate important messages and enhance their relationships with their children. Recent studies from the National Center on Addiction and Substance Abuse at Columbia University found that teens from families who eat dinner together were less likely to use illegal drugs, alcohol, and cigarettes, while teenagers who rarely eat dinner with their parents were more likely to engage in these unhealthy activities.

Families and all Americans can act together to educate our youth about the dangers of drugs and alcohol and help them grow into healthy, responsible, compassionate citizens. In order to ensure a brighter future for our Nation, and safe, healthy, and happy lives for our children, our children must learn that avoiding harmful substances is an ongoing responsibility. As we work to educate our next generation about making healthy choices, we renew our commitment to the American family.

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 22, 2003, as Family Day. I call upon the people of the United States to observe this day by engaging in activities to strengthen the relationships between parents and children and help fight against substance abuse and risky behaviors.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of August, in the year of our Lord two thousand three, and of the

Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 03–22542
Filed 9–2–03; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13315 of August 28, 2003

Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members, and Taking Certain Other Actions

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code, in view of United Nations Security Council Resolution 1483 of May 22, 2003, and in order to take additional steps with respect to the situation in Iraq,

I, GEORGE W. BUSH, President of the United States of America, hereby expand the scope of the national emergency declared in Executive Order 13303 of May 22, 2003, to address the unusual and extraordinary threat to the national security and foreign policy of the United States posed by obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in that country, and the development of political, administrative, and economic institutions in Iraq. I find that the removal of Iraqi property from that country by certain senior officials of the former Iraqi regime and their immediate family members constitutes one of these obstacles. I further determine that the United States is engaged in armed hostilities and that it is in the interest of the United States to confiscate certain additional property of the former Iraqi regime, certain senior officials of the former regime, immediate family members of those officials, and controlled entities. I intend that such property, after all right, title, and interest in it has vested in the Department of the Treasury, shall be transferred to the Development Fund for Iraq. Such property shall be used to meet the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq's infrastructure, for the continued disarmament of Iraq, for the costs of Iraqi civilian administration, and for other purposes benefiting the Iraqi people. I determine that such use would be in the interest of and for the benefit of the United States. I hereby order:

Section 1. Except to the extent provided in section 203(b)(1), (3), and (4) of IEEPA (50 U.S.C. 1702(b)(1), (3), and (4)), or regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, all property and interests in property of the former Iraqi regime or its state bodies, corporations, or agencies, or of the following persons, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(a) the persons listed in the Annex to this order; and

(b) persons determined by the Secretary of the Treasury, in consultation with the Secretary of State,

(i) to be senior officials of the former Iraqi regime or their immediate family members; or

(ii) to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any of the persons listed in the Annex to this order or determined to be subject to this order.

Sec. 2. The Secretary of the Treasury, in consultation with the Secretary of State, is authorized to confiscate property that is blocked pursuant to section 1 of this order and that he determines, in consultation with the Secretary of State, to belong to a person, organization, or country that has planned, authorized, aided, or engaged in armed hostilities against the United States. All right, title, and interest in any property so confiscated shall vest in the Department of the Treasury. Such vested property shall promptly be transferred to the Development Fund for Iraq.

Sec. 3. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 4. For purposes of this order:

(a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States;

(d) the term "former Iraqi regime" means the Saddam Hussein regime that governed Iraq until on or about May 1, 2003;

(e) the term "coalition authority" means the Coalition Provisional Authority under the direction of its Administrator, and the military forces of the United States, the United Kingdom, and their coalition partners present in Iraq under the command or operational control of the Commander of United States Central Command; and

(f) the term "Development Fund for Iraq" means the fund established on or about May 22, 2003, on the books of the Central Bank of Iraq, by the Administrator of the Coalition Provisional Authority responsible for the temporary governance of Iraq and all accounts held for the fund or for the Central Bank of Iraq in the name of the fund.

Sec. 5. I hereby determine that the making of donations of the type specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by or to persons determined to be subject to the sanctions imposed under this order would seriously impair my ability to deal with the national emergency declared in Executive Order 13303 and expanded in scope in this order and would endanger Armed Forces of the United States that are engaged in hostilities, and I hereby prohibit such donations as provided by section 1 of this order.

Sec. 6. For those persons listed in the Annex to this order or determined to be subject to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 13303 and expanded in scope in this order, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

Sec. 7. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and UNPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government, consistent with applicable law. All agencies of the United States Government

are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 8. The Secretary of the Treasury, in consultation with the Secretary of State, is authorized to determine, subsequent to the issuance of this order, that circumstances no longer warrant inclusion of a person in the Annex to this order and that such person is therefore no longer covered within the scope of the order.

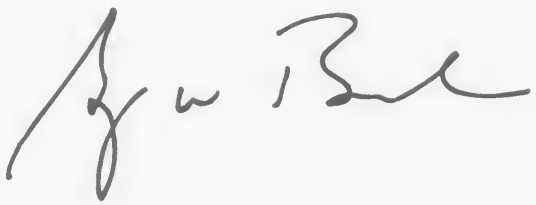
Sec. 9. Nothing in this order is intended to affect the continued effectiveness of any rules, regulations, orders, licenses, or other forms of administrative action issued, taken, or continued in effect heretofore or hereafter under 31 C.F.R. chapter V, except as expressly terminated, modified, or suspended by or pursuant to this order.

Sec. 10. This order shall not apply to such property as is or may come under the control of the coalition authority in Iraq. Nothing in this order is intended to affect dispositions of such property or other determinations by the coalition authority.

Sec. 11. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, officers or employees, or any other person.

Sec. 12. This order is effective on 12:01 a.m. EDT on August 29, 2003.

Sec. 13. This order shall be transmitted to the Congress and published in the **Federal Register**.



THE WHITE HOUSE,
August 28, 2003.

Billing code 3195–01–P

ANNEX

Saddam Hussein al-Tikriti
[DOB 28 Apr 1937; POB al-Awja, near Tikrit, Iraq; President since 1979; nationality Iraqi; a.k.a. Abu Ali]

Qusay Saddam Hussein al-Tikriti
[DOB 1965; alt. DOB 1966; POB Baghdad, Iraq; Saddam Hussein al-Tikriti's second son; oversaw Special Republican Guard, Special Security Organization, and Republican Guard; nationality Iraqi]

Uday Saddam Hussein al-Tikriti
[DOB 1964; alt. DOB 1967; POB Baghdad, Iraq; Saddam Hussein al-Tikriti's eldest son; leader of paramilitary organization Fedayeen Saddam; nationality Iraqi]

Abid Hamid Mahmud al-Tikriti
[DOB circa 1957; POB al-Awja, near Tikrit, Iraq; Saddam Hussein al-Tikriti's presidential secretary and key advisor; nationality Iraqi; a.k.a. Abid Hamid bid Hamid Mahmud; a.k.a. Col. Abdel Hamid Mahmoud; a.k.a. Abed Mahmoud Hammud]

Ali Hassan al-Majid al-Tikriti
[DOB 1943; POB al-Awja, near Tikrit, Iraq; presidential advisor and senior member of Revolutionary Command Council; nationality Iraqi; a.k.a. al-Kimawi]

Izzat Ibrahim al-Duri
[DOB circa 1942; POB al-Dur, Iraq; deputy commander-in-chief of Iraqi military; deputy secretary, Ba'th party regional command; vice chairman, Revolutionary Command Council; nationality Iraqi; a.k.a. Abu Brays]

Hani abd-al-Latif Tilfah al-Tikriti
[DOB circa 1962; POB al-Awja, near Tikrit, Iraq; Special Security Organization; nationality Iraqi]

Aziz Salih al-Numan
[DOB 1941; alt. DOB 1945; POB An Nasiriyah, Iraq; Ba'th party regional command chairman; nationality Iraqi]

Muhammad Hamza Zubaidi
[DOB 1938; POB Babylon, Babil Governorate, Iraq; former prime minister; nationality Iraqi]

Kamal Mustafa Abdallah
[DOB 1952; alt. DOB 4 May 1955; POB Tikrit, Iraq; Republican Guard Secretary; led Special Republican Guard and commanded both Republican Guard corps; nationality Iraqi; a.k.a. Kamal Mustafa Abdallah Sultan al-Tikriti]

Barzan abd al-Ghafur Sulaiman Majid al-Tikriti
[DOB 1960; POB Salah al-Din, Iraq; commander, Special Republican Guard; nationality Iraqi; a.k.a. Barzan Razuki abd al-Ghafur]

Muzahim Sa'b Hassan al-Tikriti
[DOB circa 1946; alt. DOB 1949; POB al-Awja, near Tikrit, Iraq; led Iraq's Air Defense Forces; Deputy Director, Organization of Military Industrialization; nationality Iraqi]

Ibrahim Ahmad abd al-Sattar Muhammed al-Tikriti
[DOB 1943; alt. DOB 1950; alt. DOB 1952; POB Ba'qubah or al-Sumayda/Shirqat, Iraq; armed forces chief of staff; nationality Iraqi]

Saif-al-Din Fulayyih Hassan Taha al-Rawi
[DOB 1953; POB Ar Ramadi, al-Anbar Governorate, Iraq; Republican Guard chief of staff; nationality Iraqi; a.k.a. Ayad Futayyih al-Rawi]

Rafi abd-al-Latif Tilfah al-Tikriti
[DOB circa 1954; POB Tikrit, Iraq; Director, Directorate of General Security; nationality Iraqi]

Tahir Jalil Habbush al-Tikriti
[DOB 1950; POB Tikrit, Iraq; director of Iraqi Intelligence Service; nationality Iraqi]

Hamid Raja Shalah al-Tikriti
[DOB 1950; POB Bayji, Salah al-Din Governorate, Iraq; air force commander; nationality Iraqi; a.k.a. Hamid Raja-Shalah Hassan al-Tikriti; a.k.a. Hamid Raja-Shalah Hassum al-Tikriti]

Latif Nusayyif Jasim al-Dulaymi
[DOB circa 1941; POB Ar-Rashidiya suburb of Baghdad, Iraq; Ba'ath party military bureau deputy chairman; nationality Iraqi]

Abd-al-Tawab Mullah Huwaysh
[DOB 1957; alt. DOB 14 March 1942; POB Mosul or Baghdad, Iraq; deputy prime minister; director, Organization of Military; nationality Iraqi]

Taha Yassin Ramadan al-Jizrawi
[DOB circa 1938; vice president since 1991; nationality Iraqi]

Rukan Razuki abd-al-Ghafur Sulaiman al-Tikriti
[DOB 1956; POB Tikrit, Iraq; head of Tribal Affairs Office in presidential office; nationality Iraqi; a.k.a. Rukan abdal-Ghaffur Sulayman al-Majid; a.k.a. Rukan abd al-Gafur al-Majid; a.k.a. Rukan abd al-Ghaffur al-Majid al-Tikriti; a.k.a. Rukan Razuqi abd al-Gahfur al-Majid; a.k.a. Rukan 'abd al-Ghaffur al-Majid al-Tikriti; a.k.a. Abu Walid]

Jamal Mustafa Abdallah Sultan al-Tikriti
[DOB 4 May 1955; POB al-Samnah, near Tikrit, Iraq; deputy head of tribal affairs in presidential office; nationality Iraqi]

Mizban Khadr Hadi
[DOB 1938; POB Mandali District, Diyala, Iraq; member, Ba'th party regional command and Revolutionary Command Council since 1991; nationality Iraqi]

Taha Muhyi-al-Din Ma'ruf
[DOB 1924; POB Sulaymaniyah, Iraq; Vice President; member of Revolutionary Command Council; nationality Iraqi]

Tariq Aziz
[DOB 1 Jul 1936; POB Mosul or Baghdad, Iraq; Deputy Prime Minister; Passport No. NO34409/129 (July 1997); nationality Iraqi; a.k.a. Tariq Mikhail Aziz]

Walid Hamid Tawfiq al-Tikriti
[DOB circa 1950; POB Tikrit, Iraq; Governor of Basrah; nationality Iraqi; a.k.a. Walid Hamid Tawfiq al-Nasiri]

Sultan Hashim Ahmad al-Tai
[DOB circa 1944; POB Mosul, Iraq; Minister of Defense; nationality Iraqi]

Hikmat Mizban Ibrahim al-Azzawi
[DOB 1934; POB Diyala, Iraq; Deputy Prime Minister and Finance Minister; nationality Iraqi]

Mahmud Dhiyab al-Ahmad
[DOB 1953; POB Mosul or Baghdad, Iraq; Minister of Interior; nationality Iraqi]

Ayad Futayyih Khalifa al-Rawi
[DOB 1942; POB Rawah, Iraq; Quds Force Chief of Staff; nationality Iraqi]

Zuhair Talib abd-al-Sattar al-Naqib
[DOB circa 1948; Director, Military Intelligence; nationality Iraqi]

Amir Hamudi Hassan al-Sa'di
[DOB 5 Apr 1938; POB Baghdad, Iraq; presidential scientific advisor; Passport No. NO33301/862, issued 17 October 1997, expires 1 October 2005; Passport No. M0003264580; Passport No. H0100009, issued 1 May 2002; nationality Iraqi]

Amir Rashid Muhammad al-Ubaidi
[DOB 1939; POB Baghdad, Iraq; Minister of Oil; nationality Iraqi]

Husam Muhammad Amin al-Yassin
[DOB 1953; alt. DOB 1958; POB Tikrit, Iraq; head, National Monitoring Directorate; nationality Iraqi]

Muhammad Mahdi al-Salih
[DOB 1947; alt. DOB 1949; POB al-Anbar Governorate, Iraq; Minister of Trade; nationality Iraqi]

Sab'awi Ibrahim Hassan al-Tikriti
[DOB 1947; POB Tikrit, Iraq; presidential advisor; half-brother of Saddam Hussein al-Tikriti; nationality Iraqi]

Watban Ibrahim Hassan al-Tikriti
[DOB 1952; POB Tikrit, Iraq; presidential advisor; half-brother of Saddam Hussein al-Tikriti; nationality Iraqi; a.k.a. Watab Ibrahim al-Hassan]

Barzan Ibrahim Hassan al-Tikriti
[DOB 1951; POB Tikrit, Iraq; presidential advisor; half-brother of Saddam Hussein al-Tikriti; Passport No. M0001666/970; Passport No. NM0000860/114; Passport No. M0009851/1; nationality Iraqi]

Huda Salih Mahdi Ammash
[DOB 1953; POB Baghdad, Iraq; member, Ba'ath party regional command; nationality Iraqi]

Abd-al-Baqi abd-al-Karim Abdallah al-Sad'un
[DOB 1947; Ba'th party regional command chairman, Diyala; nationality Iraqi]

Muhammad Zimam abd-al-Razzaq al-Sa'dun
[DOB 1942; POB Suq ash-Shuyukh District, Dhi-Qar, Iraq; Ba'th party regional chairman, at-Tamim; nationality Iraqi]

Samir abd al-Aziz al-Najim
[DOB 1937; POB 1938, Baghdad, Iraq; Ba'th party regional command chairman, East Baghdad; nationality Iraqi]

Humam abd-al-Khaliq abd-al-Ghafur
[DOB 1945; POB ar-Ramadi, Iraq; Minister of Higher Education and Research; Passport No. M0018061/104, issued 12 September 1993; nationality Iraqi; a.k.a. Humam 'abd al-Khaliq 'abd al-Rahman; a.k.a. Humam 'abd al-Khaliq Rashid]

Yahia Abdallah al-Ubaidi
[Ba'th party regional command chairman, al-Basrah; nationality Iraqi]

Nayif Shindakh Thamir Ghalib
[Ba'th party regional command chairman, an-Najaf; member, Iraqi National Assembly; nationality Iraqi]

Saif-al-Din al-Mashhadani
[DOB 1956; POB Baghdad, Iraq; Ba'th party regional command chairman, al-Muthanna; nationality Iraqi]

Fadil Mahmud Gharib
[DOB 1944; POB Dujail, Iraq; Ba'th party regional command chairman, Babil; chairman, General Federation of Iraqi Trade Unions; nationality Iraqi; a.k.a. Gharib Muhammad Fazel al-Mashaikhi]

Muhsin Khadr al-Khafaji
[Ba'th party regional command chairman, al-Qadisiyah; nationality Iraqi]

Rashid Taan Kazim
[Ba'th party regional command chairman, al-Anbar; nationality Iraqi]

Ugla Abid Saqar al-Kubaysi
[DOB 1944; POB Kubaisi, al-Anbar Governorate, Iraq; Ba'th party regional command chairman, Maysan; nationality Iraqi; a.k.a. Saqr al-Kabisi abd Aqala]

Ghazi Hammud al-Ubaidi
[DOB 1944; POB Baghdad, Iraq; Ba'th party regional command chairman, Wasit; nationality Iraqi]

Adil Abdallah Mahdi
[DOB 1945; POB al-Dur, Iraq; Ba'th party regional command chairman, Dhi-Qar; nationality Iraqi]

Hussein al-Awadi
[Ba'th party regional command chairman, Ninawa; nationality Iraqi]

Khamis Sirhan al-Muhammad
[Ba'th party regional command chairman, Karbala; nationality Iraqi; a.k.a. Dr. Khamis]

Sa'd abd-al-Majid al-Faysal al-Tikriti
[DOB 1944; POB Tikrit, Iraq; Ba'th party regional command chairman, Salah al-Din; nationality Iraqi]

Note: The bracketed identifying information with respect to each person listed in this Annex reflects information recently available and is provided solely to facilitate compliance with this order. Each person listed in this Annex remains subject to the prohibitions of this order notwithstanding any change in title, position, or affiliation, unless and until such person is subject to a determination pursuant to section 8 of this order.

[FR Doc. 03–22543
Filed 9–2–03; 8:45 am]
Billing code 4810–25–C

Presidential Documents

Memorandum of August 29, 2003

Assistance for Voluntary Population Planning

Memorandum for the Secretary of State

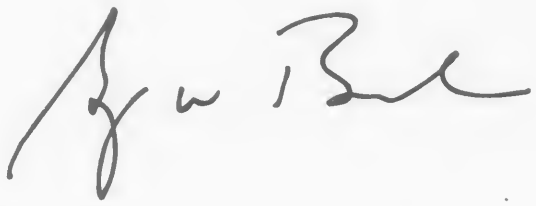
On March 28, 2001, I issued a memorandum for the Administrator of the United States Agency for International Development (USAID) directing that certain conditions be placed on assistance for family planning activities provided to foreign nongovernmental organizations by USAID.

Because family planning grants are awarded by the Department of State outside of USAID as well as through USAID, you are hereby directed to extend the requirements of the March 28, 2001, memorandum to all assistance for voluntary population planning furnished to foreign nongovernmental organizations and appropriated pursuant to the Foreign Assistance Act, whether such assistance is furnished by USAID or any other bureau, office, or component of the Department of State.

As set forth in the March 28, 2001, memorandum, this policy applies to certain assistance provided to foreign nongovernmental organizations. Such organizations do not include multilateral organizations that are associations of governments. This policy shall not apply to foreign assistance furnished pursuant to the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (Public Law 108–25).

The foregoing directive is issued consistent with the authority vested in me by the Constitution and laws of the United States of America, including sections 104 and 104A of the Foreign Assistance Act of 1961, as amended.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, August 29, 2003.

[FR Doc. 03–22544
Filed 9–2–03; 8:45 am]
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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV03–905–1 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Extension and Modification of the Exemption for Shipments of Tree Run Citrus

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule extends for one season the exemption for tree run citrus under the Florida citrus marketing order (order). The order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida and is administered locally by the Citrus Administrative Committee (committee). Under this rule, shipments of tree run citrus are exempt from grade, size, and assessment requirements for the 2003–04 season. This rule also increases the limit on the amount of citrus a grower can ship from 1,500 boxes to 3,000 boxes per variety and requires growers to identify their containers with their name and address. The committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns.

DATES: Effective September 4, 2003; comments received by November 3, 2003 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884–1671; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule extends for one season an exemption to ship tree run citrus free from grade, size, and assessment requirements under the order. This rule also increases the limit on the total amount of citrus a grower can ship under the exemption from 1,500 boxes to 3,000 boxes per variety and requires growers to identify their containers with their name and address. This extension is for the 2003–04 season only. The committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns. This action was recommended unanimously by the committee at its meeting on July 1, 2003.

Section 905.80 of the order provides authority for the Committee to exempt certain types of shipments from regulation. Exemptions can be implemented for types of shipments of any variety in such minimum quantities, or for such purposes as the committee with the approval of USDA may specify. No assessment is levied on fruit so shipped. The committee shall, with the approval of USDA, prescribe such rules, regulations, or safeguards as it deems necessary to prevent varieties handled under the provisions of this section from entering channels of trade for other than the purposes authorized by this section.

Section 905.149 of the order's rules and regulations defines grower tree run citrus and outlines the procedures to be used for growers to apply to the committee to ship their own tree run citrus exempt from grade, size, and assessment requirements. The provisions of this section were originally established just for the 2002–

03 season. It allowed growers to ship a maximum of 150 1⅗ bushel boxes per variety per shipment up to a seasonal total of 1,500 boxes per variety of their tree run fruit free from order requirements.

This rule amends § 905.149 and extends its provisions for another season. This rule extends the exemption to ship tree run citrus free from grade, size, and assessment requirements as specified in § 905.149 for the 2003–04 season. This rule also amends § 905.149 by increasing the limit on the amount of citrus a grower can ship during the season from 1,500 boxes to 3,000 boxes per variety and by requiring that each container in each shipment be labeled with or contain the name and address of the grower. Growers must receive approval from the committee before they can utilize this exemption.

According to Florida Department of Citrus (FDOC) regulation 20–35.006, "Tree run grade is that grade of naturally occurring sound and wholesome citrus fruit which has not been separated either as to grade or size after severance from the tree." Also, FDOC regulation 20–62.002 defines wholesomeness as fruit free from rot, decay, sponginess, unsoundness, leakage, staleness, or other conditions showing physical defects of the fruit. By definition, this fruit is handled by the grower and bypasses normal handler operations. Prior to implementation of the exemption, all tree run citrus had to meet all requirements of the marketing order, as well as State of Florida Statutes and Florida Department of Citrus regulations. Even with this rule, tree run citrus must continue to meet applicable State of Florida Statutes and Florida Department of Citrus regulations, including inspection and any container marking requirements. However, growers will be able to pick, box, and ship directly to buyers, and avoid the costs incurred when citrus is handled by packinghouses.

During the past few seasons, small producers of Florida citrus have expressed concerns about problems incurred when trying to sell their citrus. These concerns include increasing production costs, limited returns, and the availability of markets. For some growers, there is limited demand for the variety of citrus they produce or they do not produce much volume. Consequently, they have difficulty getting packinghouses to pack their fruit. These problems, along with market conditions, have driven a fair number of citrus growers out of the citrus industry.

According to Florida Agricultural Statistics Service, over the past five years, fresh grapefruit sales have dropped 22 percent and fresh orange shipments are down 16 percent. This means fewer cartons are being packed. This can cause problems for varieties that may be out of favor with handlers and consumers, or for a particular variety of fruit where there may be a glut on the market. As a result, packinghouses do not wish to become over stocked with fruit which is difficult to market and, therefore, will not pack less popular minor varieties of fruit or fruit that is in oversupply. Packinghouses do not want to pack what they cannot sell. These factors have caused wholesome fruit to be shipped to processing plants or left on the tree.

When citrus cannot be sold into the fresh market, it can be sold to the processing plants. However, the prices received are considerably lower. During the last five years, only the 1999–2000 season produced on-tree returns for processed grapefruit that exceeded one dollar per box. Over the period from 1977 through 2000, the differential between fresh prices and processed prices has averaged $3.55 per box. The average on-tree price for processed Florida oranges during the 2001–02 season was $3.08 compared to $4.50 for fresh oranges.

In addition, the costs associated with growing for the fresh market are greater than the costs for growing for the processed market. While the costs of growing for the fresh market have been increasing, in many cases the returns to the grower have been decreasing. The cost of picking, packing, hauling, and associated handling costs for fresh fruit is sometimes greater than the grower's return on the fruit. In some cases, where the cost of harvesting exceeds the returns to the grower or the grower cannot find a buyer for the fruit, economic abandonment can occur. According to information from the National Agricultural Statistics Service, the seasons of 1995–96, 1996–97, 1997–98, and 2000–01 had an average economic abandonment of two million boxes or more of red seedless grapefruit alone.

Consequently, growers are looking for other outlets for their fruit in an effort to increase returns. Some growers believe secondary markets exist which are not currently being supplied that would provide additional outlets for their citrus. They think niche markets exist that could be profitable and want the opportunity to service them. They believe they can ship quality fruit directly to out-of-state markets and that it would be well received. These growers contend tree run citrus does not need a minimum grade and size to be marketable, and that they can supply quality fruit to secondary markets not served by packed fruit. However, they believe they need to bypass normal handler operations and the associated costs for it to be profitable.

To address these concerns, the committee recommended that for the 2002–03 season producers be allowed to ship small quantities of their own production directly to market exempt from order requirements. The exemption was for the 2002–03 season and expired July 31, 2003. A final rule on this action was published in the **Federal Register** on January 29, 2003 [68 FR 4361]. The committee agreed that following the 2002–03 season they would review the information provided by growers who applied for and used the tree run exemption to determine if the exemption should be continued.

During the 2002–03 season, 75 growers were approved to ship under the exemption. Approximately 25 growers actually used the exemption, shipping a total of 5,000 1–3/5 bushel boxes of oranges, grapefruit, tangerines, and tangelos. Those producers who took advantage of the exemption believe the program was successful. They were able to sell their fruit and supply markets not already supplied by packed fruit.

The growers who used the exemption believe that one year was not long enough and that it should be extended. They think more time is needed to determine the benefits of the exemption and whether it should be extended on a continuous basis. Growers believe to successfully develop new markets they must demonstrate they can consistently supply new markets with quality fruit and this cannot be done in a single season or without the exemption.

Growers also believe more markets exist. They think more time is needed to identify and research potential markets. In some cases, potential markets were not identified until late in the 2002–03 season when there was not enough fruit available to supply them. Growers want the opportunity to try to supply these markets in the coming season.

In addition, some interested growers did not take advantage of the exemption during the past season. Some stated if the exemption were to be extended for another season, they would use it to try shipping tree run citrus. By extending the exemption for another season, growers will have more time to utilize this opportunity and it will provide the committee with a better indicator of the level of interest and success.

There was also some discussion that the previously established 1,500 box

limit on the total amount of each variety of citrus a grower could ship during the season may prevent growers from fully developing new markets. One concern expressed was that should a buyer want additional fruit during the season, a grower may not be able to supply it because they had reached their shipping limit. Another concern was for growers that only produce one variety of citrus. The limit of 1,500 boxes per variety for the season may prevent them from utilizing more of their fruit. Also, a producer may identify two or more potential markets, but with the limited amount of fruit that can be shipped, the grower can only supply fruit to one market. Growers believe raising the limit on the number of boxes per variety they can ship for the season will allow them to supply the markets previously developed as well as develop additional markets for their tree run fruit.

The committee reviewed this issue and discussed the concerns of small growers and the problems encountered during the past season. The committee determined that offering the exemption for another season will provide additional information on how fruit shipped under the exemption was received by the market. It will also provide a better indication of whether or not other markets exist that packed fruit is not currently supplying, where these markets are located, and approximately how much fruit can be sold in such markets. Extending the exemption also gives other growers an opportunity to try it.

Tree run fruit will be sold primarily to non-competitive, niche markets, such as farmers' markets, flea markets, roadside stands, and similar outlets and will not compete with non-exempt fruit shipped under the order. Fruit is sold in similar markets within the state, and such markets have been successful. Continuing the exemption for another season allows growers to sell directly to similar markets outside of the state, supplying markets that might not otherwise be supplied. The committee believes this action will allow the industry to service more non-traditional markets and may be a way to increase fresh market shipments and to develop new markets.

The committee also discussed the limits on the amount of fruit growers can ship during the season. Several different combinations of shipment totals were discussed. The committee determined the previously established limit of 150 boxes of each variety per shipment was still appropriate, allowing the grower to ship a sufficient amount of fruit to make the exemption cost effective, while preventing too much fruit from entering market channels exempt from order requirements. However, the committee did agree that by raising the total amount of citrus a grower can ship during the season, the grower may be able to service more markets and sell more fruit. The committee supported increasing the volume limit from 1,500 boxes to 3,000 boxes per variety under the exemption. This amount provides additional volume for the grower while limiting the amount of fruit that can be shipped under the exemption. Maintaining shipments at these levels will help keep this fruit in non-competitive outlets.

With the potential for additional fruit entering the market under the exemption, ensuring compliance with the provisions of the exemption and reducing the chances of tree run fruit getting into regular market channels is an important consideration. As a means of tracking the fruit and ensuring compliance, the committee decided that each container of tree run fruit should contain the name and address of the grower. Because tree run fruit can be shipped in a variety of containers, the committee thought requiring a label on the containers themselves may be impractical. For some containers, such as cardboard box, having the name and address printed on the outside of the container would not be problematic. However, on other containers, such as field boxes, plastic boxes, or mesh bags, it can be difficult to print the name and address or affix a label. Therefore, the committee agreed that placing the name and address inside the container provides a means for identifying the owner of the fruit with the least amount of difficulty.

Consequently, for the reasons discussed, the committee voted unanimously to extend the tree run exemption for the 2003–04 season, raise the limit on the amount of citrus a grower can ship from 1,500 boxes to 3,000 boxes per variety, and require that growers identify each container with their name and address. The exemption is being extended for the 2003–04 season only, and will expire on July 31, 2004. At the end of the season, the committee will review all available information and decide whether the exemption should be continued on a permanent basis.

Growers will continue to be required to apply to the committee, on the "Grower Tree Run Certificate Application" form provided by the committee, for an exemption to ship tree run citrus fruit to interstate markets. On this form, the grower must provide their name; address; phone number; legal description of the grove; variety of citrus to be shipped; and the approximate number of boxes produced in the specified grove. The grower must also certify that the fruit to be shipped comes from the grove owned by the grower applicant. The application form will be submitted to the committee manager and reviewed for completeness and accuracy. The manager will also verify the information provided. After the application has been reviewed, the manager will notify the grower applicant in writing whether the application is approved or denied.

Once the grower has received approval for their application for exemption and begins shipping fruit, a "Report of Shipments Under Grower Tree Run Certificate" form, also provided by the committee, must be completed for each shipment. On this form, the grower will provide the location of the grove, the amount of fruit shipped, the shipping date, and the type of transportation used to ship the fruit, along with the vehicle license number. The grower must supply the Road Guard Station with a copy of the grower certificate report for each shipment, and provide a copy of the report to the committee. This report will enable the committee to maintain compliance and gather data, which will be used to determine the effectiveness of the exemption. Failure to comply with these requirements may result in the cancellation of a grower's certificate.

This rule does not affect the provision that handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from regulatory requirements. Fruit shipped in gift packages that are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from handling requirements under specific conditions. Also, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements under the order.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including citrus, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order. Therefore, no change is necessary in the citrus import regulations as a result of this action.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of

this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

There are approximately 11,000 producers of Florida citrus in the production area and approximately 75 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida oranges, grapefruit, tangerines, and tangelos during the 2002–03 season was approximately $8.55 per 4/5 bushel carton, and total fresh shipments for the 2002–03 season where around 49.3 million cartons of oranges, grapefruit, tangerines, and tangelos. Approximately 20 handlers handled 65 percent of Florida's citrus shipments in 2002–03. Considering the average f.o.b. price, at least 55 percent of the oranges, grapefruit, tangerine, and tangelo handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida citrus handlers may be classified as small entities. The majority of Florida citrus producers may also be classified as small entities.

This rule extends the provisions of § 905.149 of the rules and regulations under the order for one more season. This rule exempts shipments of small quantities of tree run citrus from the grade, size, and assessment requirements for the 2003–04 season. This rule also increases the limit on the amount of citrus a grower can ship from 1,500 boxes to 3,000 boxes per variety during the season and requires growers to identify their containers with their name and address. Growers must receive approval from the committee before they can use this exemption. The committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns. Authority for this action is provided in § 905.80(e).

According to a recent study by the University of Florida—Institute of Food and Agricultural Sciences, production costs for the 2001–02 season ranged from $1.71 per box for processed oranges to $2.41 per box for grapefruit grown for the fresh market. The average packing charge for oranges is approximately $6.50 per box, for grapefruit the charge is approximately $5.75 per box, and for tangerines the charge can be as high as $9 per box. In a time when grower returns are weak, sending fruit to a packinghouse can be cost prohibitive, especially for the small grower. This rule may provide an additional outlet for fruit that might otherwise be forced into the processing market or left on the tree altogether.

This rule will not impose any additional costs on the grower, but have the opposite effect, providing growers the opportunity to reduce the costs associated with having fruit handled by a packinghouse. This action will allow growers to ship small quantities of their tree run citrus directly into interstate commerce exempt from the order's grade, size, and assessment requirements and their related costs. With this action, growers will be able to reduce handling costs and use those savings toward developing additional markets not serviced by packed fruit. This will benefit all growers regardless of size, but it is expected to have a particular benefit for the small grower.

The committee considered alternatives to this action. One possible alternative was not extending the exemption for another season. However, the committee believes the exemption does provide other possible outlets for fruit and may help increase returns to growers, so this alternative was rejected. Another alternative considered was removing the limit on the total amount of citrus a grower could ship during the season. Committee members had concerns about allowing this exemption without some limit on total shipments. The committee agreed that an increase in the limit would provide additional opportunities for growers without causing any market disruption or making it more difficult to keep tree run fruit in noncompetitive outlets. Therefore, this alternative was also rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements contained in this rule have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in committee deliberations. Like all committee meetings, the July 1, 2003, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on extending for one season the exemption to ship tree run citrus free from grade, size, and assessment requirements under the order. The rule also invites comments on the increase in the limit on the total amount of citrus a grower can ship per variety under the exemption from 1,500 boxes to 3,000 boxes and the requirement that growers identify their citrus with their name and address. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. This rule needs to be in place as soon as possible to cover as many shipments during the 2003–04 season as possible. Growers need to know this rule is in place so they can begin making plans on how to utilize the exemption. In addition, growers and handlers are aware of this rule, which was recommended at a public meeting. Also, a 60-day comment period is provided for in this rule and any comments

received will be considered prior to finalization.

List of Subjects in 7 CFR Part 905

Grapefruit, Oranges, Tangelos, Tangerines, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 905.149:
■ a. Paragraph (d) is amended by revising "July 31, 2003." to read "July 31, 2004.".
■ b. Paragraph (f)(2) is amended by revising "1,500" to read "3,000".
■ c. Paragraph (f)(3) is amended by revising "for the 2002–03 season only" to read "during the 2003–04 season only" and "July 31, 2003." to read "July 31, 2004.".
■ d. A new paragraph (f)(6) is added to read as follows:

§ 905.149 Procedure for permitting growers to ship tree run citrus fruit.

* * * * *

(f) * * *

(6) Each container of tree run fruit shipped under a Grower Tree Run Certificate shall be labeled with or contain the name and address of the grower shipping under the Grower Tree Run Certificate.

Dated: August 28, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–22414 Filed 9–2–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 922, 923, and 924

[Docket No. FV03–922–1 FR]

Increased Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rates established for the Washington Apricot Marketing Committee, the Washington Cherry Marketing Committee, and the Washington-Oregon Fresh Prune Committee (Committees) for the 2003–2004 and subsequent fiscal periods. This rule increases the assessment rates established for the Committees from $2.50 to $3.00 per ton for Washington apricots, from $0.75 to $1.00 per ton for Washington sweet cherries, and $1.00 to $1.50 per ton for Washington-Oregon fresh prunes. The Committees are responsible for local administration of the marketing orders which regulate the handling of apricots and cherries grown in designated counties in Washington, and prunes grown in designated counties in Washington and in Umatilla County, Oregon. Authorization to assess apricot, cherry, and prune handlers enables the Committees to incur expenses that are reasonable and necessary to administer the programs. The fiscal period for these marketing orders begins April 1 and ends March 31. The assessment rates will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 922 (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington; Marketing Agreement and Order No. 923 (7 CFR part 923) regulating the handling of sweet cherries grown in designated counties in Washington; and Marketing Agreement and Order No. 924 (7 CFR part 924) regulating the handling of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon, hereinafter referred to as the "orders." The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing orders now in effect, handlers in the designated areas are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates fixed herein will be applicable to all assessable Washington apricots, Washington sweet cherries, and Washington-Oregon fresh prunes beginning April 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule increases the assessment rates established for the Committees for the 2003–2004 and subsequent fiscal periods from $2.50 to $3.00 per ton for Washington apricots, from $0.75 to $1.00 per ton for Washington sweet cherries, and $1.00 to $1.50 per ton for Washington-Oregon fresh prunes.

The orders provide authority for the Committees, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committees are producers and handlers in designated counties in Washington and in Umatilla County, Oregon. They are familiar with the Committees' needs and with the costs for goods and services in their

local areas and are thus in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2002–2003 and subsequent fiscal periods, the Washington Apricot Marketing Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Washington Apricot Marketing Committee met on May 21, 2003, and unanimously recommended 2003–2004 expenditures of $10,559 and an assessment rate of $3.00 per ton of apricots. In comparison, last year's budgeted expenditures were $11,685. The assessment rate of $3.00 is $0.50 higher than the rate currently in effect. The increase is necessary to offset an anticipated decrease in production due to the adverse effect of cooler temperatures on the size and quality of the 2003 apricot crop.

The assessment rate recommended by the Washington Apricot Marketing Committee was derived by dividing anticipated expenses by expected shipments of apricots grown in designated counties in Washington. Applying the $3.00 per ton rate of assessment to the Washington Apricot Marketing Committee's 3,600-ton shipment estimate should provide $10,800 in assessment income. Income derived from handler assessments should be adequate to cover budgeted expenses and allow the Washington Apricot Marketing Committee to maintain an acceptable financial reserve. Funds in the reserve ($8,360 as of March 31, 2003), will be kept within the maximum permitted by the order (approximately one fiscal period's operational expenses; § 922.42).

For the 1997–98 and subsequent fiscal periods, the Washington Cherry Marketing Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Washington Cherry Marketing Committee met on May 22, 2003, and unanimously recommended 2003–2004 expenditures of $71,865 and an assessment rate of $1.00 per ton of cherries. In comparison, last year's budgeted expenditures were $68,715. The assessment rate of $1.00 is $0.25 higher than the rate currently in effect. The higher assessment rate is necessary to offset an anticipated decrease in production due to the adverse effect of cooler temperatures on the size and quality of the 2003 cherry crop.

The assessment rate recommended by the Washington Cherry Marketing Committee was derived by dividing anticipated expenses by expected shipments of sweet cherries grown in designated counties in Washington. Applying the $1.00 per ton rate of assessment to the Washington Cherry Marketing Committee's 64,000-ton shipment estimate should provide $64,000 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve ($33,064 as of March 31, 2003), will be kept within the maximum permitted by the order (approximately one fiscal period's operational expenses; § 923.42).

For the 2001–2002 and subsequent fiscal periods, the Washington-Oregon Fresh Prune Marketing Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Washington-Oregon Fresh Prune Marketing Committee met on June 3, 2003, and unanimously recommended 2003–2004 expenditures of $7,411 and an assessment rate of $1.50 per ton of prunes. In comparison, last year's budgeted expenditures were $8,095. The assessment rate of $1.50 is $0.50 higher than the rate currently in effect. The higher assessment rate is necessary to bring the assessment rate closer to budgeted expenses, and to use less of the reserve to fund expenses.

The assessment rate recommended by the Washington-Oregon Fresh Prune Committee was derived by dividing anticipated expenses by expected shipments of fresh prunes grown in designated counties in Washington, and Umatilla County, Oregon. Applying the $1.50 per ton rate of assessment to the Washington-Oregon Fresh Prune Marketing Committee's 4,300-ton shipment estimate should provide $6,450 in assessment income. Income derived from handler assessments, along with funds from the Washington-Oregon Fresh Prune Marketing Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve ($5,407 as of March 31, 2003), will be kept within the maximum permitted by the order (approximately one fiscal period's operational expenses; § 924.42).

All three Committees are managed from the same office, and as such, major expenses recommended by the Committees for the 2003–2004 year include manager and clerical salaries ($54,500), rent and maintenance ($7,200), compliance officer ($4,840), and Committee travel and compensation ($4,000). Budgeted expenses for these items in 2002–2003 were $49,100, $6,800, $5,120, and $6,100, respectively.

The assessment rates established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committees or other available information.

Although the assessment rates will be in effect for an indefinite period, the Committees will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rates. The dates and times of the Committees' meetings are available from the Committees or USDA. The Committees' meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate the Committees' recommendations and other available information to determine whether modification of the assessment rates is needed. Further rulemaking will be undertaken as necessary. The Committees' 2003–2004 budgets and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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

There are approximately 272 Washington apricot producers, 1,800 Washington sweet cherry producers,

and 215 Washington-Oregon fresh prune producers in the respective production areas. In addition, there are approximately 28 Washington apricot handlers, 69 Washington sweet cherry handlers, and 10 Washington-Oregon fresh prune handlers subject to regulation under the respective marketing orders. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on a three-year average fresh apricot production of 4,225 tons (Washington Apricot Marketing Committee records), a three-year average producer price of $893 per ton as reported by National Agricultural Statistics Service (NASS), and 272 Washington apricot producers, the average annual producer revenue is approximately $13,871. In addition, based on Washington Apricot Marketing Committee records and 2002 f.o.b. prices ranging from $12.50 to $16.50 per 24-pound container as reported by USDA's Market News Service (MNS), all of the Washington apricot handlers ship under $5,000,000 worth of apricots.

Based on a three-year average fresh cherry production of 71,220 tons (Washington Cherry Marketing Committee records), a three-year average producer price of $1,857 per ton as reported by NASS, and 1,800 Washington cherry producers, the average annual producer revenue is approximately $73,475. In addition, based on Washington Cherry Marketing Committee records and an average 2002 f.o.b. price of $28.00 per 20-pound container as reported by MNS, 81 percent of the Washington cherry handlers ship under $5,000,000 worth of cherries.

Based on a three-year average fresh prune production of 4,893 tons (Washington-Oregon Fresh Prune Marketing Committee records), a three-year average producer price of $210 per ton as reported by NASS, and 215 Washington-Oregon prune producers, the average annual producer revenue is approximately $4,779. In addition, based on Washington-Oregon Fresh Prune Marketing Committee records and 2002 f.o.b. prices ranging from $8.50 to $9.50 per 30-pound container as reported by MNS, all of the Washington-Oregon prune handlers ship under $5,000,000 worth of prunes.

In view of the foregoing, the majority of Washington apricot, Washington sweet cherry, and Washington-Oregon fresh prune producers and handlers may be classified as small entities.

This rule increases the assessment rates established for the Committees from $2.50 to $3.00 per ton for apricots, from $0.75 to $1.00 per ton for cherries, and from $1.00 to $1.50 per ton for prunes. For the 2003–2004 fiscal period, the quantity of assessable fruit is estimated at 3,600 tons for apricots, 64,000 tons for cherries, and 4,300 tons for prunes.

All three Committees are managed from the same office, and as such, major expenses recommended by the Committees for the 2003–2004 year include manager and clerical salaries ($54,500), rent and maintenance ($7,200), compliance officer ($4,840), and Committee travel and compensation ($4,000). Budgeted expenses for these items in 2002–2003 were $49,100, $6,800, $5,120, and $6,100, respectively.

The higher assessment rates are necessary to offset increases in salaries and rent and maintenance, and projected decreases in the production of each crop due to the adverse effect of cooler temperatures on the size and quality of the fruit. The additional assessment income will also permit the Washington Apricot Marketing Committee and the Washington-Oregon Fresh Prune Committee to meet budgeted expenses and maintain an acceptable financial reserve. For the Washington Cherry Marketing Committee, the increased assessment rate will allow it to use less reserve funds to meet its budgeted expenses.

The Committees discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the programs with adequate reserves.

Apricot shipments for 2003 are estimated at 3,600 tons, which should provide $10,800 in assessment income. Income derived from handler assessments should be adequate to cover budgeted expenses. Funds in the reserve ($8,360 as of March 1, 2003) will be kept within the maximum permitted by the order (approximately one fiscal period's operational expenses; § 923.42).

Sweet cherry shipments for 2003 are estimated at 64,000 tons, which should provide $64,000 in assessment income. Income derived from handler assessments, along with funds from the authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve ($33,064 as of March 31, 2003) will be kept within the maximum permitted by the order (one fiscal period's operational expenses; § 923.42).

Fresh prune shipments for 2003 are estimated at 4,300 tons, which should provide $6,450 in assessment income. Income derived from handler assessments, along with funds from the authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve ($5,407 as of March 31, 2003) will be kept within the maximum permitted by the order (approximately one fiscal period's operational expenses; § 924.42).

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2003–2004 season could range between $783 and $1,050 per ton for Washington apricots, between $1,580 and $2,000 per ton for Washington sweet cherries, and between $166 and $252 per ton for Washington-Oregon fresh prunes. Therefore, the estimated assessment revenue for the 2003–2004 fiscal period as a percentage of total producer revenue could range between 0.29 and 0.38 percent for Washington apricots, between 0.05 and 0.06 percent for Washington sweet cherries, and between 0.60 and 0.90 for Washington-Oregon fresh prunes.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing orders. In addition, the Committees' meetings were widely publicized throughout the Washington apricot, Washington sweet cherry, and Washington-Oregon fresh prune industries and all interested persons were invited to attend and participate in the Committees' deliberations on all issues. Like all meetings of these Committees, the May 21, May 22, and June 3, 2003, meetings were public meetings and all entities, both large and small, were able to express views on the issues.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Washington apricot, Washington sweet cherry, or Washington-Oregon fresh prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

A proposed rule concerning this action was published in the **Federal Register** on July 25, 2003 (68 FR 43975). Copies of the proposed rule were also mailed or sent via facsimile to all members of the Committees. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 15-day comment period ending August 11, 2003, was provided for interested persons to respond to the proposal. No comments were received.

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

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

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2003–2004 fiscal period began on April 1, and the marketing orders require that the rate of assessment for each fiscal period apply to all assessable Washington apricots, Washington sweet cherries, and Washington-Oregon fresh prunes handled during such fiscal period. Further, handlers are aware of this rule which was unanimously recommended by each of the Committees at public meetings. Also, a 15-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects

7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 924

Plums, Prunes, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR parts 922, 923, and 924 are amended as follows:

■ 1. The authority citation for 7 CFR parts 922, 923, and 924 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 2. Section 922.235 is revised to read as follows:

§ 922.235 Assessment rate.

On or after April 1, 2003, an assessment rate of $3.00 per ton is established for the Washington Apricot Marketing Committee.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 3. Section 923.236 is revised to read as follows:

§ 923.236 Assessment rate.

On or after April 1, 2003, an assessment rate of $1.00 per ton is established for the Washington Cherry Marketing Committee.

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND UMATILLA COUNTY, OREGON

■ 4. Section 924.236 is revised to read as follows:

§ 924.236 Assessment rate.

On or after April 1, 2003, an assessment rate of $1.50 per ton is established for the Washington-Oregon Fresh Prune Marketing Committee.

Dated: August 28, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–22415 Filed 9–2–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV03–948–2 FR]

Irish Potatoes Grown in Colorado; Reinstatement of the Continuing Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule reinstates the continuing assessment rate established for the Area No. 3 Colorado Potato Administrative Committee (Committee) for the 2003–2004 and subsequent fiscal periods at $0.03 per hundredweight of potatoes handled. The Committee locally administers the marketing order regulating the handling of potatoes grown in northern Colorado. The continuing assessment rate was suspended for the 2001–2002 and subsequent fiscal periods to bring the monetary reserve within the program limit of two fiscal periods' operating expenses. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of potatoes grown in Colorado, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Colorado potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the

assessment rate established herein would be applicable to all assessable potatoes beginning on July 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule reinstates § 948.215 of the order's rules and regulations and establishes a continuing assessment rate for the Committee for the 2003–2004 and subsequent fiscal periods at $0.03 per hundredweight of potatoes handled.

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

For the 2001–2002 and subsequent fiscal periods, the Committee recommended, and USDA approved, a suspension of the continuing assessment rate that would remain suspended until reinstated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 8, 2003, and unanimously recommended 2003–2004 expenditures of $19,737 and an assessment rate of $0.03 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were also $19,737. For the 2001–2002 fiscal period, the Committee recommended suspending the continuing assessment rate to bring the monetary reserve within program limits of approximately two fiscal periods' operating expenses (§ 948.78). At that time, the reserve fund contained about $60,000. The Committee has been operating for the last two years by drawing income from its reserve. With a suspended assessment rate and a significant decrease in the number of potato producers and acreage in Area No. 3, the reserve has rapidly decreased to the current level of about $24,077. The Committee would like to maintain the reserve at approximately this level, thus reinstatement of the assessment rate at $0.03 per hundredweight is needed.

The major expenditures recommended by the Committee for the 2003–2004 fiscal period include $8,200 for salaries, $3,000 for rent expense, and $1,750 for office expenses. Budgeted expenses for these items in 2002–2003 were also $8,200, $3,000, and $1,750, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado potatoes. Colorado potato shipments for the year are estimated at 632,500 hundredweight which should provide $18,975 in assessment income. Income derived from handler assessments along with interest and rent income should be adequate to cover budgeted expenses. Funds in the reserve (estimated at $24,077 as of June 30, 2003), will be kept within the maximum permitted by the order (approximately two fiscal period's expenses; § 948.78).

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

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2003–2004 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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

Based on Committee data, there are 12 producers, (9 of whom are also handlers) and 10 handlers (9 of whom are also producers) in the production area subject to regulation under the order. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000.000, and small agricultural producers are defined as those whose annual receipts are less than $750,000.

Based on Committee data, the production of Area No. 3 Colorado potatoes for the 2001–2002 marketing year was 773,053 hundredweight. Based on National Agricultural Statistics Service data, the average producer price for Colorado summer potatoes for the 2001–2002 marketing year was $6.70 per hundredweight. The average annual producer revenue for the 12 Colorado Area No. 3 potato producers is therefore calculated to be approximately $431,621. Using Committee data regarding each individual handler's total shipments during the 2001–2002 marketing year and a Committee estimated average f.o.b. price during the 2001–2002 marketing year of $8.80 per hundredweight ($6.70 per hundredweight plus estimated packing and handling costs of $2.10 per hundredweight), all of the Colorado Area No. 3 potato handlers ship under $5,000,000 worth of potatoes. In view of the foregoing, it can be concluded that the majority of the Colorado Area No. 3 potato producers and handlers may be classified as small entities.

This rule reinstates § 948.215 of the order's rules and regulations and

establishes a continuing assessment rate for the Committee, to be collected from handlers for the 2003–2004 and subsequent fiscal periods, at $0.03 per hundredweight of potatoes. The Committee recommended 2003–2004 expenditures of $19,727 and an assessment rate of $0.03 per hundredweight. The quantity of Area No. 3 Colorado potatoes for the 2003–2004 fiscal period is estimated at 632,500 hundredweight. Thus, the $0.03 rate should provide $18,975 in assessment income. This together with interest and rent income should be adequate to meet this fiscal period's budgeted expenses.

The major expenditures recommended by the Committee for the 2003–2004 fiscal period include $8,200 for salaries, $3,000 for rent expense, and $1,750 for office expenses. Budgeted expenses for these items in 2002–2003 were also $8,200, $3,000, and $1,750, respectively.

For the 2001–2002 fiscal period, the Committee recommended suspending the continuing assessment rate to bring the monetary reserve within program limits of approximately two fiscal periods' operating expenses (§ 948.78). At that time, the reserve fund contained about $60,000. The Committee has been operating for the last two years by drawing income from its reserve. With a suspended assessment rate and a significant decrease in the number of potato producers and acreage in Area No. 3, the reserve has rapidly decreased to the current level of about $24,000. The Committee would like to maintain the reserve at approximately this level, thus reinstatement of the assessment rate is needed.

The Committee discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with adequate reserves.

The assessment rate of $0.03 per hundredweight of assessable potatoes was determined by dividing the total recommended budget by the quantity of assessable potatoes, estimated at 632,500 hundredweight for the 2003–2004 fiscal period. This is approximately $1,402 above the anticipated expenses when combined with interest and rent income, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2003–2004 fiscal period could range between $5.10 and $6.70 per hundredweight of Colorado summer potatoes. Therefore, the estimated assessment revenue for the 2003–2004 fiscal period as a percentage of total producer revenue could range between 0.45 and 0.59 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Area No. 3 Colorado potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 8, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Colorado Area No. 3 potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

A proposed rule concerning this action was published in the **Federal Register** on July 28, 2003 (68 FR 44239). Copies of the proposed rule were also mailed or sent via facsimile to all Committee members. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 15-day comment period ending August 12, 2003, was provided for interested persons to respond to the proposal. No comments were received.

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

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

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2003–2004 fiscal period began on July 1, 2003, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period. Further, handlers are aware of this action which was recommended by the Committee at a public meeting. Also, a 15-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

■ 1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 948.215 is reinstated and revised to read as follows:

§ 948.215 Assessment rate.

On and after July 1, 2003, an assessment rate of $0.03 per hundredweight is established for Colorado Area No. 3 potatoes.

Dated: August 28, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–22416 Filed 9–2–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1150

[Docket No. DA–03–06]

National Dairy Promotion and Research Program; Amendment to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Dairy Promotion and Research Order (Order). The amendment modifies the composition of the National Dairy Promotion and Research Board (Dairy Board) by changing the number of

members in four of the thirteen geographic regions. The Dairy Board, which administers the Order, requested the amendment in order to better reflect the geographic distribution of milk production in the contiguous 48 States.

EFFECTIVE DATE: September 4, 2003.

FOR FURTHER INFORMATION CONTACT: David R. Jamison, USDA, AMS, Dairy Programs, Promotion and Research Branch, Stop 0233—Room 2958–S, 1400 Independence Avenue, SW., Washington, DC 20250–0233, (202) 720–6961, *David.Jamison2@usda.gov.*

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Proposed Rule and Invitation for Comments on Proposed Amendment to the Order: Issued June 27, 2003; published July 3, 2003 (68 FR 39861).

This final rule is issued pursuant to the Dairy Production Stabilization Act of 1983 (Act) (7 U.S.C. 4501, *et seq.*), Public Law 98–108, enacted November 29, 1983.

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule does not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act authorizes the National Dairy Promotion and Research Program. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 4509 of the Act, any person subject to the Dairy Promotion and Research Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law and requesting a modification of the Order or to be exempted from the Order. A person subject to an Order is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) is required to examine the impact of this final rule on small entities. The purpose of the Regulatory Flexibility Act is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. For the purpose of the Regulatory Flexibility Act, small businesses in the dairy industry have been defined as those employing less than 500 employees. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $750,000. There are approximately 70,000 dairy farms subject to the provisions of this Order. Most of the parties subject to the Order are considered small entities. This final rule amends the Dairy Promotion and Research Order by modifying the number of members on the National Dairy Promotion and Research Board in four of the 13 geographic regions. The amendment is being made to better reflect the geographic distribution of milk produced within each of the 13 regions of the contiguous 48 States.

The Order currently is administered by the 36-member Board representing 13 geographic regions within the contiguous 48 States. The Order provides that the Dairy Board shall review the geographic distribution of milk production throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of the regions and/or modification of the number of members from regions in order to best reflect the geographic distribution of milk production volume in the United States.

Based on a review of the 2002 geographic distribution of milk production, it has been determined that the number of Dairy Board members for four of the 13 geographical regions should be changed.

Since the changes only redistribute the representation on the Dairy Board to better reflect geographic milk production in the contiguous 48 States, this amendment will not have a significant economic impact on persons subject to the Order.

Paperwork Reduction Act

This amendment to the Order will not add any burden to persons subject to the Order because it relates to provisions concerning membership of the Dairy Board. The adopted changes do not impose additional reporting or collecting requirements. No relevant Federal rules have been identified that duplicate, overlap, or conflict with this final rule. In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the forms and reporting and recordkeeping requirements that are included in the Order have been approved previously by the Office of Management and Budget (OMB).

Statement of Consideration

This final rule amends the Dairy Promotion and Research Order by modifying the number of members on the National Dairy Promotion and Research Board in four of the 13 geographic regions. The amendment modifies the composition of the Board to better reflect current milk production within each of the 13 geographic regions of the contiguous 48 States.

The Order is administered by the 36-member Board representing 13 geographic regions within the contiguous 48 States. The Order provides in § 1150.131 that the Dairy Board shall review the geographic distribution of milk production volume throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of the regions and/or modification of the number of members from regions in order to best reflect the geographic distribution of milk production in the United States. The Dairy Board is required to conduct the review at least every five years and not more than every three years.

The Order specifies the formula to be used to determine the number of Dairy Board members in each of the 13 geographic regions designated in the Order. Under the formula, total milk production for the contiguous 48 States for the previous calender year is divided by 36-the total number of Dairy Board members—to determine a factor of pounds of milk represented by each Dairy Board member. The resulting factor is then divided into the pounds of milk produced in each region to determine the number of Board members for each region. Accordingly, the following table summarizes by region the volume of milk production distribution for 2002, the percentage of total milk production, the current number of Dairy Board members per region, and the adopted number of Dairy Board members for each region.

Region	States	Milk production (mil lbs)*	Percentage of total milk production	Current number of board members	Adopted number of board members
1	Oregon, Washington	7,713	4.5	1	2
2	California	34,884	20.6	6	7
3	Arizona, Colorado, Idaho, Montana, Nevada, Utah, Wyoming.	16,291	9.6	3	3
4	Arkansas, Kansas, New Mexico, Oklahoma, Texas	15,313	9.0	3	3
5	Minnesota, North Dakota, South Dakota	10,447	6.2	3	2
6	Wisconsin	22,074	13.0	5	5
7	Illinois, Iowa, Missouri, Nebraska	8,971	5.3	2	2
8	Alabama, Kentucky, Louisiana, Mississippi, Tennessee	4,265	2.5	1	1
9	Indiana, Michigan, Ohio, West Virginia	13,264	7.8	3	3
10	Florida, Georgia, North Carolina, South Carolina, Virginia	7,194	4.2	2	1
11	Delaware, Maryland, New Jersey, Pennsylvania	12,492	7.4	3	3
12	New York	12,217	7.2	3	3
13	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.	4,518	2.7	1	1
Total	48 Contiguous States	169,643	100	36	36

*Based upon preliminary 2002 data that was released in Milk Production, Distribution & Income, NASS, USDA, April 2003. This data will later be updated, revised, and finalized.

Upon the basis of its review of geographic milk production volume, the Dairy Board proposed that the number of members in four of the 13 geographic regions be changed. The Dairy Board was last modified in 1998 based on 1997 milk production data. The current review conducted by the Dairy Board is based on 2002 data. In 2002, total milk production was 169,643 million pounds, which indicates that each of the Dairy Board members would represent 4,712 million pounds of milk. For 1997, total milk production was 156,464, which indicated that each of the Board members represented 4,346 milk pounds of milk.

Based on the 2002 milk production data, the Dairy Board proposed that member representation in Region 1 (Oregon and Washington) and Region 2 (California) each be increased by one member, and member representation in Region 5 (Minnesota, North Dakota, and South Dakota) and Region 10 (Florida, Georgia, North Carolina, South Carolina, and Virginia) each be decreased by one member. Milk production in Region 1 increased to 7,713 million pounds in 2002 up from 6,915 million pounds in 1997, indicating two Dairy Board members (7,713 divided by 4,712 = 2) compared to one Dairy Board member based on 1997 milk production data. Milk production in Region 2 increased in 2002 to 34,884 million pounds up from 27,628 million pounds in 1997, indicating seven Dairy Board members for the region (34,884 divided by 4,712 = 7) compared to 6 Dairy Board members based on 1997 data. Also, in Region 5, milk production decreased to 10,447 million pounds in 2002 down from 11,307 million pounds in 1997, indicating two Dairy Board members (10,447 divided by 4,712 = 2) compared to three Board members based on 1997 milk production data. Additionally, milk production in Region 10 decreased to 7,194 million pounds in 2002 down from 7,523 million pounds in 1997, indicating one Dairy Board member for the region (7,194 divided by 4,712 = 1) compared to two members based on 1997 data.

Interested parties were provided an opportunity to file comments on the proposed rule. One comment from a producer recommended that, due to Region 5's large geographical area, the number of representatives for Region 5 remain at the current level of three Dairy Board members. As discussed above, the proposed number of representatives for Region 5 (*i.e.*, two regional representatives) is reflective of the volume of milk produced in the region.

This final rule adopts the Dairy Board's proposal that member representation in Region 1 be increased from one member to two members, Region 2 representation be increased from six members to seven members, Region 5 representation be decreased from three members to two members, and Region 10 representation be decreased from two members to one member. The amendment is necessary to ensure that regional representation on the Dairy Board reflects geographic milk production in the contiguous 48 States.

The proposed amendment to the Order is made final in this action. The final rule will be effective one day after publication in the **Federal Register** to allow for the timely appointment of Dairy Board members based on current distribution of milk production in the contiguous 48 States.

Thus, good cause exists for making this rule effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1150

Dairy Products, Milk, Promotion, Research.

■ For the reasons set forth in the preamble, 7 CFR part 1150 is amended as follows:

PART 1150—DAIRY PROMOTION PROGRAM

■ 1. The authority citation for 7 CFR part 1150 continues to read as follows:

Authority: 7 U.S.C. 4501–4513.

■ 2. In § 1150.131, paragraphs (a)(1), (a)(2), (a)(5), and (a)(10) are revised to read as follows:

§ 1150.131 Establishment and membership.

(a) * * *

(1) Two members from region number one comprised of the following States: Washington and Oregon.

(2) Seven members from region number two comprised of the following State: California.

* * * * *

(5) Two members from region number five comprised of the following States: Minnesota, North Dakota and South Dakota.

* * * * *

(10) One member from region number ten comprised of the following States: Florida, Georgia, North Carolina, South Carolina and Virginia.

* * * * *

Dated: August 28, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–22417 Filed 9–2–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–32–AD; Amendment 39–13285; AD 2003–17–10]

RIN 2120–AA64

Airworthiness Directives; McCauley Propeller Systems, Inc. Propeller Hub Models B5JFR36C1101, C5JFR36C1102, B5JFR36C1103, and C5JFR36C1104; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2003–17–10. That AD applies to McCauley Propeller Systems, Inc. Propeller Hub Models B5JFR36C1101, C5JFR36C1102, B5JFR36C1103, and C5JFR36C1104 propellers. AD 2003–17–10 was published in the **Federal Register** on August 21, 2003 (68 FR 50462). Paragraph (o) incorrectly references Table 3 and should reference Table 2. This document corrects that reference. In all other respects, the original document remains the same.

EFFECTIVE DATE: Effective September 3, 2003.

FOR FURTHER INFORMATION CONTACT: Timothy Smyth, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Room 107, Des Plaines, IL 60018; telephone: (847) 294–7132; fax: (847) 294–7834.

SUPPLEMENTARY INFORMATION: A final rule; request for comments to supersede an existing AD, FR Doc. 03–21519 that applies to McCauley Propeller Systems, Inc. Propeller Hub Models B5JFR36C1101, C5JFR36C1102, B5JFR36C1103, and C5JFR36C1104 propellers, was published in the **Federal Register** on August 21, 2003 (68 FR 50462). The following correction is needed:

§ 39.13 [Corrected]

■ On page 50464, in the third column, in the paragraph entitled Material Incorporated by Reference, paragraph (o), in the sixth line, "listed in Table 3 of this AD" is corrected to read "listed in Table 2 of this AD".

Issued in Burlington, MA, on August 27, 2003.

Francis A. Favara,

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

[FR Doc. 03–22381 Filed 9–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–164–AD; Amendment 39–13292; AD 2003–18–01]

RIN 2120–AA64

Airworthiness Directives; General Dynamics (Convair) Model P4Y–2 Airplanes, General Dynamics (Consolidated-Vultee) (Army) Model LB–30 Airplanes, and General Dynamics (Consolidated) (Army) Model C–87A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to various surplus military airplanes manufactured by Consolidated, Consolidated Vultee, and Convair, that currently requires repetitive inspections to find fatigue cracks in the lower rear cap of the wing front spar, front spar web, and lower skin of the wings; repair or replacement of any cracked part with a new part; and follow-on inspections at new intervals. This amendment continues to require those actions and revises and clarifies the applicability of the existing AD. The actions specified in this AD are intended to find and fix fatigue cracking, which could result in structural failure of the wings and consequent loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective September 18, 2003.

Comments for inclusion in the Rules Docket must be received on or before November 3, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–164–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–164–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this AD may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: John Cecil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5228; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On April 16, 2003, the FAA issued AD 2003–08–13, amendment 39–13126 (68 FR 19728, April 22, 2003), applicable to various surplus military airplanes manufactured by Consolidated, Consolidated Vultee, and Convair, to require repetitive inspections to find fatigue cracks in the lower rear cap of the wing front spar, front spar web, and lower skin of the wings; repair or replacement of any cracked part with a new part; and follow-on inspections at new intervals. That action was prompted by an accident resulting from the structural failure of the center wing of a United States Department of Agriculture (USDA) Forest Service Model P4Y–2 airplane, and results of an investigation, which revealed fatigue cracking of the lower rear cap of the wing font spar, front spar web, and lower skin of the wings. Such fatigue cracking, if not found and fixed in a timely manner, could result in structural failure of the wings and consequent loss of control of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received inquiries concerning the applicability of the AD. The commenters indicate that the applicability of the AD, as published, contains a phrase that could lead the reader to believe that the AD applies to all former military surplus aircraft, rather than just those airplanes specifically called out by model in the AD.

We agree that using the phrase "including, but not limited to, all of the following surplus military airplanes" in the applicability of the existing AD may be misleading; therefore, we have clarified the applicability of this new AD by removing that phrase. We also have revised the applicability to retain only those airplane models for which a U.S. type certificate has been issued: General Dynamics (Consolidated-Vultee) (Army) Model LB–30 airplanes, and General Dynamics (Convair) Model P4Y–2 airplanes. Additionally, this AD adds a new airplane model, General Dynamics (Consolidated) (Army) Model C–87A airplanes, to the applicability of this AD. Other models specified in the existing AD have been removed from the applicability of this new AD.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD supersedes AD 2003–08–13 to continue to require repetitive inspections to find fatigue cracks in the lower rear cap of the wing front spar, front spar web, and lower skin of the wings; repair or replacement of any cracked part with a new part; and follow-on inspections at new intervals. As specified above, this AD clarifies and revises the applicability of the existing AD to add another airplane model and remove certain other airplane models.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Changes to 14 CFR part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–164–AD." The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, 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, 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 removing amendment 39–13126 (68 FR 19728, April 22, 2003), and by adding a new airworthiness directive (AD), amendment 39–13292, to read as follows:

2003–18–01 General Dynamics (Convair), General Dynamics (Consolidated-Vultee) (Army), and General Dynamics (Consolidated) (Army): Amendment 39–13292. Docket 2003–NM–164–AD. Supersedes AD 2003–08–13, Amendment 39–13126.

Applicability: All Model P4Y–2 airplanes, Model LB–30 airplanes, and Model C–87A airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To find and fix fatigue cracking in the lower rear cap of the wing front spar, front spar web, and lower skin of the wings, which could result in structural failure of the wings and consequent loss of control of the airplane, accomplish the following:

Initial and Repetitive Inspections for Certain Airplanes

(a) For Models P4Y–2 and LB–30 airplanes: Within 30 days after May 7, 2003 (the effective date of AD 2003–08–13, amendment 39–13126), do the actions specified in

paragraphs (a)(1) and (a)(2) of this AD per a method approved by the Manager, Los Angeles Certification Office (ACO), FAA.

(1) Do an inspection (between 39 and 63 inches outboard of the airplane center line on both the left and right sides of the wings) to find cracks in the lower rear cap of the wing front spar, front spar web, and lower skin of the wings localized under the front spar lower cap. Special detailed inspection procedures must be sufficiently reliable to determine the location, size, and orientation of the cracks.

(2) Develop repetitive inspection intervals that prevent crack growth from exceeding the minimum residual strength required to support limit load on the affected structure. The repetitive inspection intervals must be approved by the Manager, Los Angeles ACO. Thereafter, do the inspection approved per paragraph (a)(1) of this AD at the intervals approved per this paragraph.

Initial and Repetitive Inspections for Model C–87A Airplanes

(b) For all Model C–87A airplanes: Within 30 days after the effective date of this AD, do the actions specified in paragraphs (b)(1) and (b)(2) of this AD per a method approved by the Manager, Los Angeles ACO.

(1) Do an inspection (between 39 and 63 inches outboard of the airplane center line on both the left and right sides of the wings) to find cracks in the lower rear cap of the wing front spar, front spar web, and lower skin of the wings localized under the front spar lower cap. Special detailed inspection procedures must be sufficiently reliable to determine the location, size, and orientation of the cracks.

(2) Develop repetitive inspection intervals that prevent crack growth from exceeding the minimum residual strength required to support limit load on the affected structure. The repetitive inspection intervals must be approved by the Manager, Los Angeles ACO. Thereafter, do the inspection approved per paragraph (b)(1) of this AD at the intervals approved per this paragraph.

If Any Cracking Is Found

(c) If any crack is found during any inspection required by this AD, before further flight, do the action(s) specified in paragraphs (c)(1) and (c)(2) of this AD per a method approved by the Manager, Los Angeles ACO.

(1) Repair or replace the cracked part or structure.

(2) Repeat the inspection required by paragraph (a)(1) of this AD at reduced intervals approved by the Manager, Los Angeles ACO, to find cracks before the growth is critical and exceeds the minimum residual strength required to support limit load on the affected structure.

Alternative Methods of Compliance

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

Effective Date

(e) This amendment becomes effective on September 18, 2003.

Issued in Renton, Washington, on August 19, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22382 Filed 9–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. 1998F–0196]

Food Additives Permitted in Feed and Drinking Water of Animals; Selenium Yeast

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for food additives permitted in feed to provide for the safe use of selenium yeast as a source of selenium in animal feeds for beef and dairy cattle and to provide a description of the food additive. This action is in response to a food additive petition filed by Alltech Biotechnology Center.

DATES: This rule is effective September 3, 2003. Submit written objections and request for hearing by November 3, 2003.

ADDRESSES: Submit written objections and requests for a hearing to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic objections to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Sharon Benz, Center for Veterinary Medicine (HFV 228), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6656.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of May 12, 1998 (63 FR 26193), FDA announced that a food additive petition (animal use) (FAP 2238) had been filed by Alltech Biotechnology Center, 3031 Catnip Hill Pike, Nicholasville, KY 40356. The petition proposed to amend the food additive regulations in § 573.920 *Selenium* (21 CFR 573.920) to provide for the safe use of selenium yeast as a source of selenium in animal feeds for poultry, swine, and cattle. Based on the information in the petition, the selenium food additive regulation was amended to include the use of selenium yeast in feed for chickens on June 6, 2000 (65 FR 35823). FDA sought additional data from the sponsor before approving use in other species. After this data was submitted for turkeys and swine, the selenium food additive regulation was amended to extend its use in turkeys and swine on July 17, 2002 (67 FR 46850). Additional data submitted by the sponsor and further amendments to the petition provide information to extend its use to beef and dairy cattle. The notice of filing provided for a 60-day comment period on the petitioner's environmental assessment. No substantive comments have been received.

In the regulation in § 571.1(c) (21 CFR 571.1(c)), paragraph E of the form for petitions requires full reports of investigations of the safety of a food additive. The Center for Veterinary Medicine (CVM) evaluated information in the petition and in the scientific literature and has determined that there is an acceptable daily intake of 0.4 milligram (mg) per person per day for selenium in the human diet. It has further determined that when supplemental selenium is incorporated at the maximal allowable levels of 0.3 part per million (ppm) of complete feeds, selenium levels in edible animal products are at or below the upper limit of the normal range of selenium in untreated animals. These upper limits are as follows: Swine, 0.8 ppm in muscle and 1.1 ppm in liver, and dairy cattle (milk) 0.14 ppm. Further, CVM considers the normal range for selenium in beef (liver) is 0.1 to 1.2 ppm; turkeys, 0.6 ppm in muscle and 1.4 ppm in liver; for chicken (liver) 0.1 to 0.9 ppm and for eggs 0.1 to 0.5 ppm.

II. Conclusion

FDA concludes that the data establish the safety and utility of selenium yeast, for use as proposed and that the food additive regulations should be amended as set forth in this document.

III. Public Disclosure

In accordance with § 571.1(h), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Veterinary Medicine by appointment with the information contact person. As provided in § 571.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Objections and Hearing Requests

Any person who will be adversely affected by this regulation may file with the Division of Dockets Management (see **ADDRESSES**) written objections by (see **DATES**). Each objection must be separately numbered, and each numbered objection must specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested must state that a hearing is requested. Failure to request a hearing for any particular objection will constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested must include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection will constitute a waiver of the right to a hearing on the objection. Three copies of all documents must be submitted and must be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 573

Animal feeds, food additives.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 573 is amended as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

■ 1. The authority citation for 21 CFR part 573 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

■ 2. Section 573.920 is amended by revising paragraph (h) to read as follows:

§ 573.920 Selenium.

* * * * *

(h) The additive selenium yeast is added to complete feed for chickens, turkeys, swine, beef cattle and dairy cattle at a level not to exceed 0.3 part per million.

(1) Selenium yeast is a dried, nonviable yeast (*Saccharomyces cerevisiae*) cultivated in a fed-batch fermentation which provides incremental amounts of cane molasses and selenium salts in a manner which minimizes the detrimental effects of selenium salts on the growth rate of the yeast and allows for optimal incorporation of inorganic selenium into cellular organic material. Residual inorganic selenium is eliminated in a rigorous washing process and must not exceed 2 percent of the total selenium content in the final selenium yeast product.

(2) Guaranteed organic selenium content from selenium yeast must be declared on the selenium yeast product label.

(3) Usage of this additive must conform to the requirements of paragraphs (d)(1), (e), and (f) of this section.

Dated: August 19, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–22358 Filed 9–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Tampa 02–053]

RIN 1625–AA00

Security Zones; Tampa Bay, Port of Tampa, Port of Saint Petersburg, Port Manatee, Rattlesnake, Old Port Tampa, and Crystal River, Florida

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing security zones in Tampa Bay, Port of Tampa, Port of Saint Petersburg, Port Manatee, Rattlesnake, Old Port Tampa, and Crystal River, Florida. These zones are needed to ensure public safety and security in the greater Tampa Bay area. Entry into these zones is prohibited unless authorized by the Captain of the Port, or their designated representative.

DATES: This final rule is effective on September 3, 2003.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket [COTP Tampa 02–053] and are available for inspection or copying at Marine Safety Office Tampa, 155 Columbia Drive, Tampa, Florida 33606–3598 between 7:30 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Heath Hartley, Coast Guard Marine Safety Office Tampa, at (813) 228–2189 extension 123.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 12, 2003, we published a notice of proposed rulemaking (NPRM) entitled "Security Zones; Tampa, Saint Petersburg, Port Manatee, Rattlesnake, Old Port Tampa and Crystal River, Florida" in the **Federal Register** (68 FR 7093). We did not receive any letters commenting on the proposed rule. No public hearing was requested, and none was held. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest since immediate action is needed to continue to protect the public and the ports and waterways of the United States. The Coast Guard will issue a broadcast notice to mariners and place Coast Guard vessels in the vicinity of these zones from time to time to advise mariners of these restrictions.

Background and Purpose

The terrorist attacks of September 11, 2001, killed thousands of people and heightened the need for development of various security measures throughout the seaports of the United States, particularly those vessels and facilities which are frequented by foreign nationals and are of interest to national security. Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorists attacks are likely. The Captain of the Port of Tampa has determined that these security zones are necessary to protect the public, ports, and waterways of the United States from potential subversive acts.

These security zones are similar to temporary security zones established for vessels, waterfront facilities and bridges that were previously published in the **Federal Register** (68 FR 14328, March 25, 2003).

Discussion of Comments and Changes

No comments were received. Therefore no substantive changes have

been made to the proposed rule. We have only made minor wording changes which provide improved descriptions of the regulated area and make the regulation easier to read.

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. There is ample room for vessels to navigate around the security zones and the Captain of the Port of Tampa may allow vessels to enter the zones, on a case-by-case basis with the express permission of the Captain of the Port of Tampa or that officer's designated representative.

Small Entities

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

The majority of the zones are limited in size and leave ample room for vessels to navigate around the zones. The zones will not significantly impact commuter and passenger vessel traffic patterns, and vessels may be allowed to enter the zones, on a case-by-case basis, with the express permission of the Captain of the Port of Tampa or that officer's designated representative. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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 Effect 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.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction, from further environmental documentation. Because it is a security zone, this rule is categorically-excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record-keeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.760 to read as follows:

§ 165.760 Security Zones; Tampa Bay, Port of Tampa, Port of Saint Petersburg, Port Manatee, Rattlesnake, Old Port Tampa, Big Bend, Weedon Island, and Crystal River, Florida.

(a) *Location.* The following areas, denoted by coordinates fixed using the North American Datum of 1983 (World Geodetic System 1984), are security zones:

(1) *Rattlesnake, Tampa, FL.* All waters, from surface to bottom, in Old Tampa Bay east and south of a line commencing at position 27°53.32′ N, 082°32.05′ W; north to 27°53.36′ N, 082°32.05′ W.

(2) *Old Port Tampa, Tampa, FL.* All waters, from surface to bottom, in Old Tampa Bay encompassed by a line connecting the following points: 27°51.62′ N, 082°33.14′ W; east to 27°51.71′ N, 082°32.5′ W; north to 27°51.76′ N, 082°32.5′ W; west to 27°51.73′ N, 082°33.16′ W; and south to 27°51.62′ N, 082°33.14′ W, closing off the Old Port Tampa channel.

(3) *Sunshine Skyway Bridge, Tampa, FL.* All waters in Tampa Bay, from surface to bottom, 100-feet around all bridge supports, dolphins and rocky outcroppings bounded on the northern portion of the bridge at pier 135, (also designated 24N which is the 24th pier north of the center span), 27°37.85′ N, 082°39.78′ W, running south under the bridge to pier 88, (also designated 24S which is the 24th pier south of the center span) 27°36.59′ N, 082°38.86′ W. Visual identification of the zone can be defined as to the areas to the north and south where the bridge structure begins a distinct vertical rise.

(4) *Vessels Carrying Hazardous Cargo, Tampa, FL.* All waters, from surface to bottom, 200 yards around vessels moored in Tampa Bay carrying or transferring Liquefied Petroleum Gas (LPG), Anhydrous Ammonia (NH3) and/or grade "A" and "B" flammable liquid cargo. Any vessel transiting within the outer 100 yards of the zone for moored vessels carrying or transferring Liquefied Petroleum Gas (LPG), Anhydrous Ammonia (NH3) and/or grade "A" and "B" cargo may operate unless otherwise directed by the Captain of the Port or his designee but must proceed through the area at the minimum speed necessary to maintain safe navigation. No vessel may enter the inner 100-yard portion of the security zone closest to the vessel.

(5) *Piers, Seawalls, and Facilities, Port of Tampa, Port Sutton and East Bay.* All waters, from surface to bottom, extending 50 yards from the shore, seawall and piers around facilities in Port Sutton and East Bay within the Port of Tampa encompassed by a line connecting the following points: 27°54.15′ N, 082°26.11′ W, east northeast to 27°54.19′ N, 082°26.00′ W, then northeast to 27°54.37′ N, 082°25.72′ W, closing off all of Port Sutton Channel, then northerly to 27°54.48′ N, 082°25.70 ′W, then northeasterly and terminating at point 27°55.27′ N, 082°25.17′ W.

(6) *Piers, Seawalls, and Facilities, Port of Tampa, East Bay and the eastern side of Hooker's Point.* All waters, from surface to bottom, extending 50 yards from the shore, seawall and piers around facilities on East Bay and on the East Bay Channel within the Port of Tampa encompassed by a line connecting the following points: 27°56.05′ N, 082°25.95′ W, southwesterly to 27°56.00′ N, 082°26.07′ W, then southerly to 27°55.83′ N, 082°26.07′ W, then southeasterly to 27°55.55′ N, 082°25.75′ W, then south to 27°54.75′ N, 082°25.75′ W, then southwesterly and terminating at point 27°54.57′ N, 082°25.86′ W.

(7) *Piers, Seawalls, and Facilities, Port of Tampa, on the western side of Hooker's Point.* All waters, from surface to bottom, extending 50 yards from the shore, seawall and piers around facilities on Hillsborough Bay Cut "D" Channel, Sparkman Channel, Ybor Turning Basin, and Ybor Channel within the Port of Tampa encompassed by a line connecting the following points: 27°54.74′ N, 082°26.47′ W, northwest to 27°55.25′ N, 082°26.73′ W, then north-northwest to 27°55.60′ N, 082°26.80′ W, then north-northeast to 27°56.00′ N, 082°26.75′ W, then northeast to 27°56.58′ N, 082°26.53′ W, and north to 27°57.29′ N, 082°26.51′ W, west to 27°57.29′ N, 082°26.61′ W, then southerly to 27°56.65′ N, 082°26.63′ W, southwesterly to 27°56.58′ N, 082°26.69′ W, then southwesterly and terminating at 27°56.53′ N, 082°26.90′ W.

(8) *Piers, Seawalls, and Facilities, Port of Manatee.* All waters, from surface to bottom, within the Port of Manatee extending 50 yards from the shore, seawall and piers around facilities. This security zone encompasses all piers and seawalls of the cruise terminal berths 9 and 10 in Port Manatee, Florida beginning at 27°38.00′ N, 082°33.81′ W; continuing east to 27°38.00′ N, 082°33.53′ W.

(9) *Moving Cruise Ships in the Port of Tampa, Port of Saint Petersburg, and Port Manatee, Florida.* All waters, from surface to bottom, extending 200 yards around all cruise ships entering or departing Port of Tampa, Port of Saint Petersburg, or Port Manatee, Florida. These temporary security zones are activated on the inbound transit when a cruise ship passes the Tampa Lighted Whistle Buoy "T", located at 27°35.35′ N, 083°00.71′ W and terminate when the vessel is moored at a cruise ship terminal. The security zones are activated on the outbound transit when a cruise ship gets underway from a terminal and terminates when the cruise ship passes the Tampa Lighted Whistle Buoy "T", located at 27°35.35′ N, 083°00.71′ W. Any vessel transiting within the outer 100 yards of the zone for a cruise ship may operate unless otherwise directed by the Captain of the Port or his designee but must proceed through the area at the minimum speed necessary to maintain safe navigation. No vessel may enter the inner 100-yard portion of the security zone closest to the vessel.

(10) *Moored Cruise Ships in the Port of Tampa, Port of Saint Petersburg, and Port Manatee, Florida.* All waters, from surface to bottom, extending 200 yards around moored cruise ships in the Ports of Tampa, Saint Petersburg, or Port Manatee, Florida. Any vessel transiting within the outer 100 yards of the zone of moored cruise ships may operate unless otherwise directed by the Captain of the Port or his designee but must proceed through the area at the minimum speed necessary to maintain safe navigation. No vessel may enter the inner 100-yard portion of the security zone closest to the vessel.

(11) *Saint Petersburg Harbor, FL.* All waters, from surface to bottom, extending 50 yards from the seawall and around all moorings and vessels in Saint Petersburg Harbor (Bayboro Harbor), commencing on the north side of the channel at dayboard "10" in approximate position 27°45.56′ N, 082°37.55′ W, and westward along the seawall to the end of the cruise terminal in approximate position 27°45.72′ N, 082°37.97′ W. The zone will also include the Coast Guard south moorings in Saint Petersburg Harbor. The zone will extend 50 yards around the piers commencing from approximate position 27°45.51′ N, 082°37.99′ W; to 27°45.52′ N, 082°37.57′ W. The southern boundary of the zone is shoreward of a line between the entrance to Salt Creek easterly to Green Daybeacon 11 (LLN 2500).

(12) *Crystal River Nuclear Power Plant.* All waters, from surface to bottom, around the Florida Power Crystal River nuclear power plant located at the end of the Florida Power Corporation Channel, Crystal River, Florida, encompassed by a line connecting the following points: 28°56.87′ N, 082°45.17′ W (Northwest corner); 28°57.37′ N, 082°41.92′ W (Northeast corner); 28°56.81′ N, 082°45.17′ W (Southwest corner); and 28°57.32′ N, 082°41.92′ W (Southeast corner).

(13) *Crystal River Demory Gap Channel.* All waters, from surface to bottom, in the Demory Gap Channel in Crystal River, Florida, encompassed by a line connecting the following points: 28°57.61′ N, 082°43.42′ W (Northwest corner); 28°57.53′ N, 082°41.88′ W (Northeast corner); 28°57.60′ N, 082°43.42′ W (Southwest corner); and 28°57.51′ N, 082°41.88′ W (Southeast corner).

(b) *Regulations.* (1) Entry into or remaining within these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Tampa, Florida or that officer's designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 813–228–2189/91 or on VHF channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or their designated representative.

(c) *Definition.* As used in this section, "cruise ship" means a vessel required to comply with 33 CFR Part 120.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: August 1, 2003.

James M. Farley,

Captain, U.S. Coast Guard, Captain of The Port, Tampa, Florida.

[FR Doc. 03–22370 Filed 9–2–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0299; FRL–7324–1]

Acetamiprid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of acetamiprid in or on canola seed and mustard seed. Bayer Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The ownership of this petition has subsequently been transferred to Nippon Soda Company, Ltd.

DATES: This regulation is effective September 3, 2003. Objections and requests for hearings, identified by docket ID number OPP–2002–0299, must be received on or before November 3, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Akiva Abramovitch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 308–8328; e-mail address: *abramovitch.akiva@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–2002–0299. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html,* a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm.*

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

II. Background and Statutory Findings

In the **Federal Register** of May 30, 2001 (66 FR 29313) (FRL–6782–9), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 0F6082) by Bayer Corporation, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. That notice included a summary of the petition prepared by Bayer Corporation, the registrant. There were no comments received in response to the notice of filing. Subsequent to the notice of filing, the ownership of this

petition was transferred to Nippon Soda Company, Ltd., 220 East 42nd Street, Suite 3002, New York, NY 10017.

The petition requested that 40 CFR 180.578 be amended by establishing a tolerance for residues of the insecticide acetamiprid, N1-[(6-chloro-3-pyridyl)methyl]-N2-cyano-N1-methylacetamidine, in or on canola seed and mustard seed at 0.01 parts per million (ppm).

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for residues of acetamiprid on canola seed and mustard seed at 0.01 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 acetamiprid are discussed in Table 1 of this unit as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity in rats	NOAEL: 12.4/14.6 mg/kg/day (M/F) LOAEL: 50.8/56.0 mg/kg/day (M/F: decreased BW, BW gain and food consumption).
870.3100	90–Day oral toxicity in mice	NOAEL: 106.1/129.4 mg/kg/day (M/F) LOAEL: 211.1/249.1 mg/kg/day (reduced BW and BW gain, decreased glucose and cholesterol levels, reduced absolute organ weights).
870.3150	90–Day oral toxicity in dogs	NOAEL: 13/14 mg/kg/day (M/F) LOAEL: 32 mg/kg/day (reduced BW gain in both sexes).
870.3200	21–Day dermal toxicity in rabbits	NOAEL: 1,000 mg/kg/day (HDT) LOAEL: >1,000 mg/kg/day
870.3700	Developmental toxicity in rats	Maternal NOAEL: 16 mg/kg/day Maternal LOAEL: 50 mg/kg/day (reduced BW and BW gain and food consumption, increased liver weights). Developmental NOAEL: 16 mg/kg/day Developmental LOAEL: 50 mg/kg/day (increased incidence of shortening of the 13th rib)
870.3700	Developmental toxicity in rabbits	Maternal NOAEL: 15 mg/kg/day Maternal LOAEL: 30mg/kg/day (BW loss and decreased food consumption). Developmental NOAEL: 30 mg/kg/day (HDT) Developmental LOAEL: > 30 mg/kg/day

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

Guideline No.	Study Type	Results
870.3800	2–Generation reproduction in rats	Parental systemic NOAEL: 17.9/21.7 mg/kg/day (M/F) Parental systemic LOAEL: 51.0/60.1 mg/kg/day (M/F) (decreased body weight, body weight gain and food consumption). Offspring systemic NOAEL: 17.9/21.7 mg/kg/day (M/F) Offspring systemic LOAEL: 51.0/60.1 mg/kg/day (M/F: reductions in pup weight, litter size, viability and weaning indices; delay in age to attain preputial separation and vaginal opening). Reproductive NOAEL: 17.9/21.7 mg/kg/day (M/F) Reproductive LOAEL: 51.0/60.1 mg/kg/day (M/F: reductions in litter weights and individual pup weights on day of delivery).
870.4100	Chronic toxicity dogs	NOAEL: 20/21 mg/kg/day (M/F) LOAEL: 55/61 mg/kg/day (M/F: initial BW loss and overall reduction in BW gain).
870.4200	Carcinogenicity in mice	NOAEL: 20.3/75.9 mg/kg/day (M/F) LOAEL: 65.6/214.6 mg/kg/day (M/F: decreased BW and BW gain and amyloidosis in numerous organs (M) and decreased BW and BW gain (F)). Not oncogenic under conditions of study.
870.4300	Carcinogenicity in rats	NOAEL: 7.1/8.8 mg/kg/day (M/F) LOAEL: 17.5/22.6 mg/kg/day (M/F, decreases in mean BW and BW gain (F) and hepatocellular vacuolation (M)) Evidence of treatment-related increase in mammary tumors. There was an absence of a dose-response and a lack of a statistically significant increase in the mammary adenocarcinoma incidence by pair with comparison of the mid- and high-dose groups with the controls. Although the incidence exceeded the historical control data from the same lab, it was within the range of values from the supplier.
870.5100	*Salmonella typhimurium/E. coli* Reverse gene mutation assay	Not mutagenic under the conditions of the study.
870.5300	Mammalian cells in culture Forward gene mutation assay - CHO cells	Not mutagenic under the conditions of the study.
870.5375	*In vitro* mammalian chromosomal aberrations - CHO cells	Acetamiprid is a clastogen under the conditions of the study.
870.5385	*In vivo* mammalian chromosome aberrations - rat bone marrow	Acetamiprid did not induce a significant increase in chromosome aberrations in bone marrow cells when compared to the vehicle control group.
870.5395	*In vivo* mammalian cytogenetics - micronucleus assay in mice	Acetamiprid is not a clastogen in the mouse bone marrow micronucleus test.
870.5550	UDS assay in primary rat hepatocytes/ mammalian cell culture	Acetamiprid tested negatively for UDS in mammalian hepatocytes *in vivo*.
870.6200	Acute neurotoxicity in rats	NOAEL: 10 mg/kg LOAEL: 30 mg/kg (reduction in locomotor activity).
870.6200	Subchronic neurotoxicity in rats	NOAEL: 14.8/16.3 mg/kg/day (M/F) LOAEL: 59.7/67.6 mg/kg/day (M/F: reductions in BW, BW gain, food consumption and food efficiency).
N/A	28–Day feeding in dogs	NOAEL: 16.7/19.1 mg/kg/day (M/F) LOAEL: 28.0/35.8 mg/kg/day (reduced BW gain).

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

Guideline No.	Study Type	Results
870.7485	Metabolism in rats	Extensively and rapidly metabolized. Metabolizes 79–86% of administered dose. Profiles similar for males and females for both oral and intravenous dosing. Three to seven percent of dose recovered in urine and feces as unchanged test article. Urinary and fecal metabolites from 15–day repeat dose experiment only showed minor differences from single-dose test. Initial Phase I biotransformation: Demethylation of parent. 6-chloronicotinic acid most prevalent metabolite. Phase II metabolism shown by increase in glycine conjugate.
870.7485	Metabolism in mice, rats, and rabbits (Special study)	Male mice, rats or rabbits were administered single doses of acetamiprid by gavage, intraperitoneal injection (i.p.) or intravenous injection (i.v.) up to 60 mg/kg. The animals were assessed for a variety of neurobehavioral parameters. *In vitro* experiments were also done using isolated ileum sections from guinea pigs to assess contractile responses in the absence and presence of agonists (acetylcholine, histamine diphosphate, barium chloride and nicotine tartrate). Acetamiprid was also assessed via i.v. in rabbits for effects on respiratory rate, heart rate and blood pressure; via gavage in mice for effects on gastrointestinal motility; and via i.p. in rats for effects on water and electrolyte balance in urine, and blood coagulation, hemolytic potential and plasma cholinesterase activity. Based on a number of neuromuscular, behavioral and physiological effects of acetamiprid in male mice, under the conditions of this study, a overall NOAEL of 10 mg/kg (threshold) and LOAEL of 20 mg/kg could be estimated for a single dose by various exposure routes.
870.7600	Dermal absorption	The majority of the dose was washed off with the percent increasing with dose. Skin residue was the next largest portion of the dose with the percent decreasing with dose. In neither case was there evidence of an exposure related pattern. Absorption was small and increased with duration of exposure. Since there are no data to demonstrate that the residues remaining on the skin do not enter the animal, then as a conservative estimate of dermal absorption, residues remaining on the skin will be added to the highest dermal absorption value. The potential total absorption at 24 hours could be approximately 30%.

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.

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

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

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects

though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for acetamiprid used for human risk assessment is shown in the following Table 2 of this unit:

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

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (general population including infants and children)	NOAEL = 10 mg/kg/day UF = 100 Acute RfD = 0.10 mg/kg/day	FQPA SF = 1X aPAD = acute RfD/FQPA SF = 0.10 mg/kg/day	Acute neurotoxicity study LOAEL = 30 mg/kg/day based on decrease in locomotor activity in males.
Chronic dietary (all populations)	NOAEL= 7.1 mg/kg/day UF = 100 Chronic RfD = 0.07 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD/FQPA SF = 0.07 mg/kg/day	Chronic feeding/oncology study in rats. LOAEL = 17.5 mg/kg/day based on decrease in body weight/body weight gain and hepatocellular vacuolation.
Short-term (1 to 30 days) and intermediate-term (1 to 6 months) Incidental Oral	NOAEL= 15 mg/kg/day	LOC for MOE = 100 (Residential)	13–Week feeding study in rats; subchronic neurotoxicity in rats; developmental toxicity in rats. LOAEL = 50 mg/kg/day based on decrease in body weight/body weight gain, food consumption, and food efficiency.
Short-term (1 to 30 days) and intermediate-erm (1 to 6 months) dermal	Oral NOAEL = 17.9 mg/kg/day (dermal absorption factor = 30%)	LOC for MOE = 100 (Residential) LOC for MOE = 100 (Occupational)	2–Generation reproduction study. LOAEL = 51 mg/kg/day based on delay in preputial separation, vaginal opening, eye opening and pinna unfolding; reduced litter size, viability and weaning indices in offspring.
Long-term dermal (> 6 months)	Oral NOAEL= mg/kg/day (dermal absorption factor = 30%)	LOC for MOE = 100 (Residential) LOC for MOE = 100 (Occupational)	Chronic feeding/oncology study in rats. LOAEL = 17.5 mg/kg/day based on decrease in body weight/body weight gain and hepatocellular vacuolation.
Short-term (1 to 30 days) and intermediate-term (1 to 6 months) Inhalation	Oral NOAEL = 17.9 mg/kg/day (inhalation absorption factor = 100%)	LOC for MOE = 100 (Residential) LOC for MOE = 100 (Occupational)	2–Generation reproduction study. LOAEL = 51 mg/kg/day based on delay in preputial separation, vaginal opening, eye opening and pinna unfolding; reduced litter size, viability and weaning indices in offspring.
Long-term inhalation (> 6 months)	Oral NOAEL = 7.1 mg/kg/day (inhalation absorption factor = 100%)	LOC for MOE = 100 (Residential) LOC for MOE = 100 (Occupational)	Chronic feeding/oncology study in rats. LOAEL = 17.5 mg/kg/day based on decrease in body weight/body weight gain and hepatocellular vacuolation.
	Cancer (oral, dermal, inhalation) - Not likely to be carcinogenic.		

*The reference to the FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.578) for the residues of acetamiprid, in or on a variety of raw agricultural commodities. Tolerances for acetamiprid range from 0.2 to 20 ppm in plant commodities and range from 0.01 to 0.2 ppm in livestock commodities. Risk assessments were conducted by EPA to assess dietary exposures from acetamiprid in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: The assessment assumed that 100% of the proposed crops and all other crops having acetamiprid tolerances were treated and that all treated crops and livestock had residues of concern at the tolerance level. The general U.S. population and all population subgroups have exposure and risk estimates which are below EPA's LOC (i.e., the aPADs are all below 100%). The most highly exposed subgroup is children 1 to 6 years of age, which utilizes 40% of the aPAD.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The assessment

assumed that 100% of the proposed crops and all other crops having acetamiprid tolerances were treated and that all treated crops and livestock had residues of concern at the tolerance level. The general U.S. population and all population subgroups have exposure and risk estimates which are below EPA's LOC (i.e., the cPADs are all below 100%). The most highly exposed subgroup is children 1 to 6 years of age, which utilizes 21% of the cPAD.

iii. *Cancer.* EPA has determined that acetamiprid is not likely to be a human carcinogen and EPA, therefore, does not expect it to pose a cancer risk. As a result, a quantitative cancer dietary exposure analysis 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 acetamiprid 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 acetamiprid.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The Screening Concentrations 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. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

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

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

Based on the FIRST and SCI-GROW models the EECs of acetamiprid for acute exposures are estimated to be 17 parts per billion (ppb) for surface water and 0.0008 ppb for ground water. The EECs for chronic exposures are estimated to be 4 ppb for surface water and 0.0008 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).

Acetamiprid is currently registered for use on the following residential non-dietary sites: As an outdoor insecticide on ornamentals, flowers, vegetable gardens, and fruit trees. The risk assessment was conducted using the following residential exposure assumptions: Residential handlers (homeowners) are assumed to make the maximum number of applications at maximum use rates with little use of any protective equipment. Potential dermal and inhalation doses that homeowners may receive during applications of pesticides to the garden, around walkways, driveways, foundations, vegetables, and ornamentals were considered; therefore, exposures and risks are calculated for both dermal and inhalation exposures. This scenario assumes that pesticides are available for inhalation or have the potential to come in contact with the skin of adults and youths during the mixing/loading and application of pesticides used around the garden. The short- and intermediate-term handler MOEs for the residential uses of acetamiprid for both age groups of adults and youth are at or greater than 120,000 for all exposure scenarios, and therefore represent risks that are below EPA's level of concern.

Postapplication exposures were calculated assuming dermal exposure to adults and children while working in treated gardens or with various fruit trees and ornamentals. Inhalation exposure was not quantitatively addressed because exposure by inhalation is considered minimal due to the air exchange that occurs in outdoor scenarios. In addition, toddlers are not expected to spend a significant amount of time in a home garden and any resulting incidental oral exposures would be minimal and not quantifiable; therefore, EPA does not believe that incidental oral exposure from the registered homeowner uses will result in significant incidental oral exposures to children. This scenario assumes that pesticide residues are transferred to the skin of adults and youth who enter treated gardens for gardening or other homeowner activities. The short- and intermediate-term postapplication MOEs for the residential uses of acetamiprid for both age groups of adults and youth are at or greater than 18,000 for all exposure scenarios, and therefore represent risks that are below EPA's level of concern.

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

EPA does not have, at this time, available data to determine whether acetamiprid has a common mechanism of toxicity with other substances. 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 acetamiprid and any other substances, and acetamiprid 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 acetamiprid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* Neither quantitative nor qualitative evidence of increased susceptibility of fetuses to *in utero* exposure to acetamiprid was observed in the developmental toxicity studies in rats and rabbits. In the multigeneration reproductive study, qualitative evidence of increased susceptibility of rat pups is observed since the offspring effects are considered to be more severe than the parental effects. However, quantitative evidence of increased susceptibility of rat pups was not observed since the parental and offspring NOAELs and LOAELs are at the same doses.

Since there is qualitative evidence of increased susceptibility of the young following exposure to acetamiprid in the rat reproduction study, EPA performed a Degree of Concern analysis to determine the level of concern for the effects observed when considered in the context of all available toxicity data, and to identify any residual uncertainties after establishing toxicity endpoints and traditional uncertainty factors to be used in the risk assessment of this chemical. If residual uncertainties are identified, EPA examines whether these residual uncertainties can be addressed by a special FQPA safety factor and, if so, the size of the factor needed.

The multigeneration reproduction study in rats was used for the Degree of Concern analysis. In that rat reproduction study, qualitative susceptibility was evidenced as significant reductions in pup weights in both generations, reductions in litter size, and viability and weaning indices among F_2 offspring as well as significant delays in the age to attain vaginal opening and preputial separation in the presence of lesser maternal toxicity (reductions in body weight, body weight gain and food consumption) at the highest dose tested. Considering the overall toxicity profile and the doses and endpoints selected for risk assessment for acetamiprid, the EPA characterized the degree of concern for the effects observed in this study as low, noting that there is a clear NOAEL for the offspring effects observed and that these effects occurred in the presence of parental toxicity and only at the highest dose tested. No residual uncertainties were identified. The NOAEL for offspring effects in this reproduction study (17.9 mg/kg/day) is used as the basis for short- and intermediate-term dermal and inhalation exposure scenarios. For all other toxicity endpoints established for acetamiprid, a NOAEL lower than this offspring NOAEL is used.

For the reasons stated above, EPA has concluded that there is low concern for prenatal and/or postnatal toxicity resulting from exposure to acetamiprid.

3. *Conclusion.* The toxicology data base is not complete for FQPA purposes. EPA has determined that a developmental neurotoxicity study in rats should be conducted. The need for a developmental neurotoxicity study is based on the consideration that clinical signs of neurotoxicity were observed on the day of dosing in the acute neurotoxicity study in rats. In addition, acetapmiprid is structurally related to thiamethoxam and imidacloprid, both of which are neonicotinoids. Imidacloprid is a chloronicotinyl compound and is an analog to nicotine. Studies in the published literature suggest that nicotine, when administered causes developmental toxicity, including functional deficits, in animals and/or humans that are exposed *in utero*. With imidacloprid, there is evidence that administration causes clinical signs of neurotoxicity following a single oral dose in the acute study and alterations in brain weight in rats in the 2–year carcinogenicity study. With thiamethoxam, there was also evidence of clinical signs of neurotoxicity in the acute neurotoxicity study. There are also indications that thiamethoxam may affect the endocrine system.

Recently, EPA has received objections to tolerances for residues of acetamiprid from the Natural Resources Defense Council (NRDC). NRDC asserted that EPA is missing data bearing on oral exposure to acetamiprid from residential uses of the pesticide. The **Federal Register** notice on the contested acetamiprid tolerance notes that "incidental oral exposure is an insignificant pathway of exposure" for acetamiprid (67 FR 14649, 14657; March 27, 2002). As noted above, little or no incidental oral exposure is expected since acetamiprid's residential uses are limited to ornamentals, flowers, vegetable gardens, and fruit trees. Incidental oral exposure to pesticides can occur when young children engage in "mouthing" behavior (i.e. repeatedly placing their hands or other objects in their mouth) in a location where a pesticide is present. EPA assumes that incidental oral exposure to a pesticide may occur when a pesticide is used to treat a home lawn because young children frequently play on home lawns. EPA, however, considers it unlikely that young children would spend an extended time in flower, vegetable, or ornamental gardens, and thus treatment of such gardens with a pesticide is not likely to lead to a significant exposure to children by the incidental oral route.

The NRDC also claimed that a 10X safety factor should be used to account for the lack of the developmental neurotoxicity study. However, it has been noted that reliable developmental neurotoxicity data received and reviewed for other structurally-related compounds in this chemical class (neonicotinoids), including thiacloprid, clothianidin, and imidacloprid, demonstrated that the developmental neurotoxicity had no effect on the regulatory endpoint for those pesticides. Therefore, EPA believes that the results of the required developmental neurotoxicity study will not likely impact the regulatory doses selected for acetamiprid. It is further noted that the requirement of a developmental neurotoxicity study is not based on criteria reflecting special concern for the developing fetuses or young (e.g., neuropathy in adult animals; CNS malformations following prenatal exposure; brain weight or sexual maturation changes in offspring; and/or functional changes in offspring). On this basis, EPA concluded that a data base uncertainty factor is not needed to account for the lack of the developmental neurotoxicity study with acetamiprid, and that reliable data support removing the additional safety factor for the protection of infants and children.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential

uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

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

When EECs for surface water and 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 acetamiprid will occupy 17% of the aPAD for the U.S. population, 11% of the aPAD for females 13 years and older, 38% of the aPAD for infants less than 1 year of age and 40% of the aPAD for children 1 to 6 years of age. In addition, there is potential for acute dietary exposure to acetamiprid 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 the following Table 3 of this unit:

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

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. population	0.10	17	17	0.0008	2,900
All Infants (< 1 year)	0.10	38	17	0.0008	620
Children 1 to 6 years	0.10	40	17	0.0008	600
Females 13 to 50 years	0.10	11	17	0.0008	2,700

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to acetamiprid from food will utilize 8% of the cPAD for the U.S. population, 15% of the cPAD for infants less than 1 year of age and 21% of the cPAD for children 1 to 6 years of age. Based upon the use pattern, chronic residential exposure to residues of acetamiprid is not expected. In addition, there is potential for chronic dietary exposure to acetamiprid 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 the following Table 4 of this unit:

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

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.07	8	4	0.0008	2,260
All infants (< 1 year)	0.07	15	4	0.0008	600
Children 1 to 6 years	0.07	21	4	0.0008	550

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

Acetamiprid is currently registered for use that could result in short- and intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short- and intermediate-term exposures for acetamiprid.

Using the exposure assumptions described in this unit for short- and intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 18,000 for U.S. population and 23,000 for children 7 to 12 years of age. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short- and intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of acetamiprid in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short- and intermediate-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 5 of this unit:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR SHORT- AND INTERMEDIATE-TERM EXPOSURE TO ACETAMIPRID

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-/Intermediate-Term DWLOC (ppb)
U.S. population	18,000	100	4	0.0008	1,500
Children 7 to 12 years	23,000	100	4	0.0008	400

5. *Aggregate cancer risk for U.S. population.* Acetamiprid has been classified as a "not likely human carcinogen." Therefore, it 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 acetamiprid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (solvent extraction followed by gas chromatography/electron capture detection (GC/ECD) determination of residues) 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

No Codex, Canadian, or Mexican maximum residue levels (MRLs) have been established for residues of acetamiprid.

V. Conclusion

Therefore, the tolerance is established for residues of acetamiprid, N1-[(6-chloro-3-pyridyl)methyl]-N2-cyano-N1-methylacetamidine, in or on canola seed and mustard seed at 0.01 ppm.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0299 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 3, 2003.

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 (1900C), 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 Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *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 Unit I.B.1. Mail your copies, identified by docket ID number OPP–2002–0299, 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 Unit I.B.1. 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 the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: August 22, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.578 is amended by alphabetically adding commodities to the table in paragraph (a)(1) to read as follows:

§ 180.578 Acetamiprid; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
Canola, seed	0.010
* * * * *	*
Mustard, seed	0.010
* * * * *	*

* * * * *

[FR Doc. 03–22313 Filed 9–2–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0288; FRL–7323–9]

Bifenthrin; Pesticide Tolerance for Emergency Exemption; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA issued a final rule in the **Federal Register** of September 27, 2001, to establish a time-limited tolerance for residues of bifenthrin in or on sweet potato. This action was in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on sweet potato. This document is being issued to correct typographical errors in that original document.

DATES: This document is effective on September 3, 2003.

FOR FURTHER INFORMATION CONTACT: Andrea Conrath, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9356; e-mail address: *conrath.andrea@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and 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 the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. 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) number OPP–2003–0288. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_ 40/40cfr180_00.html,* a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to 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 Technical Amendment Do?

EPA issued a final rule in the **Federal Register** of September 27, 2001 (66 FR 49300)(FRL–6801–5), to establish a time-limited tolerance for residues of bifenthrin in or on sweet potato. This action was in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on sweet potato. The amendment to establish the tolerance for bifenthrin inadvertently added the tolerance for "sweet potato" to 40 CFR 180.442(a). However, 40 CFR 180.442(a) is not designated for section 18 emergency exemptions; consequently, the entry for sweet potato could not be added to § 180.442(a) by the Office of the Federal Register. This technical amendment is being issued to correctly add the tolerance for sweet potato to the table in § 180.442(b), which is designated for time-limited tolerances associated with section 18 emergency exemptions.

In addition to correctly adding the tolerance to paragraph (b) of § 180.442, based on a final rule issued by EPA in the **Federal Register** of July 1, 2003 (68 FR 39427)(FRL–7308–9), EPA is also changing the commodity term "sweet potato" to read "sweet potato, roots."

III. Why is this Technical Amendment Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's technical amendment final without prior proposal and opportunity for comment, because EPA is merely correcting the placement of a tolerance already issued and previously published as a final rule, and the commodity term. EPA finds that this

constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Regulatory Assessment Requirements

This final rule implements technical amendments to the Code of Federal Regulations and it does not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that a technical amendment is not a "significant regulatory action" subject to review by OMB 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 the action does 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 action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Submission to Congress and the Comptroller General

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: August 21, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.442 is amended by alphabetically adding the commodity "sweet potato, roots" to the table in paragraph (b) to read as follows:

§ 180.442 Bifenthrin; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ revocation date
* *	*	*
Sweet potato, roots	0.05	12/31/03
* *	*	*

* * * * *

[FR Doc. 03–22314 Filed 9–2–03; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0267; FRL–7321–3]

Lambda Cyhalothrin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of the pyrethroid lambda-cyhalothrin, 1:1 mixture of (S)-α-cyano-3-phenoxybenzyl-(Z)-(1R,3R)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (R)-α-cyano-3-phenoxybenzyl-(Z)-(1S,3S)-3-(2-chloro-3,3,3- trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and its epimer expressed as epimer of lambda-cyhalothrin, a 1:1 mixture of

(S)-α-cyano-3- phenoxybenzyl-(Z)-(1S,3S) -3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (R)-α-cyano-3- phenoxybenzyl-(Z)-(1R,3R)-3-(2-chloro-3,3,3- trifluoroprop-1-enyl)- 2,2-dimethylcyclopropanecarboxylate in or on clover, forage and clover, hay. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on alfalfa/clover/grass mixed stands. This regulation establishes a maximum permissible level for residues of lambda-cyhalothrin and its epimer in these food commodities. The tolerances will expire and are revoked on December 31, 2005.

DATES: This regulation is effective September 3, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0267, must be received on or before November 3, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.**

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a Federal or State government agency involved in administration of environmental quality programs (i.e., Departments of Agriculture, Environment, etc). Potentially affected entities may include, but are not limited to:

•Federal or State Government Entity, (NAICS 9241), i.e., Departments of Agriculture, Environment, etc.

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–2003–0267. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development.

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

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for combined residues of the insecticide lambda-cyhalothrin and its epimer, in or on clover, forage at 5.0 parts per million (ppm) and clover, hay at 6.0 ppm. These tolerances will expire and are revoked on December 31, 2005. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

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

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

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

III. Emergency Exemption for Lambda Cyhalothrin on Alfalfa/Clover/Grass Mixed Stands and FFDCA Tolerances

The state of New York requested the use of lambda-cyhalothrin to control alfalfa weevil (*Hypera postica*),

Armyworms (*Spodoptera spp.*) and Potato leafhopper (*Empoasca fabae*) on alfalfa/clover/grass mixed stands. The use of insecticides is the only practical means of controlling the three major pests that infest alfalfa/clover/grass mixed stands and there are no pesticides registered to control insect pests in these stands of mixed of alfalfa/clover/grass. Experts estimate a 35% yield loss if these mixed stands are not protected. EPA has authorized under FIFRA section 18 the use of lambda-cyhalothrin on alfalfa/clover/grass mixed stands for control of alfalfa weevil, armyworms and potato leafhoppers in New York. After having reviewed the submissions, EPA concurs that an emergency condition exists for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of lambda-cyhalothrin in or on clover, forage and clover, hay. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerances under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although these tolerances will expire and are revoked on December 31, 2005, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on clover, forage and clover, hay after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether lambda-cyhalothrin meets EPA's registration requirements for use on alfalfa/clover/grass mixed stands or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of lambda-cyhalothrin by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than New York to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for lambda-cyhalothrin, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT.**

IV. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of lambda-cyhalothrin and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for time-limited tolerances for the combined residues of lambda-cyhalothrin and its epimer in or on clover, forage at 5.0 ppm and clover, hay at 6.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Endpoints

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

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

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

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

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR LAMBDA-CYHALOTHRIN] FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (General population including infants and children)	NOAEL = 0.5 mg/kg/day UF = 100 Acute RfD = 0.005 mg/kg/day	FQPA SF = 1 aPAD = acute RfD + FQPA SF = 0.005 mg/kg/day	Chronic oral study in the dog (lambda-cyhalothrin) LOAEL = LOAEL = 3.5 mg/kg/day based on clinical signs of neurotoxicity (ataxia) observed from day 2, 3 to 7 hours post-dosing.
Chronic Dietary (All populations)	NOAEL= 0.1 mg/kg/day UF = 100 Chronic RfD = 0.001 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD + FQPA SF = 0.001 mg/kg/day	Chronic oral study in the dog (lambda-cyhalothrin) LOAEL = 0.5 based on gait abnormalities observed in 2 dogs
Incidental Oral Short- and Intermediate-Term (1 - 30 Days and 1 - 6 Months) Residential Only	NOAEL= 0.1	LOC for MOE = 100 (Residential)	Chronic oral study in the dog (lambda-cyhalothrin) LOAEL = 0.5 based on gait abnormalities observed in 2 dogs
Dermal (All Durations; - Short-Term (1 to 7 days) - Intermediate-Term (1 week to several months) - Long-Term (several months to lifetime) (Residential)	dermal (or oral) study NOAEL= 10 mg/kg/day	LOC for MOE = 100 (Residential)	21–Day dermal toxicity study in the rat (lambda-cyhalothrin) LOAEL = 50 mg/kg/day based on clinical signs of neurotoxicity (observed from day 2) and decreased body weight and body weight gain
Inhalation (All Durations; - Short-Term (1 to 7 days) - Intermediate-Term (1 week to several months) - Long-Term (several months to lifetime) (Residential)	inhalation (or oral) study NOAEL= 0.3 Environmental protection, Cut and past remainder of subjects. µg/L (0.08 mg/kg/day) (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	21–Day Inhalation Study in Rats (lambda-cyhalothrin) LOAEL = 3.3 µg/L (0.90 mg/kg/day) based on clinical signs of neurotoxicity, decreased body weight gains, increased incidence of punctuate foci in the cornea, slight reductions in cholesterol in females and slight changes in selected urinalysis parameters.
Cancer (oral, dermal, inhalation)			Classification: Group D chemical (not classifiable as to human carcinogenicity)

*The reference to the FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Currently established tolerances for residues of lambda-cyhalothrin are listed under 40 CFR 180.438 and include permanent tolerances on plants ranging from 0.01 ppm on soybeans to 6.0 ppm on alfalfa, hay; corn, forage; and tomato, pomace (dry or wet). Tolerances are also established on animal commodities ranging from 0.01 ppm in egg; poultry, meat; and poultry, meat by-products to 5.0 ppm in milk, fat (reflecting 0.2 ppm in whole milk). The Agency has recently established additional tolerances for lambda-cyhalothrin on a number of commodities ranging from 0.05 ppm on sugarcane to 3.0 ppm on peanut, hay. Risk assessments were conducted by EPA to assess dietary exposures from lambda-cyhalothrin in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. A refined Tier 3 probabilistic acute dietary risk assessment was conducted for all currently registered and proposed lambda-cyhalothrin food uses. For the acute dietary risk analysis the entire distribution of residue field trial data was used for not-blended or partially-blended commodities; average residue field trial data was used for blended commodities; information from cooking and processing studies were used when available; and market share data for proposed and established tolerances was used.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM® analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. For the chronic dietary risk analysis the average of the residue field trials, information from cooking and processing studies, and market share data were used.

iii. *Cancer.* The data base for carcinogenicity is considered complete, and no additional studies are required at this time. The requirements for oncogenicity studies in the rat and the mouse with lambda-cyhalothrin have been satisfied by a combined chronic/oncogenicity study in rats and an oncogenicity study in mice, both conducted with cyhalothrin. Lambda-cyhalothrin has been classified as a Group D chemical (not classifiable as to human carcinogenicity) with regards to its carcinogenic potential.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue

levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must 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 the 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 the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT. A detailed description of how the Agency used PCT information in this assessment can be found in the lambda-cyhalothrin pesticide tolerance document published on September 27, 2002 (67 FR 60902; FRL–7200–1) in Unit III.C.(1)(iv).

The Agency believes that the three conditions listed above] have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses 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. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. 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 lambda-cyhalothrin 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 lambda-cyhalothrin 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 lambda-cyhalothrin.

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

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

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

The compounds to be regulated in drinking water are lambda-cyhalothrin and degradate XV (parent hydroxylated in the 4-position of the phenoxy ring). Based on the FIRST, PRZM/EXAMS and SCI-GROW models the estimated environmental concentrations (EECs) of lambda-cyhalothrin and its degradate XV for acute exposures are estimated to be 0.62 parts per billion (ppb) for surface water (0.51 ppb lambda-cyhalothrin and 0.11 ppb degradate XV) and 0.012 ppb (0.006 ppb lambda-cyhalothrin and 0.006 ppb degradate XV) for ground water. The EECs for chronic exposures are estimated to be 0.098 ppb for surface water (0.09 ppb lambda-cyhalothrin and 0.008 ppb degradate XV) and 0.012 ppb for ground water (0.006 ppb lambda-cyhalothrin and 0.006 ppb degradate XV).

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). The residential exposure/risk assessment evaluated both proposed and existing uses for lambda-cyhalothrin. Existing uses on turf, in gardens, on golf courses, and for structural pest control were qualitatively assessed, but a quantitative

calculation was only completed for postapplication exposure on treated turf because this scenario is expected to have the highest associated exposures. This screening level tool is protective for all residential exposures, even the handler scenarios, because the dose levels for children playing on treated lawns are thought to exceed those expected for all other scenarios. For postapplication exposure, all residential MOEs were well above the Agency target MOE of 100 for the inhalation, dermal, and oral routes and therefore do not exceed EPA's level of concern (range 700 to 14,700). Additionally, when total MOEs were aggregated, MOEs were still not of concern (MOEs for children = 500 and for adults = 3,000).

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

EPA does not have, at this time, available data to determine whether lambda-cyhalothrin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, lambda-cyhalothrin 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 lambda-cyhalothrin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

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

2. *Developmental toxicity studies.* In a developmental toxicity study in rats, the maternal NOAEL was 10 mg/kg/day and the LOAEL was 15 mg/kg/day based on uncoordiniated limbs, reduced body weight gain and food consumption. The developmental NOAEL was 15 mg/kg/day (HDT) and the developmental LOAEL was > 15 mg/kg/day.

In a developmental toxicity study in rabbits, the maternal NOAEL was 10 mg/kg/day and the LOAEL was 30 mg/kg/day based on reduced body weight gain and food consumption. The developmental NOAEL was 30 mg/kg/day (HDT) and the developmental LOAEL was >30 mg/kg/day.

3. *Reproductive toxicity study.* In a 3-generation reproduction study in rats, the parental/offspring NOAEL was 1.5 mg/kg/day and the LOAEL was 5.0 mg/kg/day based on decreased parental body weight and body weight gain during premating and gestation periods and reduced pup weight and weight gain during lactation. The reproductive NOAEL was 5.0 mg/kg/day (HDT)

4. *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 cyhalothrin and there is no evidence of increased susceptibility of young rats in the reproduction study with cyhalothrin.

5. *Conclusion.* Through the use of bridging data, the toxicology data base for lambda-cyhalothrin is complete. The Agency has determined that the special FQPA safety factor should be reduced to 1x because as noted above, there is no evidence of increased susceptibility of rat or rabbit fetuses following *in utero* exposure in the developmental studies with cyhalothrin and there is no evidence of increased susceptibility of young rats in the reproduction study with cyhalothrin. The Agency concluded there are no residual uncertainties for pre- and/or postnatal exposure. The RfDs and other endpoints established for risk assessment are protective of pre-/postnatal toxicity following exposure to cyhalothrin.

D. Aggregate Risks and Determination of Safety

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

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

When EECs for surface water and groundwater are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to lambda-cyhalothrin 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 lambda-cyhalothrin on 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 lambda-cyhalothrin will occupy 41% of the aPAD for the U.S. population, 24% of the aPAD for females 13 years and older, 71% of the aPAD for all infants <1 year old and 82% of the aPAD for children 1–6 years old. In addition, despite the potential for acute dietary exposure to lambda-cyhalothrin in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of lambda-cyhalothrin in surface and

ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO LAMBDA-CYHALOTHRIN

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. Population (total)	0.005	40.86	0.62	0.012	103
All Infants (1 year)	0.005	71.22	0.62	0.012	14
Children 1–6 years	0.005	82.36	0.62	0.012	9
Children 7–12 years	0.005	46.09	0.62	0.012	27
Females 13–50	0.005	23.83	0.62	0.012	114
Males 13–19	0.005	27.61	0.62	0.012	127
Males 20+ years	0.005	21.69	0.62	0.012	137
Seniors 55+	0.005	21.85	0.62	0.012	137

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to lambda-cyhalothrin from food will utilize 8.2% of the cPAD for the U.S. population, 11.7% of the cPAD for all infants < 1 year old and 21.8% of the cPAD for children 1-6 years old. Based on the use pattern, chronic residential exposure to residues of lambda-cyhalothrin is not expected. In addition, despite the potential for chronic dietary exposure to lambda-cyhalothrin in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of lambda-cyhalothrin in surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

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

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population (total)	0.001	8.2	0.098	0.012	32
All Infants (< 1 year)	0.001	11.7	0.098	0.012	9
Children 1–6 years	0.001	21.8	0.098	0.012	8
Children 7–12 years	0.001	12.9	0.098	0.012	9
Females 13–50	0.001	5.7	0.098	0.012	28
Males 13–19	0.001	7.9	0.098	0.012	32
Males 20+ years	0.001	6.0	0.098	0.012	33
Seniors 55+	0.001	5.8	0.098	0.012	33

3. *Short- and intermediate-term risk.* Aggregate risk for short- and intermediate-term durations of exposure includes food, drinking water, and residential exposure pathways. The residential exposure pathway includes dermal, inhalation, and incidental oral (hand-to-mouth-type inadvertent exposure) routes of exposure. This aggregate risk assessment included lawn post-application exposure, considered the scenario with the highest potential for exposure and is a day 0 screening level assessment.

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

Using the exposure assumptions described in this unit for short- and intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 879 for adults, 239 for children 1–6, and 302 for infants <1 year 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 lambda-cyhalothrin in ground water 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 the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR SHORT AND INTERMEDIATE-TERM EXPOSURE TO LAMBDA-CYHALOTHRIN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short and Intermediate-Term DWLOC (ppb)
Adults	879	100	0.098	0.012	31
Child (1–6)	239	100	0.098	0.012	6
Infant (<1 yr)	302	100	0.098	0.012	7

5. *Aggregate cancer risk for U.S. population.* Lambda-cyhalothrin has been classified as a Group D chemcial (not classifiable as to human carcinogenicity) with regards to its carcinogenic potential.

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 lambda-cyhalothrin residues.

V. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

There are no Codex, Canadian, or Mexican MRLs established for residues of lambda-cyhalothrin in plant or animal commodities. Codex MRLs for cyhalothrin are established for several commodities which are unrelated to this action. Therefore, a discussion of compatibility with U.S. tolerances is not relevant at this time.

VI. Conclusion

Therefore, the tolerances are established for the combined residues of lambda-cyhalothrin and its epimer in or on clover, forage at 5.0 ppm and clover, hay at 6.0 ppm.

VII. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0267 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 3, 2003.

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 (1900C), 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 Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its

inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by the docket ID number OPP–2003–0267, 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 Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VIII. Regulatory Assessment Requirements

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

IX. Submission to Congress and the Comptroller General

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: August 22, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.438 is amended by alphabetically adding commodities to the table in paragraph (b) to read as follows:

§ 180.438 Lambda-cyhalothrin; tolerances for residues.

(b) * * *

* * * * *

Commodity	Parts per million	Expiration/revocation date
Clover, forage	5.0	12/31/05
Clover, hay	6.0	12/31/05

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[FR Doc. 03–22315 Filed 9–2–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; DA 03–2690]

Certifications Required Pursuant to the Children's Internet Protection Act; Approval of FCC Forms 486 and 479 by the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of the amendments to our rules implementing the revised FCC Form 486 (Receipt of Service Confirmation) and the revised FCC Form 479 (Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection Act (CIPA)) and instructions have been approved by the Office of Management and Budget (OMB). The Order in CC Docket No. 96–45 was published in the **Federal Register** on August 8, 2003.

DATES: The final rule amending 47 CFR Part 54, published on August 8, 2003 (68 FR 47253), became effective on August 14, 2003.

FOR FURTHER INFORMATION CONTACT: Jennifer Schneider, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CC Docket No. 96–45, released August 19, 2003. The Wireline Competition Bureau announces that the revised FCC Form 486 (Receipt of Service Confirmation) and the revised FCC Form 479 (Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection Act (CIPA)) and instructions have been approved by the Office of Management and Budget (OMB). Accordingly, the effective date of the Order is August 14, 2003. See 68 FR 47253, August 8, 2003.

On August 14, 2003, OMB approved the information collections. See OMB No. 3060–0853.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirement, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–22368 Filed 9–2–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172, 178, and 180

[Docket No. RSPA–98–3554 (HM–213)]

RIN 2137–AC90

Hazardous Materials: Requirements for Cargo Tanks

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; response to appeals.

SUMMARY: On April 18, 2003, the Research and Special Programs Administration published a final rule under Docket No. RSPA–98–3554 (HM–213) to update and clarify requirements in the Hazardous Materials Regulations applicable to construction and maintenance of cargo tank motor vehicles. In response to appeals submitted by persons affected by the April 18, 2003 final rule, this final rule amends certain requirements and makes minor editorial corrections.

DATES: *Effective Date:* This final rule is effective October 1, 2003.

Voluntary Compliance Date: Voluntary compliance is authorized as of September 3, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Olson, Office of Hazardous Materials Technology, RSPA, telephone (202) 366–4504; Ms. Susan Gorsky, Hazardous Materials Standards, RSPA, telephone (202) 366–8553; or Mr. Danny Shelton, Office of Enforcement and Program Delivery, Hazardous Materials Division, Federal Motor Carrier Safety Administration (FMCSA), telephone (202) 366–6121.

SUPPLEMENTARY INFORMATION:

I. Background

On April 18, 2003, the Research and Special Programs Administration (RSPA; we) published a final rule (68 FR 19258) that revised requirements in the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) for cargo tank design, qualification, maintenance, and use. Specifically, the final rule:

- Revised the definitions of "Design Certifying Engineer" and "Registered Inspector" to allow experienced persons without degrees to qualify;
- Permitted cargo tank owners to re-certify cargo tanks to their original specifications;
- Revised minimum road clearance and bottom damage protection requirements for certain cargo tank motor vehicles;
- Clarified current requirements for using the EPA Method 27 leakage test as an alternative to the HMR leak test requirements;
- Revised certain requirements applicable to MC 331 and MC 338 cargo tanks for consistency with regulations applicable to the more recently adopted MC 400 series cargo tanks;
- Required MC 338 cargo tanks to be equipped with a means of thermal activation for automatically closing the internal self-closing stop valve in the event of a fire;
- Clarified cargo tank test and inspection requirements and relaxes the leakage test requirement for cargo tanks in anhydrous ammonia service; and
- Eliminated redundant or unnecessary regulations.

In addition, the April 18 final rule revised the HMR to address three recommendations from the National Transportation Safety Board (NTSB):

- Consistent with Recommendation H–90–91, the April 18 final rule

required controls for internal shut-off valves for the discharge system to be installed at remote locations on all newly constructed and currently authorized MC 330, MC 331, and MC 338 specification cargo tanks. Cargo tanks currently in hazardous materials service must be retrofitted with on-truck remote shut-off controls over a three-year period.

- Consistent with Recommendation H–93–94, the April 18 final rule required all manually activated on-truck remote shutoff devices for closure of the internal valve to be marked "Emergency Shutoff."
- Consistent with Recommendation H–95–14, the April 18 final rule required thickness testing of ring stiffeners and appurtenances on cargo tanks that are constructed of mild steel, high-strength, low-alloy steel, or aluminum, when the ring stiffeners and appurtenances are installed in a manner that precludes an external visual inspection.

The April 18 final rule effective date is October 30, 2003; voluntary compliance is authorized as of May 18, 2003.

II. Appeals

Six organizations submitted appeals to the April 18 final rule in accordance with 49 CFR Part 106: the Compressed Gas Association, Inc. (CGA); the National Propane Gas Association (NPGA); Container Technology, Inc. (Container Technology); the National Tank Truck Carriers, Inc. (NTTC); Baltimore Cargo Tank Service, Inc. (Baltimore Tank); and Fisher Controls (Fisher). The appellants express concern about several revisions included in the final rule; two appellants ask for an extension to the effective date of the final rule. The issues raised by the appellants are discussed in detail below.

A. Appeals Granted

Section 178.320—Definitions. The April 18 final rule revised the definition of "cargo tank." NTTC requests that we consider further modifying the definition to indicate that a cargo tank may be used for the transportation of solids and semi-solids, in addition to liquids or gases. NTTC explains that, in today's operating environment, cargo tanks are used routinely to transport materials that may be tendered as solids (such as powders) and slurries (semi-solids). Many such loads, especially environmentally sensitive materials, are subject to the HMR. We agree; in this final rule we are modifying the definition of "cargo tank" to include solids and semi-solids among the materials for which a cargo tank may be used for transportation.

The April 18 final rule adopted definitions for "sacrificial device" and "shear section" that were developed for the DOT 400 series cargo tanks and made the definitions generally applicable to all cargo tanks. NPGA objects to the new definitions, stating that because of "substantial" differences in design, construction, use and pressure conditions, the definitions for the DOT 400 series cargo tanks are not directly transferable to MC 331 cargo tanks. We agree that the issue requires further analysis and that, until such analysis is complete, the definitions for "sacrificial device" and "shear section" originally adopted for the DOT 400 series cargo tanks should not be applied to MC 331 cargo tanks. Therefore, in this final rule, we are deleting the definitions from § 178.320, which establishes requirements applicable to all DOT specification cargo tank motor vehicles, and placing them in § 178.345–1(c), which sets forth general requirements applicable to DOT 406, DOT 407, and DOT 412 cargo tank motor vehicles. We will consider addressing this issue in a subsequent rulemaking.

The April 18 final rule adopted a definition for "shear section" to mean a sacrificial device fabricated to reduce the wall thickness of the adjacent piping or valve material by at least 30 percent. Based on this definition, the April 18 final rule revised § 178.337–10(f)(2) to require a shear section to break at no more than 70 percent of the load that would be required to cause the failure of the protected lading retention device, part, or wall. NPGA suggests that this requirement would necessitate a complete and costly redesign of valves used as sacrificial devices. Therefore, in this final rule we are revising § 178.337–10(f)(2) to remove the requirement adopted in the April 18 final rule for a shear section to break at no more than 70 percent of the load that would be required to cause the failure of the protected lading retention device, part, or wall.

Section 178.320—Design certification. The April 18 final rule revised § 178.320(b)(1) to require accident damage protection devices to be certified by a Design Certifying Engineer (DCE). NPGA, Fisher, and Baltimore Tank note that, since the term "accident damage protection devices" is not defined, it could be misinterpreted to include component valves, particularly if the component valve includes a shear section. NPGA and Fisher request that we define "accident damage protection devices." We agree. In this final rule, we are adding a sentence to § 178.320(b)(1) to clarify that the term "accident damage protection devices," means rear-end protection, overturn protection, and piping protection devices.

Baltimore Tank suggests that, as drafted, § 178.320(b)(1) could be interpreted to require a DCE certification of an accident damage protection device design on its own—that is, independent of the cargo tank motor vehicle to which it is attached. This was not our intent. In this final rule, we are revising the section as suggested by Baltimore Tank.

Section 178.337–9—Use of stainless steel for internal cargo tank components. The April 18 final rule adopted a provision in § 178.337–9(b)(2) to prohibit the use of stainless steel for internal components of a cargo tank, such as shutoff discs and springs. NPGA and Container Technology appealed this provision, suggesting that it is overly restrictive and that stainless steel should be permitted for internal components where it is not incompatible with the lading. We agree and are making the appropriate revision in this final rule.

CGA also appealed the April 18 final rule provision in § 178.337–9(b)(2). CGA's concern is that the final rule requires malleable steel, stainless steel, or ductile iron to be used to construct primary valves and fittings used in liquid filling or vapor equalization. CGA points out that malleable metal, including brass, is safely used for fittings on cargo tanks used to transport carbon dioxide. We agree; this revision in § 178.337–9(b)(2) was inadvertent. In this final rule, we are revising this provision to require malleable metal, stainless steel, or ductile iron to be used to construct primary valves and fittings.

In addition, in this final rule we are revising § 178.337–9(b)(2) to make an editorial change suggested by NPGA. The phrase "except for sacrificial devices" should be part of the second sentence in this section, not the third sentence.

Section 178.337–10—Rear end protection. The April 18 final rule adopted rear end protection requirements originally developed for DOT 400 series cargo tanks as an option for MC 331 cargo tanks. In paragraph (c)(1) of § 178.337–10, the final rule requires rear end bumper dimensions to meet the requirements in 49 CFR 393.86 and extend vertically to a height that is adequate to protect all valves and fittings located at the read of the cargo tank. NPGA notes that certain MC 331 cargo tanks used to transport propane have a pressure gauge in a fitting located at the center of the rear cargo tank head

and suggests that, if read literally, the new requirement could require the rear bumper to extend past the center of the rear head. This was not our intent. In this final rule, we are revising the requirement as suggested by NPGA.

Section 178.337–17—Marking. The April 18 final rule requires a name plate on an MC 331 cargo tank to include information about the weld material used on the cargo tank. Container Technology and NPGA suggest that this is unnecessary and that MC 331 cargo tanks typically incorporate several different weld methods and materials. Both appellants suggest that this requirement be deleted. We agree that the requirement is unnecessary. In this final rule, it is deleted from the requirements for information to be included on an MC 331 cargo tank name plate.

The April 18 final rule requires a name plate to include an indication of the pressure to which the cargo tank was tested during its manufacture. NPGA recommends that this mark be deleted, stating that it is not clear how this information will assist operators and enforcement officials. We agree that the original test pressure number is of little value and could create confusion for operators when determining the pressure to which a cargo tank must be retested in accordance with § 180.407(g). In this final rule, therefore, the requirement to include a cargo tank's original test pressure on the name plate is removed.

The April 18 final rule also included a requirement for a specification plate on an MC 331 cargo tank to include the maximum loading and unloading rates. NPGA notes that this was not proposed in the HM–213 NPRM nor were the reasons for including the information on the specification plate discussed in the preamble to the final rule. NPGA suggests that the requirement should therefore be deleted. We agree; in this final rule, the requirement for including maximum loading and unloading rates on an MC 331 specification plate is deleted.

Section 180.405—Recertification of MC 306, MC 307 or MC 312 CTMVs. The April 18 final rule included a provision permitting a cargo tank originally manufactured to the MC 306, MC 307, or MC 312 specification, unless the cargo tank has been stretched, rebarrelled, or modified, to be recertified to its original certification provided certain conditions are met (see § 180.405(b)(2)). Baltimore Tank appealed this provision of the final rule, suggesting that rebarrelled, stretched, or modified MC 306, MC 307, or MC 312 cargo tanks should be treated in the same manner as unmodified cargo tanks and permitted to be recertified provided appropriate records are available to verify the original certifications.

Modifications to non-specification cargo tanks, which includes "decertified" cargo tanks that no longer meet a specification standard, need not be performed in accordance with the standards set forth in Part 180. Our concern in limiting the exception in § 180.405(b)(2) to cargo tanks that have not been stretched, rebarrelled, or modified was to prevent a "decertified" tank that was modified without reference to the Part 180 regulations from being recertified as a specification cargo tank. However, we agree with Baltimore Tank that if the operator can provide documentation to verify that a cargo tank originally built to an MC 306, MC 307, or MC 312 specification was stretched, rebarrelled, or modified in accordance with the procedures in Part 180 and the National Board Inspection Code, then the cargo tank may be recertified to its original specification under the same conditions as for unmodified MC 306, MC 307, or MC 312 cargo tanks. In this final rule, we are revising § 180.405(b) to permit modified MC 306, MC 307, and MC 312 cargo tanks to be recertified to their original specification under certain conditions.

Section 180.413—Leak testing. The April 18 final rule revised paragraph (c) in § 180.413 to clarify leak test requirements performed after maintenance or replacement of piping, hose, valves, or fittings that does not involve welding. The revised paragraph (c) requires a leak test to be performed at not less than 80 percent of the design pressure marked on the cargo tank. NPGA appealed this provision, noting that § 180.407(h)(1)(i) permits an MC 330 or MC 331 cargo tank in dedicated liquefied petroleum gas service to be leak tested at not less than 60 psig (414 kPa) and that the requirement adopted in the April 18 final rule greatly exceeds the 60 psig leak test exception for LPG tanks. NPGA states that the leak test requirement adopted in the final rule will place a significant burden on the propane industry and will be very disruptive to propane distribution operations. NPGA suggests that we revise § 180.413(c) to permit the leak test required after maintenance or replacement operations that do not require welding to be performed at 60 pisg (414 kPa). We agree; this final rule revises § 180.413(c)(1) to permit the leak test to be performed in accordance with § 180.407(h)(1).

B. Appeals Denied

Definition of "manufacturer." Fisher and NPGA ask us to reconsider the definition in the HMR for "manufacturer" in § 178.320 of the HMR. The NPRM did not propose nor did the final rule adopt a revision of this definition. The Fisher and NPGA appeals are thus beyond the scope of this rulemaking and are denied. We will address the definition in a subsequent rulemaking and seek comment on any proposed changes to the definition.

Remote controls for internal self-closing shutoff valves. The April 18 final rule adopted a requirement for all newly constructed and currently authorized MC 338 cargo tank motor vehicles (CTMVs) to be equipped with a means of thermal activation for closing the internal self-closing stop valve, except for cargo tanks used to transport argon, carbon dioxide, helium, krypton, neon, nitrogen, xenon, or mixtures thereof; tanks currently in service must be retrofitted by October 2, 2006. CGA appealed this provision of the final rule with respect to MC 338 cargo tanks used to transport non-flammable ladings; CGA suggests that that this is a "very expensive" modification for MC 338 cargo tanks because installation of the remote controls requires modifications to piping in addition to installation of a valve. CGA asks that we reinstate the grandfather provision excepting MC 338 CTMVs constructed prior to 1995 and used to transport non-flammable ladings from the requirement for a means of thermal activation for closing the internal self-closing stop valve.

As discussed in the preamble to the NPRM, this provision reflects discussions conducted by a negotiated rulemaking committee established under Docket No. RSPA–97–2718 (HM–225A). The committee agreed that fusible elements, which provide a heat-activated means for closing a valve, convey a significant safety benefit, and we adopted a requirement for all MC 331 cargo tanks to be so equipped in the HM–225A final rule. The provision applicable to MC 338 cargo tanks adopted in the HM–213 final rule is consistent with the requirements for MC 331 tanks; moreover, we do not agree that installation of fusible elements on MC 338 cargo tanks will be prohibitively expensive. We estimate that the retrofit provision in the final rule will affect about 100 MC 338 CTMVs, at a cost per vehicle of about $200. For these reasons, the CGA appeal of the final rule provisions concerning installation of fusible links on MC 338 cargo tanks is denied.

Maximum lading density marking. The April 18 final rule requires the name plate on an MC 331 cargo tank to include an indication of the maximum density of lading in pounds per gallon (§ 178.337–17(b)(7)). Container Technology and NPGA appealed this provision of the final rule. NPGA states that the marking serves no purpose; Container Technology asserts that lading density is not necessary for compliance with structural integrity requirements and that the mark limits an operator's flexibility to use an MC 331 cargo tank to transport a variety of ladings with different densities.

We do not agree that the mark serves no purpose nor do we agree that it limits an operator's flexibility. A cargo tank is usually designed with a specific lading or ladings in mind. An indication of the maximum lading density that may safely be transported in a cargo tank helps an operator determine whether the cargo tank should be used to transport a specific cargo. The mark is meant to convey the density for the heaviest lading possible to be transported in the cargo tank based on the structural design calculations for the tank. An operator is free to transport lading for which the maximum density is less than the mark indicated on the name plate or to transport smaller amounts of a lading for which the maximum density is greater than the mark indicated on the name plate. For these reasons, the Container Technology and NPGA appeals of this provision in the April 18 final rule are denied.

Original Test Date Marking. The April 18 final rule requires the name plate to include the original test date for the cargo tank. NPGA suggests that the mark could cause confusion for enforcement personnel and recommends that it be deleted. We disagree that the mark should be deleted. The original test date is the date the cargo tank manufacturer performed the tests required under Part 178 to assure that the cargo tank meets applicable design specifications. Thus, the original test date is the date that the cargo tank is certified to meet the specification to which it was designed. Including the original test date on the name plate enables the owner and/or operator of the cargo tank and enforcement personnel easily to identify specific requirements applicable to the tank's design and manufacture, without having to go back to the certification documentation provided by the cargo tank manufacturer. The marking of the original test date is in keeping with the intent of the regulations to help clarify marking requirements for all cargo tanks and, taken in whole with the definitions adopted in the HM–213 final rule, should not be confusing. For these reasons, the NPGA appeal of this provision in the April 18 final rule is denied.

Pressure greater than MAWP. The April 18 final rule revised § 180.407(a)(2) to clarify that a cargo tank may not be subjected to a pressure greater than its design pressure or maximum allowable work pressure (MAWP) except during a pressure test; the revision removed an exception from this general requirement for loading and unloading operations. CGA appealed this provision of the final rule, stating that, as rewritten, it conflicts with other provisions of the HMR. CGA, citing § 173.318(b)(4)(i), states that, during pressure transfers, an operator may raise the pressure in an MC 338 cargo tank to exceed the tank's MAWP, but not to exceed the set-to-discharge setting of the tank's pressure relief device.

Section 173.318 sets forth requirements for pressure relief devices on cargo tanks used to transport cryogenic liquids. Paragraph (b)(4)(i) of this section establishes the set-to-discharge setting for pressure relief devices—each pressure relief valve in the primary relief system must be set at a pressure no higher than 110% of the cargo tank's design pressure. This setting provides a tolerance level for the pressure relief system to account for small temporary increases in pressure because of temperature or other variances. The set-to-discharge setting does not mean that the pressure in the cargo tank may safely be raised to a level just below the set-to-discharge setting of the pressure relief devices if that level exceeds the MAWP of the tank. Section 173.33(c) establishes maximum lading pressures for materials transported in CTMVs. Specifically with respect to cryogenic liquids, § 173.33(c) states that the MAWP of a cargo tank must be greater than or equal to the pressures prescribed in § 173.318. Thus, the MAWP of the cargo tank must be greater than or equal to the set-to-discharge pressure for a pressure relief device in § 173.318(b)(4)(i). At no time, except during pressure tests, may the pressure in a cargo tank exceed its MAWP. The revision to § 180.407(a)(2) was made to clarify this point. For these reasons, the CGA appeal of this provision of the April 18 final rule is denied.

Periodic inspection of insulated cargo tanks. In § 180.407(d)(1), the April 18 final rule clarified requirements for inspection and testing of insulated cargo tanks where insulation precludes external and/or internal visual inspections. The final rule did not change current requirements for inspection and testing of such tanks; it merely clarified the requirements to make them easier to understand. CGA appealed this provision of the final rule, suggesting that it reduced the interval for conducting internal inspections and pressure tests on MC 331 cargo tanks from 5 years to one year and that such a change is not warranted. This is incorrect; the NPRM did not propose nor did the final rule adopt a provision to change the pressure test interval for MC 331 cargo tanks. The final rule includes a provision to permit operators of insulated MC 330, MC 331, and MC 338 cargo tanks equipped with manholes or inspection openings to perform an internal visual inspection or a pressure test in conjunction with the required annual external visual inspection (see Note 4 to the table in § 180.407 (c)). The pressure test performed in conjunction with the annual external visual inspection requires only that the cargo tank be pressurized to the level indicated in the table in § 180.407(g)(1)(iv); the operator is not required to complete every element of the pressure test set forth in § 180.407(g). The interval for performing a complete pressure test of an MC 331 cargo tank in accordance with § 180.407(g) remains 5 years. The CGA appeal of the April 18 final rule provision in § 180.407(d) is therefore denied.

Use of "weep holes" in mounting pads. Baltimore Tank wants the HMR to require the use of "weep holes" for mounting pads. The NPRM did not propose nor did the final rule adopt any change to the current requirements for "weep holes" in mounting pads. Baltimore Tank's appeal on this issue is beyond the scope of the HM–213 rulemaking and is, therefore, denied.

Modification, stretching, or rebarrelling of a cargo tank. The April 18 final rule revised the provisions in § 180.413(d) concerning modification, stretching, or rebarrelling of cargo tanks. Among other requirements, the revision requires a modified, stretched, or rebarrelled CTMV to be certified by a DCE to meet the structural integrity and accident damage protection requirements of the applicable specification. Baltimore Tank appealed this provision of the final rule, suggesting that modifications to a cargo tank may or may not affect the design of the CTMV and recommending changes to the final rule to clarify when recertification of the modified cargo tank is required and when recertification of the CTMV is required.

For purposes of the HMR, a "cargo tank motor vehicle" or CTMV is a motor vehicle with one or more cargo tanks

permanently attached to or forming an integral part of the motor vehicle. A "modification" is any change to the original design and construction of a cargo tank or a CTMV that affects its structural integrity or lading retention capability (see § 180.403). "Stretching" is a change in the width, length, or diameter of a cargo tank or any change to a CTMV's undercarriage that may affect the cargo tank's structural integrity. Modifying, stretching, or rebarrelling a cargo tank affects the design of the CTMV because the cargo tank is part of the CTMV; thus, whenever a cargo tank is modified, stretched, or rebarrelled, the complete CTMV must be recertified by a DCE. For this reason, Baltimore Tank's appeal of this provision is denied.

Damage to a cargo tank requiring pressure testing. The April 18 final rule restated the current requirement in § 180.407(b)(2) that a cargo tank that has been damaged to an extent that may adversely affect its lading retention capability must be inspected and tested in accordance with § 180.407, including the pressure test requirements in paragraph (g), prior to its return to service. The final rule did not change current requirements for testing damaged tanks; paragraph (b)(2) makes explicit the previous requirement that a cargo tank that has been damaged to an extent that may adversely affect its lading retention capability must be pressure tested in accordance with paragraph (g). Baltimore Tank appealed this provision of the final rule, suggesting that the full pressure test procedure as set forth in paragraph (g) is not necessary to ascertain if a damaged tank may be returned to service. This provision of the April 18 final rule made no changes to the long-standing requirements for inspection and testing of damaged cargo tanks. Baltimore Tank's appeal is beyond the scope of the HM–213 rulemaking and is, therefore, denied.

Test/Inspection reports. The April 18 final rule amended paragraph (b) of § 180.417 to revise the information that must be included on test and inspection reports. Baltimore Tank appealed this provision on several grounds. First, Baltimore Tank suggests that operators of MC 306 and MC 307 tanks will have difficulty providing the required information concerning the minimum thickness of the cargo tank shell and heads (see § 180.417(b)(1)(v)) because such information does not typically appear on the tanks' specification plates or manufacturing documents; Baltimore Tank further states that minimum thickness measurements are rarely needed for MC 306 and MC 307 cargo tanks. We disagree. Corroded or abraded areas of a cargo tank discovered during an external visual inspection, internal visual inspection, or lining inspection must be thickness tested; thus, a cargo tank almost certainly will be subjected to thickness testing at some point during its operating life. There is no point in conducting a thickness test of a corroded or abraded area if there is no number to which the thickness of the corroded or abraded area can be compared. The operator of an MC 306 or MC 307 cargo tank, working with a Registered Inspector, should be able to determine the minimum thickness of the cargo tank and enter this information on the inspection report. In this final rule, however, we are clarifying that an inspection report need only include an indication of the minimum thickness of the cargo tank shell and heads on test and inspection reports documenting that a thickness test has been performed for any reason on any area of the tank shell or heads.

Baltimore Tank also appealed the provision in § 180.417(b)(2)(iii), which requires the test or inspection report to list all items tested or inspected, suggesting that an item count for a multi-compartment MC 306 or DOT 406 CTMV in petroleum service would total in the hundreds and, further, that the items checked would not be the same from tank to tank. Baltimore Tank recommends that we reduce the amount of information required by this section. We disagree that this is an onerous or burdensome requirement. The requirement for a test/inspection report to list all items tested or inspected is not new; current § 180.417(b)(i) includes the same requirement. The August 18 final rule added to this section a list of examples of information that must be included on the test/inspection report, such as information about pressure relief devices, upper coupler assemblies, and leakage and pressure testing. An operator may use a checklist. In addition, an operator may group items—for example, rather than list every item inspected individually, an operator may choose to list items by category. Further, the list of information required on a test or inspection report will vary depending on the inspection or test conducted; all the information listed will not appear on every test or inspection report. For these reasons, Baltimore Tank's appeal of the test and inspection report provisions of the HM–213 final rule is denied.

Final rule effective date. The April 18 final rule is effective October 1, 2003. NPGA and Container Technology request reconsideration of the effective date; they state that some of the provisions of the April 18 final rule will necessitate extensive and complex redesign of certain components of CTMVs. We disagree. The provisions at issue in the NPGA request for reconsideration of the effective date are modified in this final rule (see "Appeals Granted" section above); the clarifications requested by Container Technology are addressed in this preamble (see "Clarifications" section below). The April 18 final rule included extended compliance dates for certain provisions, including the retrofit and certain marking requirements, of from one to three years. For these reasons, the NPGA and Container Technologies appeals of the effective date are denied.

C. Corrections

In addition to the revisions described above, this final rule also makes the following corrections to the final rule published April 18:

1. Corrects several typographical errors in the Hazardous Materials Table in § 172.101 and minor typographical errors in §§ 178.337–3, 178.337–17, 178.338–10, 180.407, 180.415, and 180.417.

2. Inserts the definition for "manufacturer" that was inadvertently omitted from § 178.320(a).

3. Corrects an inadvertent omission in § 178.347–1. In the preamble to the HM–213 final rule, we agreed with a commenter to add paragraph UW–12 to the list of exceptions in paragraph (d)(8), but did not do so in the regulatory text.

D. Clarifications

Container Technologies requested a clarification as to whether, for purposes of pad design, accident damage protection devices should be considered as structures or appurtenances. Accident damage prevention devices are structures. A rear-end damage protection device, such as a bumper, typically is attached to the CTMV chassis or suspension component, not directly to the cargo tank wall. Overturn damage protection devices typically are welded directly to the cargo tank wall.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This final rule is not a significant action under DOT's Regulatory Policies and Procedures. The revisions adopted in this final rule do not alter the cost-benefit analysis and conclusions

contained in the Regulatory Evaluation prepared for the April 18, 2003 final rule. The Regulatory Evaluation is available for review in the public docket for this rulemaking.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule preempts state, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts state, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject item (5) above and preempts state, local, and Indian tribe requirements not meeting the "substantively the same" standard.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption is 90 days from the date of publication of this final rule.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply and a tribal summary impact statement is not required.

D. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires each agency to analyze proposed regulations and assess their impact on small businesses and other small entities to determine whether the proposed rule is expected to have a significant impact on a substantial number of small entities. The revisions adopted in this final rule do not alter the cost-benefit analysis and conclusions contained in the Regulatory Evaluation prepared for the April 18, 2003 final rule. Based on the assessment in the regulatory evaluation, I certify that, while this final rule applies to a substantial number of small entities, the economic impact on those small entities is not significant.

This final rule has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

E. Paperwork Reduction Act

This final rule does not impose new information collection requirements.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to state, local, or Tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

H. Environmental Assessment

The environmental assessment prepared for the April 18, 2003 final rule can be found in the public docket for this rulemaking. The revisions adopted in this final rule are relatively minor and, thus, do not alter the conclusions contained in the environmental assessment. There are no significant environmental impacts associated with this final rule.

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, we are making the following revisions and corrections to rule FR Doc. 03–9070, published on April 18, 2003 (68 FR 19258):

■ 1. In the table on page 19275, correct the following entries to read as follows:

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	PG	Label Codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-Bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Fuel, aviation, turbine engine.	3	UN1863	I	3	144, T11, TP1, TP8.	150	201	243	1 L	30 L	E.	
	.....	.....	.....	II	3	144, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B.	
	.....	.....	.....	iII	3	144, B1, IB3, T2, TP1.	150	203	242	60 L	220 L	A.	
	Gas oil	3	UN1202	III	3	144, B1, IB3, T2, TP1.	150	203	242	60 L	220 L	A.	
	Gasoline	3	UN1203	II	3	139, B33, B101, T8.	150	202	242	5 L	60 L	E.	
	Petroleum crude oil ..	3	UN1267	I	3	144, T11, TP1, TP8.	None	201	243	1 L	30 L	E.	
	.....	.....	.....	II	3	144, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B.	
	.....	.....	.....	II	3	144, B1, IB3, T2, TP1.	150	203	242	60 L	220 L	A.	

■ 2. Beginning on page 19277, in the third column, and continuing on page 19278, in paragraph (a) of § 178.320, delete the definitions for "sacrificial device" and "shear section", revise the definition for "cargo tank", and add a definition for "manufacturer" in alphabetical order, to read as follows:

§ 178.320 General requirements applicable to all DOT-specification cargo tank motor vehicles.

(a) * * *

* * * * *

Cargo tank means a bulk packaging that:

(1) Is a tank intended primarily for the carriage of liquids, gases, solids, or semi-solids and includes appurtenances, reinforcements, fittings, and closures (for *tank*, see §§ 178.337–1, 178.338–1, or 178.345–1, as applicable);

(2) Is permanently attached to or forms a part of a motor vehicle, or is not permanently attached to a motor vehicle but that, by reason of its size, construction, or attachment to a motor vehicle, is loaded or unloaded without being removed from the motor vehicle; and

(3) Is not fabricated under a specification for cylinders, intermediate bulk containers, multi-unit tank car tanks, portable tanks, or tank cars.

* * * * *

Manufacturer means any person engaged in the manufacture of a DOT specification cargo tank, cargo tank motor vehicle, or cargo tank equipment that forms part of the cargo tank wall. This term includes attaching a cargo tank to a motor vehicle or to a motor vehicle suspension component that involves welding on the cargo tank wall. A manufacturer must register with the Department in accordance with subpart F of part 107 in subpart A of this chapter.

* * * * *

■ 3. On page 19279, in the first column, revise paragraph (b)(1) of § 178.320, to read as follows:

§ 178.320 General requirements applicable to all DOT-specification cargo tank motor vehicles.

* * * * *

(b) * * * (1) Each cargo tank or cargo tank motor vehicle design type, including its required accident damage protection device, must be certified to conform to the specification requirements by a Design Certifying Engineer who is registered in accordance with subpart F of part 107 of this title. An accident damage protection device is a rear-end protection, overturn protection, or piping protection device.

* * * * *

■ 4. On page 19279, in the first column, revise paragraph (b)(1) of § 178.337–3 to read as follows:

§ 178.337–3 Structural integrity.

* * * * *

(b) *Static design and construction.* (1) The static design and construction of each cargo tank must be in accordance with Section VIII, Division 1 of the ASME Code (incorporated by reference; see § 171.7 of this subchapter). The cargo tank design must include calculation of stresses generated by design pressure, the weight of lading, the weight of structure supported by the cargo tank wall, and the effect of temperature gradients resulting from lading and ambient temperature extremes. When dissimilar materials are used, their thermal coefficients must be used in calculation of thermal stresses.

* * * * *

■ 5. On page 19279, in the third column, revise paragraph (b)(2) of § 178.337–9, to read as follows:

§ 178.337–9 Pressure relief devices, piping, valves, hoses, and fittings.

* * * * *

(b) * * *

(2) Pipe joints must be threaded, welded, or flanged. If threaded pipe is used, the pipe and fittings must be Schedule 80 weight or heavier, except for sacrificial devices. Malleable metal, stainless steel, or ductile iron must be used in the construction of primary valve body parts and fittings used in liquid filling or vapor equalization. Stainless steel may be used for internal components such as shutoff discs and springs except where incompatible with the lading to be transported. Where copper tubing is permitted, joints must be brazed or be of equally strong metal union type. The melting point of the brazing material may not be lower than 538° C (1,000° F). The method of joining tubing may not reduce the strength of the tubing.

* * * * *

■ 6. On page 19280, in the first column and continuing to the second column, revise paragraphs (c) and (f) of § 178.337–10, to read as follows:

§ 178.337–10 Accident damage protection.

* * * * *

(c) *Rear-end tank protection.* Rear-end tank protection devices must:

(1) Consist of at least one rear bumper designed to protect the cargo tank and all valves, piping and fittings located at the rear of the cargo tank from damage that could result in loss of lading in the event of a rear end collision. The bumper design must transmit the force of the collision directly to the chassis of the vehicle. The rear bumper and its attachments to the chassis must be designed to withstand a load equal to twice the weight of the loaded cargo tank motor vehicle and attachments, using a safety factor of four based on the tensile strength of the materials used, with such load being applied horizontally and parallel to the major axis of the cargo tank. The rear bumper dimensions must also meet the requirements of § 393.86 of this title; or

(2) Conform to the requirements of § 178.345–8(d).

* * * * *

(f) *Shear section.* A shear section or sacrificial device is required for the valves specified in the following locations:

(1) A section that will break under strain must be provided adjacent to or outboard of each valve specified in § 178.337–8(a)(3) and (4).

(2) Each internal self-closing stop valve, excess flow valve, and check valve must be protected by a shear section or other sacrificial device. The sacrificial device must be located in the piping system outboard of the stop valve and within the accident damage protection to prevent any accidental loss of lading. The failure of the sacrificial device must leave the protected lading protection device and its attachment to the cargo tank wall intact and capable of retaining product.

■ 7. On page 19280, in the middle column, and continuing to page 19281, revise paragraphs (b) and (c) of § 178.337–17, to read as follows:

§ 178.337–17 Marking.

* * * * *

(b) *Name plate.* The following information must be marked on the name plate in accordance with this section:

(1) DOT-specification number MC 331 (DOT MC 331).

(2) Original test date (Orig. Test Date).

(3) MAWP in psig.

(4) Cargo tank design temperature (Design Temp. Range) ___°F to ___°F.

(5) Nominal capacity (Water Cap.), in pounds.

(6) Maximum design density of lading (Max. Lading density), in pounds per gallon.

(7) Material specification number—shell (Shell matl, yyy***), where "yyy" is replaced by the alloy designation and "***" is replaced by the alloy type.

(8) Material specification number—heads (Head matl. yyy***), where "yyy"

is replaced by the alloy designation and "***" by the alloy type.

(9) Minimum Thickness—shell (Min. Shell-thick), in inches. When minimum shell thicknesses are not the same for different areas, show (top__, side__, bottom__, in inches).

(10) Minimum thickness—heads (Min. heads thick.), in inches.

(11) Manufactured thickness—shell (Mfd. Shell thick.), top__, side__, bottom__, in inches. (Required when additional thickness is provided for corrosion allowance.)

(12) Manufactured thickness—heads (Mfd. Heads thick.), in inches. (Required when additional thickness is provided for corrosion allowance.)

(13) Exposed surface area, in square feet.'

Note to paragraph (b): When the shell and head materials are the same thickness, they may be combined, (Shell&head matl, yyy***).

(c) *Specification plate.* The following information must be marked on the specification plate in accordance with this section:

(1) Cargo tank motor vehicle manufacturer (CTMV mfr.).

(2) Cargo tank motor vehicle certification date (CTMV cert. date).

(3) Cargo tank manufacturer (CT mfr.).

(4) Cargo tank date of manufacture (CT date of mfr.), month and year.

(5) Maximum weight of lading (Max. Payload), in pounds

(6) Lining materials (Lining), if applicable.

(7) Heating system design pressure (Heating sys. press.), in psig, if applicable.

(8) Heating system design temperature (Heating sys. temp.), in °F, if applicable.

(9) Cargo tank serial number, assigned by cargo tank manufacturer (CT serial), if applicable.

Note 1 to paragraph (c): See § 173.315(a) of this chapter regarding water capacity.

Note 2 to paragraph (c): When the shell and head materials are the same thickness, they may be combined (Shell & head matl, yyy***).

* * * * *

■ 8. On page 19282, in the first column, revise paragraph (c)(2) of § 178.338–10, to read as follows:

§ 178.338–10 Accident damage protection.

* * * * *

(c) * * *

(2) Conform to the requirements of § 178.345–8(b).

* * * * *

■ 9. On page 19283, in the third column, in § 178.345–1, revise paragraph (c) introductory text and the definitions for "sacrificial device" and "shear section", to read as follows:

§ 178.345–1 General requirements.

* * * * *

(c) *Definitions.* See § 178.320(a) for the definition of certain terms used in §§ 178.345, 178.346, 178.347, and 178.348. In addition, the following definitions apply to §§ 178.345, 178.346, 178.347, and 178.348:

* * * * *

Sacrificial device means an element, such as a shear section, designed to fail under a load in order to prevent damage to any lading retention part or device. The device must break under strain at no more than 70 percent of the strength of the weakest piping element between the cargo tank and the *sacrificial device.* Operation of the *sacrificial device* must leave the remaining piping and its attachment to the cargo tank intact and capable of retaining lading.

* * * * *

Shear section means a sacrificial device fabricated in such a manner as to abruptly reduce the wall thickness of the adjacent piping or valve material by at least 30 percent.

* * * * *

■ 10. On page 19284, in the third column, correct paragraphs (c)(4) and (c)(7) of § 178.345–14, to read as follows:

§ 178.345–14 Marking.

* * * * *

(c) * * *

(4) Cargo tank date of manufacture (CT date of mfr.), month and year.

* * * * *

(7) Maximum unloading rate in gallons per minute (Max. Unload rate).

* * * * * *

■ 11. On page 19285, in the middle column, add paragraph (d)(8) to § 178.347–1, to read as follows:

§ 178.347–1 General requirements.

* * * * *

(d) * * *

(8) The following paragraphs in parts UG and UW of the ASME Code, Section VIII, Division I do not apply: UG–11, UG–12, UG–22(g), UG–32(e), UG–34, UG–35, UG–44, UG–76, UG–77, UG–80, UG–81, UG–96, UG–97, UW–12, UW–13(b)(2), UW–13.1(f), and the dimensional requirements found in Figure UW–13.1.

* * * * *

■ 12. On page 19286, beginning in the first column and continuing to the middle column, revise paragraph (b)(2) in § 180.405 to read as follows:

§ 180.405 Qualification of cargo tanks.

* * * * *

(b) * * *

(2) *Exception.* A cargo tank originally manufactured to the MC 306, MC 307, or MC 312 specification may be recertified to the original specification provided:

(i) Records are available verifying the cargo tank was originally manufactured to the specification;

(ii) If the cargo tank was stretched, rebarrelled, or modified, records are available verifying that the stretching, rebarrelling, or modification was performed in accordance with the National Board Inspection Code and this part;

(iii) A Design Certifying Engineer or Registered Inspector verifies the cargo tank conforms to all applicable requirements of the original specification and furnishes to the owner written documentation that verifies the tank conforms to the original structural design requirements in effect at the time the tank was originally constructed;

(iv) The cargo tank meets all applicable tests and inspections required by § 180.407(c); and

(v) The cargo tank is recertified to the original specification in accordance with the reporting and record retention provisions of § 180.417. The certification documents required by § 180.417(a)(3) must include both the date the cargo tank was originally certified to the specification and the date it was recertified. The specification plate on the cargo tank or the cargo tank motor vehicle must display the date the cargo tank was originally certified to the specification.

* * * * *

■ 13. On page 19286, in the third column, correct amendatory instruction number 52(c) to read as follows:

52. * * *

(c) Paragraphs (a)(2), (b)(1), (b)(2), (c), (d)(1), (g)(1)(ii), (g)(1)(iv) introductory text, (g)(4), (h)(1) introductory text, (h)(2), (i)(5) introductory text, titles and column headings to Tables I and II in (i)(5) and (i)(6) are revised.

* * * * *

§ 180.407 [Amended]

■ 14. On page 19288, make the following corrections to the tables in paragraph (i)(5) of § 180.407:

a. Correct the title to Table I to read "TABLE I.—IN-SERVICE MINIMUM THICKNESS FOR MC 300, MC 303, MC 304, MC 306, MC 307, MC 310, MC 311, AND MC 312 SPECIFICATION CARGO TANKS CONSTRUCTED OF STEEL AND STEEL ALLOYS".

b. Correct the title to Table II to read "TABLE II.—IN-SERVICE MINIMUM THICKNESS FOR MC 301, MC 302, MC 304, MC 305, MC 306, MC 307, MC 311, AND MC 312 SPECIFICATION CARGO TANKS CONSTRUCTED OF ALUMINUM AND ALUMINUM ALLOYS".

■ 15. On page 19289, in the middle column, revise paragraph (c)(1) of § 180.413 to read as follows:

§ 180.413 Repair, modification, stretching, rebarreling, or mounting of specification cargo tanks.

* * * * *

(c) * * *

(1) After maintenance or replacement that does not involve welding on the cargo tank wall, the repaired or replaced piping, valve, hose, or fitting must be tested for leaks. This requirement is met when the piping, valve, hose, or fitting is tested after installation in accordance with § 180.407(h)(1). A hose may be tested before or after installation on the cargo tank.

* * * * *

■ 16. On page 19290, in the middle column, correct the paragraph "Examples to paragraph (b)" in § 180.415 to read as follows:

§ 180.415 Test and inspection markings.

* * * * *

(b) * * *

Examples to paragraph (b). The markings "10–99 P, V, L" represent that in October 1999 a cargo tank passed the prescribed pressure test, external visual inspection and test, and the lining inspection. The markings "2–00 K–EPA27" represent that in February 2000 a cargo tank passed the leakage test under § 180.407(h)(2). The markings "2–00 K, K–EPA27" represent that in February 2000 a cargo tank passed the leakage test under both § 180.407(h)(1) and under EPA Method 27 in § 180.407(h)(2).

* * * * *

■ 17. On page 19290, in the second column and continuing to the third column, revise paragraphs (b)(2)(v) and (b)(2)(viii) of § 180.417 to read as follows:

§ 180.417 Reporting and record retention requirements.

* * * * *

(b) * * *

(2) * * *

(v) Minimum thickness of the cargo tank shell and heads when the cargo tank is thickness tested in accordance with § 180.407(d)(4), § 180.407(e)(3), § 180.407(f)(3), or § 180.407(i);

* * * * *

(viii) Continued qualification statement, such as "cargo tank meets the requirements of the DOT specification identified on this report" or "cargo tank fails to meet the requirements of the DOT specification identified on this report";

* * * * *

Issued in Washington, DC, on August 6, 2003, under authority delegated in 49 CFR part 1.

Samuel G. Bonasso,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 03–22212 Filed 9–2–03; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 68, No. 170
Wednesday, September 3, 2003

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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–7552–2]

RIN 2060–AK37

Air Quality: Revision to Definition of Volatile Organic Compounds—Exclusion of 4 Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to revise EPA's definition of volatile organic compounds (VOC) for purposes of preparing State implementation plans (SIPs) to attain the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (CAA). This proposed revision would add four compounds to the list of compounds excluded from the definition of VOC on the basis that these compounds make a negligible contribution to tropospheric ozone formation.

With this proposed action the EPA is not finalizing a decision on how future petitions will be evaluated. EPA is currently in the process of assessing its VOC policy in general. We intend to publish a future notice inviting public comment on the VOC exemption policy and the concept of negligible reactivity as part of a broader review of overall policy.

DATES: Comments on this proposal must be received by October 3, 2003. Requests for a hearing must be submitted by September 18, 2003.

ADDRESSES: Comments should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–2002–03, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Comments should be strictly limited to the subject matter of this proposal, the scope of which is discussed below.

Public Hearing: If anyone contacts EPA requesting a public hearing, it will be held at Research Triangle Park, NC. Persons wishing to request a public hearing, wanting to attend the hearing or wishing to present oral testimony should notify Mr. David Sanders, Air Quality Strategies and Standards Division (C539–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–3356. The EPA will publish notice of a hearing, if requested, in the **Federal Register**. Any hearing will be strictly limited to the subject matter of the proposal, the scope of which is discussed below. The EPA has established a public docket for this action, A–2002–03, which is available for public inspection and copying between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays, at EPA's Docket Center, EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: David Sanders, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division (C539–02), Research Triangle Park, NC 27711, phone (919) 541–3356. Interested persons may call Mr. Sanders to see if a hearing will be held and the date and location of any hearing.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially affected by this action are those (in the list matrix below) which use and emit VOC as well as States which have programs to control VOC emissions. This action has no substantial direct effects on the States or industry because it does not impose any new mandates on these entities but, to the contrary, removes four chemical compounds from regulation as a VOC.

Category	Examples of regulated entities
Industry	Industries that use or make refrigerants, blowing agents, fire suppressants, or solvents
States	States which have regulations to control volatile organic compounds

This matrix lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table have the potential of being regulated.

The four compounds we are proposing to exclude from the definition of VOC all have potential for use as refrigerants, fire suppressants, aerosol propellants, or blowing agents (used in the manufacture of foamed plastic). In addition, all of these compounds, may be used as an alternative to ozone-depleting substances such as chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs).

Three of the compounds, 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane, 1,1,1,2,3,3,3-heptafluoropropane, and methyl formate are approved by EPA's Significant New Alternatives Policy (SNAP) program (CAA section 612; 40 CFR part 82, subpart G) as acceptable substitutes for ozone-depleting compounds. The fourth compound, 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane, has not been reviewed under SNAP because it was submitted for use in secondary loop refrigeration systems. Fluids used in these systems are not covered by the SNAP program (62 FR 10700). However, this compound is a member of a larger class of compounds known as hydrofluoroethers (HFEs), and other HFEs have been recognized by SNAP as ODS substitutes.

The EPA uses the SNAP program to identify substitutes for ozone-depleting compounds, evaluate the acceptability of these substitutes, promote the use of those substitutes EPA determines to present lower overall risks to human health and the environment (relative to the class I and class II compounds being replaced, as well as to other substitutes for the same end-use), and prohibit the use of those substitutes found, based on the same comparisons, to increase overall risks. The SNAP program has identified the HFCs as a class of replacement substitutes for CFCs. Because they do not contain chlorine or bromine, they do not deplete the ozone layer. All HFCs have an ozone depletion potential (ODP) of 0 although some HFCs have high global warming potential (GWP).

In approving methyl formate as an acceptable substitute for CFC's and HCFC's, the EPA's SNAP Program noted that methyl formate is toxic and flammable and should be handled by users with proper precautions. Methyl formate causes irritation to the eyes,

skin, and lungs, and at high levels may cause pulmonary damage. However, EPA believes that methyl formate is well regulated by other programs; therefore, exposures to this compound will be below levels of concern. OSHA has established an enforceable occupational exposure limit of 100 ppm as an 8-hr time-weighted average. NIOSH has also established a short-term exposure limit (averaged over 15 mins) of 150 ppm. There is only one supplier of methyl formate in the U.S., and their total production is less than 10 million pounds per year. We estimate that use of methyl formate as an HCFC replacement in the foam sector will be relatively small, reaching 2.5 million pounds between 2008–2010. Although we do not have information on all the possible exposure scenarios to methyl formate, based on information provided by industry, the air concentration levels reached in testing methyl formate as a foam blowing agent have been less than 10 ppm (without ventilation), a concentration well below the occupational exposure limits.

The four compounds will continue to be VOC for purposes of all record keeping, emissions reporting, and inventory requirements which apply to VOC. The EPA believes that it is important to continue collecting data on new exempt organic compound emissions for the following reasons:

(a) EPA wants to investigate the possibility that some compounds classified as "negligibly reactive" or which are not defined as VOC for purposes of VOC emissions limitations or VOC content requirements may, in fact, contribute to ozone formation under certain conditions, especially if there are large amounts of such emissions;

(b) EPA wants to investigate whether significant aggregate emissions of "negligibly reactive" compounds or of compounds which are not defined as VOC for purposes of VOC emissions limitations or VOC content requirements may contribute to multi-day ozone events and to ozone transport;

(c) EPA believes that in order to have more accurate modeling, it may be necessary to keep track of exempt compound emissions, especially if there are large amounts of such emissions;

(d) EPA is now in the process of assessing its VOC policy in general, and its VOC exemption policy in particular, and data about the impacts of VOC exemptions on such things as the volume of exempt compound use, the effects of an exemption on ambient ozone conditions, and the verification of VOC substitution are critical information that can only be obtained through continued record keeping and reporting. We intend to publish a future notice inviting public comment on the VOC exemption policy and the concept of negligible reactivity as part of a broader review of overall policy.

Also, we are proposing to make a nomenclature clarification to two previously exempted compounds. We propose to add the designations HFE–7100 to 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C_4F_9OH) and HFE–7200 to 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OCH_2H_5$). These names are widely accepted alternative designations for the two compounds and can be found in the book titled, *Handbook for Critical Cleaning* by Barbara Kanegsberg and Edward Kanegsberg, CRC Press, 2001, p. 77.

To determine whether your organization is regulated by this action, you should carefully examine the applicability criteria in § 51.100 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Background

Tropospheric ozone, commonly known as smog, occurs when VOCs and nitrogen oxides (NO_X) react in the atmosphere. Because of the harmful health effects of ozone, EPA and State governments limit the amount of VOCs and NO_X that can be released into the atmosphere. Volatile organic compounds are those compounds of carbon (excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate) which form ozone through atmospheric photochemical reactions. Compounds of carbon (also known as organic compounds) have different levels of reactivity—that is, they do not react at the same speed or do not form ozone to the same extent. It has been EPA's policy that organic compounds with a negligible level of reactivity need not be regulated to reduce ozone. The EPA determines whether a given organic compound has "negligible" reactivity by comparing the compound's reactivity to the reactivity of ethane. The EPA lists these compounds in its regulations (at 40 CFR 51.100(s)) and excludes them from the definition of VOCs. The chemicals on this list are often called "negligibly reactive" organic compounds.

In 1977, EPA published the "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314) which established the basic policy that EPA has used regarding organic chemical photochemical reactivity since that time. In that statement, EPA identified the following four compounds as being of negligible photochemical reactivity and said these should be exempt from regulation under SIPs: methane; ethane; 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC–113). That policy statement said that as new information becomes available, EPA may periodically revise the list of negligibly reactive compounds to add compounds to or delete them from the list.

The EPA's decision to exempt certain compounds in its 1977 policy was heavily influenced by experimental smog chamber work done earlier in the 1970's. In this experimental work, various compounds were injected into a smog chamber at a molar concentration that was typical of the total molar concentration of VOC in Los Angeles ambient air (4 ppmv). As the compound was allowed to react with NO_X at concentrations of 0.2 ppm, the maximum ozone formed in the chamber was measured. If the compound in the smog chamber did not result in ozone formation of 0.08 ppm (0.08 ppm was the NAAQS for oxidants at that time), it was assumed that emissions of the compound would not cause the oxidant standard to be exceeded. The compound could then be considered to be negligibly reactive. Ethane was the most reactive compound tested that did not cause the 0.08 ozone level in the smog chamber to be met or exceeded. Based on those findings and judgments, EPA designated ethane as negligibly reactive, and ethane became the benchmark VOC species separating reactive from negligibly reactive compounds.

Since 1977, the primary method for comparing the reactivity of a specific compound to that of ethane has been to compare the k_{OH} values for ethane and the specific compound of interest. The k_{OH} value represents the molar rate constant for reactions between the subject compound (*e.g.*, ethane) and the hydroxyl radical (*i.e.*, ·OH). This reaction is very important since it is the primary pathway by which most organic compounds initially participate in atmospheric photochemical reaction processes. The EPA has exempted 45 compounds or classes of compounds based on a comparison of k_{OH} values since 1977.

In 1994, in response to a petition to exempt volatile methyl siloxanes, EPA, for the first time, considered a comparison to ethane based on incremental reactivity (IR) metrics (59 FR 50693, October 5, 1994). The use of

IR metrics allowed EPA to take into consideration the ozone forming potential of other reactions of the compound in addition to the initial reaction with the hydroxyl radical. Volatile methyl siloxanes proved to be less reactive than ethane both on a per mole and per gram basis. In 1995, EPA considered another compound, acetone, using IR metrics. After considering the IR metrics, EPA exempted acetone based on the fact that acetone was less reactive on the basis of grams of ozone formed per grams of VOC emitted (60 FR 31635, June 16, 1995). Prior to 1994, all exemptions had been based on k_{OH} values. Since 1995, EPA has exempted one additional compound, methyl acetate, based on comparisons of IR metrics. The reactivity of methyl acetate was found to be comparable to or less than that for ethane both under a per gram basis and under a per mole basis.

On February 5, 1999, the Performance Chemicals and Fluid Division of the 3M Company submitted to EPA a petition requesting that the compound 1,1,1;2,2,3,3-heptafluoro-3-methoxy-propane be added to the list of compounds which are considered to be negligibly reactive in the definition of VOC at 40 CFR 51.100(s). The next year on August 21, 2000, the Performance Chemicals and Fluid Division of the 3M Company submitted to EPA a petition requesting that the compound 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane be added to the same list.

Potential uses for these two compounds (and other compounds for consideration under this proposal) are shown in Table 1. In its petition, 3M points out that it has requested the compound 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane be listed as an acceptable substitute for CFCs and hydrochlorofluorocarbons (HCFCs) in certain uses and; as such, use of this substance may mitigate depletion of stratospheric ozone.

TABLE 1.—POTENTIAL USES OF COMPOUNDS ADDRESSED IN THIS PROPOSAL

Compound	Potential use
1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane	—refrigerant —aerosol propellant
3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl)hexane	—refrigerant
1,1,1,2,3,3,3-heptafluoropropane	—fire suppressant —aerosol propellant
methyl formate	—blowing agent

Although 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl)hexane has not been identified as a substitute, specifically, the SNAP program has identified hydrofluoroethers (HFEs), as a class, as replacement substitutes for CFCs.

In support of the 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane and the 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6 -dodecafluoro-2-(trifluoromethyl) hexane petitions, 3M Company supplied information on their respective photochemical reactivities. The 3M Company stated that, as hydrofluoroethers, these compounds are very similar in structure, toxicity, and atmospheric properties to other compounds such as $C_4F_9OCH_3$, $(CH_3)_2CFCF_2OCH_3$, $C_4F_9OC_2H_5$, $(CH_3)_2CFCF_2OC_2H_5$ which are exempt from the VOC definition.

Other information submitted by 3M Company consists mainly of a peer reviewed article entitled "Atmospheric Chemistry of Some Fluoroethers," Guschin, Molina, Molina: Massachusetts Institute of Technology, May 1998, which has been submitted to the docket. This article discusses a study in which the rate constant for the reaction of the compounds with the hydroxyl (OH) radical is shown to be less than that for ethane and slightly more than for methane. This rate constant (k_{OH} value) is commonly used as one measure of the photochemical reactivity of compounds. The petitioner compared the rate constants with that of ethane which has already been listed as photochemically negligibly reactive (ethane is the compound with the highest k_{OH} value which is currently regarded as negligibly reactive). The compounds under consideration are listed with their reported k_{OH} rate constants in Table 2 along with that of ethane. The scientific information which the petitioner has submitted in support of the petition has been added to the docket for this rulemaking. This information includes references for the journal articles where the rate constant values are published.

TABLE 2.—REACTION RATE CONSTANTS (AT 25 °C) WITH OH RADICAL

Compound	cm^3/molecule/sec
ethane	2.4×10^{-13}
n-$C_3F_7OCH_3$	1.2×10^{-14}
HFE–7500	2.2×10^{-14}
HFC–227ea	1.09×10^{-15}
methyl formate	2.27×10^{-13}

Together with 5-day and 28-day inhalation toxicity studies, 3M Company also has included Material Safety Data Sheets indicating both their compounds as having very low toxicity. This information has been placed in the docket.

On February 18, 1998, the Great Lakes Chemical Corporation ("Great Lakes") petitioned EPA for the exclusion of 1,1,1,2,3,3,3-heptafluoropropane (HCF–227ea) from the definition of VOC. The rate constant for the reaction of HFC–227ea with the OH radical was based on studies performed at the laboratories of Aerodyne Research, Inc. and reported by Nelson, Zahniser, and Kolb in the *Geophysical Research Letters.*, Vol. 20, No. 2, pages 197–200. The rate constant for HFC–227ea as reported in this paper (Table 2) is 1.09×10^{-15} cm^3/molecule/sec at 277K (0 °C) which places it well under two orders of magnitude below ethane's reactivity.

Great Lakes also claims that HFC–227ea is not an ozone depleting substance. This compound has been approved under EPA's SNAP program as an acceptable substitute for Halon 1301 and Halon 1211 in various fire suppression applications. Also, EPA has determined HFC–227ea to have a GWP at 3800 times that of carbon dioxide, making it a probable substitute for its competitor fire suppressants which have even higher GWPs.

On February 12, 2002, Foam Supplies, Inc. submitted a petition to exclude methyl formate from the definition of VOC. Foam Supplies, Inc. submitted journal articles showing three separate studies measuring methyl formate's rate constant with hydroxyl radicals and compared this to ethane measured in a like manner as a rate constant (cm^3/molecule/sec). The highest value tested for methyl formate was that of 2.27×10^{-13} cm^3/molecule/sec which is slightly below that of ethane at 2.4×10^{-13} cm^3/molecule/sec (shown in Table 2).

Foam Supplies, Inc. also notes that methyl formate has a zero ODP and a very low or zero GWP.

In addition, Foam Supplies, Inc. notes that this compound has been approved under SNAP as an acceptable alternative to HCFC–141b and HCFC–22 in various blowing agent applications.

Because of the closeness in rate constant values attributed to methyl formate and ethane, in addition to the information on k_{OH} value submitted by the petitioner for methyl formate, EPA has examined further evidence of low reactivity for methyl formate. This evidence, which is desirable when rate constant values are so close (as in the case of methyl formate and ethane), increases the confidence level with which EPA can make a final decision on whether to approve or disapprove of a petition to exempt a compound from the VOC definition. Dr. William P. L. Carter of the University of California at Riverside has published "The SAPRC–99 Chemical Mechanism and Updated VOC Reactivity Scales", (revised 11/29/2000) on his Web site at: *http://ftp.cert.ucr.edu/pub/carter/SAPRC99/appndxc.doc*. Appendix C of his report gives maximum incremental reactivity (MIR) values which are another accepted measure of photochemical reactivity. Dr. Carter's MIR values are given in grams ozone per gram of organic compound. Also, it is easy to calculate the MIR on a basis of grams of ozone per mole of organic compound. On either basis, methyl formate has a reactivity less than half that of ethane. Sections of the Carter report showing ethane and methyl formate values have been added to the docket. Also, the data may be seen on this same website belonging to Dr. Carter.

In a similar action related to a petition to exempt tert-butyl acetate (TBAC) from the VOC definition (64 FR 52731), EPA raised the issue of whether the comparison to ethane should be made on a mass (or gram) basis or a molar basis. In the case of the four compounds considered here, all four are less reactive than ethane on both mass and molar bases and would qualify as negligibly reactive under either test.

While the purpose of exempting negligibly reactive VOCs is to avoid unnecessary regulation that will not help in the attainment of the ozone NAAQS, it is possible that exempting specific compounds from regulation as a VOC could result in significant health risks or other undesirable environmental impacts. EPA has included available information about the toxicity of the four compounds under consideration in the docket. EPA invites public comment on the potential for significant health or environmental risks that may be expected as a result of the proposed exemptions, taking into account the expected uses for the compounds.

II. The EPA Response to the Petitions

For the petitions submitted by the 3M Company, Great Lakes Chemical Corporation, and Foam Supplies, Inc., the data submitted by the petitioners support the contention that the reactivities of the compounds submitted, with respect to reaction with OH radicals in the atmosphere are lower than that of ethane. There is ample evidence in the literature that methyl formate and the halogenated paraffinic VOC, listed above, do not participate in such reactions significantly.

The EPA is responding to the petitions by proposing in this action to add the compounds in Table 3 to the list of compounds appearing in 40 CFR 51.100(s).

TABLE 3.—COMPOUNDS PROPOSED TO BE ADDED TO THE LIST OF NEGLIGIBLY REACTIVE COMPOUNDS

Compound	Chemical Name or Formula
n-$C_3F_7OCH_3$	1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane
HFE–7500	3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane
HFC–227ea	1,1,1,2,3,3,3-heptafluoropropane
methyl formate	$HCOOCH_3$

III. Proposed Action

Today's proposed action is based on EPA's review of the material in Docket No. A–2002–03. The EPA hereby proposes to amend its definition of VOC at 40 CFR 51.100(s) to exclude the compounds in Table 3 as VOC for ozone SIP and ozone control purposes. States are not obligated to exclude from control as a VOC those compounds that EPA has found to be negligibly reactive. However, if this action is made final, States should not include these compounds in their VOC emissions inventories for determining reasonable further progress under the CAA (*e.g.*, section 182(b)(1)) and may not take credit for controlling these compounds in their ozone control strategy.

In prior VOC exemption decisions, EPA has not required continued record keeping and reporting on the use and emissions of the exempt compounds. However, more current understanding of the complexities of ozone formation suggests that most organic compounds which EPA has exempted as "negligibly reactive" do have some photochemcial reactivity, albeit small. EPA is proposing to retain record keeping and reporting requirements for all new exempt organic compound emissions.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not "significant" because none of the listed criteria apply to this action. Consequently, this action is not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

This action does not contain any information collection requirements subject to OMB review under the

Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* It does not contain any recordkeeping or reporting requirement burden.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply, with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency does not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.* requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a RFA analysis in those instances where the regulation would impose a substantial impact on a significant number of small entities. Because this proposed rulemaking imposes no adverse economic impacts, an analysis has not been conducted.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. Today's proposed rule concerns only the definition of VOC and does not directly regulate any entities. The RFA analysis does not consider impacts on entities which the action in question does not regulate. See *Motor & Equipment Manufacturers Ass'n* v. *Nichols*, 142 F. 3d 449, 467 (D.C. Cir. 1998); *United Distribution Cos.* v. *FERC*, 88 F. 3d 1105, 1170 (D.C. Cir. 1996), cert. denied, 520 U.S. 1224 (1997). Pursuant to the provision of 5 U.S.C. 605(b), I hereby certify that the proposed rule will not have an impact on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Since this proposed rule is deregulatory in nature and does not impose a mandate upon any source, this rule is not estimated to result in the expenditure by State, local and tribal governments or the private sector of $100 million in any 1 year. Therefore, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the National government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed action addressing the exemption of four chemical compounds from the VOC definition does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

This action does not impose any new mandates on State or local governments. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on

the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's action does not have any direct effects on Indian tribes. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

While this proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, EPA has reason to believe that ozone has a disproportionate effect on active children who play outdoors (62 FR 38856; 38859 July 18, 1997). The EPA has not identified any specific studies on whether or to what extent the four above listed chemical compounds affect children's health. The EPA has placed the available data regarding the health effects of these four chemical compounds in docket no. A–2002–03. The EPA invites the public to submit or identify peer-reviewed studies and data, of which EPA may not be aware, that assess results of early life exposure to any of the four above listed chemical compounds.

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

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), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

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), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 27, 2003.

Marianne Lamont Horinko,

Acting Administrator.

For reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401–7641q.

2. Section 51.100 is proposed to be amended by adding paragraph (s)(5) as follows:

§ 51.100 Definitions.

* * * * * * *

(s) * * *

(5) The following compounds are VOC for purposes of all recordkeeping, emissions reporting, and inventory requirements which apply to VOC, but are not VOC for purposes of VOC emissions limitations or VOC content requirements:

1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-$C_3F_7OCH_3$), 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE–7500), 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea), and methyl formate ($HCOOCH_3$).

[FR Doc. 03–22449 Filed 9–2–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030818203–3203–01; I.D. 071503D]

RIN 0648–AR32

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Observer Program

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes to amend regulations governing the North Pacific Groundfish Observer Program (Observer Program). This action is necessary to amend current regulations to provide flexibility in the deployment of observers in the Exclusive Economic Zone (EEZ) off the coast of Alaska. This action is intended to ensure continued collection of high quality observer data to support the management objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs) and to promote the goals and objectives contained in those FMPs.

DATES: Comments must be received by October 3, 2003.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall. Hand delivery or courier delivery of comments may be sent to NMFS, 709 West 9th Street, Room 420, Juneau, AK 99801. Comments may also be sent via facsimile to 907–586–7557. Comments

will not be accepted if submitted by email or the Internet. Copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this proposed regulatory action and the Environmental Assessment (EA) prepared for the Extension of the Interim North Pacific Groundfish Observer Program beyond 2002 are available from NMFS at the above address, or by calling the Alaska Region, NMFS, at (907) 586–7228.

FOR FURTHER INFORMATION CONTACT: Jason Anderson, 907–586–7228 or *jason.anderson@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands Management Area (BSAI) in the Exclusive Economic Zone under the FMPs. The North Pacific Fishery Management Council (Council) prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

The Council adopted and NMFS implemented the Interim Groundfish Observer Program (Interim Program) in 1996, which superseded the North Pacific Fisheries Research Plan (Research Plan). The requirements of the Interim Program were extended through 1997 (61 FR 56425, November 1, 1996), again through 1998 (62 FR 67755, December 30, 1997), again through 2000 (63 FR 69024, December 15, 1998), again through 2002 (65 FR 80381, December 21, 2000), and again through 2007 (67 FR 72595, December 6, 2002). The Interim Program provides the framework for the collection of data by observers to obtain information necessary for the conservation and management of the groundfish fisheries managed under the FMPs. Further, it authorizes mandatory observer coverage requirements for vessels and shoreside processors and establishes vessel, processor, and contractor responsibilities relating to the Observer Program.

A final rule to amend regulations governing observer coverage requirements for vessels and shoreside processors in the North Pacific Groundfish Fisheries was published in the **Federal Register** on January 7, 2003 (68 FR 715). The intent of the final rule was to address concerns about: (1) Shoreside processor observer coverage; (2) shoreside processor observer logistics; (3) observer coverage requirements for vessels fishing with groundfish pot gear; and (4) confidentiality of observer personal information. This proposed rule is intended to correct and clarify specific provisions of the January 7, 2003, final rule.

This proposed rule would amend the current regulations to allow an observer to be housed: (1) On a stationary floating processor; (2) on a vessel he or she will be assigned to for a time period prior to the vessel's departure from port necessary to coordinate the vessel observer's deployment logistics and vessel departure plans; (3) on a vessel for 24 hours following the completion of an offload where the observer has duties and is scheduled to disembark; and (4) on a vessel for 24 hours following the vessel's arrival in port when the observer is scheduled to disembark.

Subsequent to publication of the January 7, 2003, final rule, Observer Program staff received comments from two separate observer providers concerned with their ability to effectively deploy observers under the current regulations at § 679.50 (i)(2)(vi). In order to account for potential logistics problems, both observer providers described a common practice whereby observers are flown to their port of departure 3 or 4 days before the vessel is scheduled to depart. Flight cancellations and delays due to weather are common so fishing companies often request that observers arrive prior to their anticipated departure date.

Observers often arrive at their assigned vessel and encounter delays in the vessel's departure. Vessel operators are often unable to predict exactly when they will be able to leave port for a fishing trip due to weather, mechanical failure, labor disputes, and other unanticipated problems. These delays result in periods of time where an observer may be housed on an assigned vessel that is not traveling to fishing grounds or actively involved in fishing.

As observers arrive, they move onto their assigned vessels and await departure. Under current regulations, observers may not be housed on vessels they are assigned to until 24 hours prior to their departure time. In their attempt to mitigate potential logistical problems and expenses, observer providers may, at times, be in violation of current regulations. This action is meant to provide fishing operations with planning flexibility to deal with these uncertainties, and give observer providers improved opportunities to serve their customers.

The action would have an effect on observers equivalent to the lengthening of a fishing trip. Observers would receive normal contracted compensation for the additional days spent on vessels. Moreover, fishing operations would pay for the extra days of observer availability. This would provide an incentive to the fishing operation to only contract for the additional days that were absolutely necessary to deal with the departure uncertainty.

The proposed regulations also provide for housing aboard stationary floating processors. Current regulations at 679.50(i)(2)(vi)(B) govern the housing requirements for observers assigned to shoreside processing facilities and for observers between vessel or shoreside assignments while still under contract to an observer provider. Observers are commonly deployed to stationary floating processors and catcher vessels delivering to stationary floating processors. Stationary floating processors are often in remote locations and observers are commonly housed on these stationary floating processors before, after, and in between catcher vessel assignments and while assigned to a stationary floating processor. During review of current regulations at 679.50(i)(2)(vi)(B) and (C), NMFS realized stationary floating processors were not accounted for as possible accommodations for observers deployed to catcher vessels delivering to these stationary floating processors. This action would extend the requirements to observers being deployed in these circumstances. Given the remoteness of these stationary floating processors, NMFS considers the practice of housing observers deployed to catcher vessels delivering to stationary floating processors reasonable. Accommodation requirements at 679.50(i)(2)(vi)(B) for observers being housed on stationary floating processors are the same as those for a licensed hotel, motel, bed and breakfast, or other shoreside accommodations.

Regulations at 679.50(i)(2)(vi)(C) would be amended to clarify that these housing requirements apply to observers under contract.

Further, during review of these regulations, NMFS noticed that 679.50(i)(2)(vi)(C)(*2*) and (*3*) were the same. The proposed amendment to the regulations would clarify NMFS intent by accounting for two housing situations where the observer is scheduled to disembark the vessel. First, the observer could be housed on a vessel for up to 24 hours following the completion of an offload where the observer has duties and is scheduled to disembark. This accounts for assignments to catcher boats which target pollock and the observer is required to monitor the offload for prohibited species. Second, the observer

could be housed on a vessel for 24 hours following the vessel's arrival in port where the observer is scheduled to disembark. This accounts for assignments to all other vessels where the observer's duties are complete upon arrival to port.

This proposed rule would amend regulations at 679.50(i)(2)(vi)(D) by moving text to the preamble. It is a requirement that observers are provided housing within the standards outlined in the regulations. Therefore, it is implied that alternative housing must be arranged if the conditions in paragraph D are not met. This statement is interpretive and does not change the intent of NMFS.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An Initial Regulatory Flexibility Analysis (IRFA) was prepared to evaluate the impacts of this action on directly regulated small entities in compliance with the requirements of Section 603 of the Regulatory Flexibility Act (RFA). The reasons for the action, its objectives, and its legal basis have been described earlier in the preamble. A copy of this analysis is available from NMFS (*see* **ADDRESSES**).

For the proposed actions, the small regulated entities include: (1) Fishing vessels with observer coverage requirements and total annual gross revenues of less than $3.5 million from all the operation's commercial activity taken together; (2) processing facilities with observer coverage requirements and fewer than 500 employees, when all their affiliated operations, worldwide, are combined; (3) the CDQ groups; and (4) observer providers. Therefore about 330 small regulated entities could be affected by the proposed rule, or about 215 if the catcher vessels in the AFA pollock cooperatives are excluded.

The preferred alternative does not appear to have adverse impacts on small entities. The alternative would amend the current regulations to allow an observer to be housed: (1) On a stationary floating processor; (2) on a vessel he or she will be assigned to for a time period prior to the vessel's departure from port necessary to coordinate the vessel observer's deployment logistics and vessel departure plans; (3) on a vessel for 24 hours following the completion of an offload where the observer has duties and is scheduled to disembark; and (4) on a vessel for 24 hours following the vessel's arrival in port when the observer is scheduled to disembark. This alternative provides better opportunities to deal with the uncertainties associated with vessel operations and subsequent placement of the observer.

The status quo is the alternative to the preferred action. The status quo would not clarify the regulations or provide fishing operations with additional flexibility to deal with the uncertainties associated with the deployment of observers. The status quo was rejected because it would not accomplish the objectives of the action, and because it would have a relatively adverse impact on small entities.

This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities. This analysis did not reveal any Federal rules that duplicate, overlap or conflict with the proposed action.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: August 27, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.50, paragraphs (i)(2)(vi)(B), (C), and (D) are revised to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 2007.

* * * * *

(i) * * *

(2) * * *

(vi) * * *

(B) Except as provided in paragraphs (i)(2)(vi)(C) and (i)(2)(vi)(D) of this section, each observer deployed to a shoreside processing facility or stationary floating processor, and each observer between vessel, stationary floating processor or shoreside assignments while still under contract with a permitted observer provider, shall be provided with accommodations at a licensed hotel, motel, bed and breakfast, stationary floating processor, or other shoreside accommodations for the duration of each shoreside assignment or period between vessel or shoreside assignments. Such accommodations must include an assigned bed for each observer and no other person may be assigned that bed for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

(C) An observer under contract may be housed on a vessel he or she will be, or currently is, assigned to for a period not to exceed:

(*1*) The time period prior to the vessel's departure from port necessary to coordinate the vessel observer's deployment logistics and vessel departure plans;

(*2*) Twenty-four hours following the completion of an offload when the observer has duties and is scheduled to disembark; or

(*3*) Twenty-four hours following the vessel's arrival in port when the observer is scheduled to disembark.

(D) During all periods an observer is housed on a vessel, the observer provider must ensure that the vessel operator or at least one crew member is aboard.

* * * * *

[FR Doc. 03–22456 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 68, No. 170
Wednesday, September 3, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Board for International Food and Agricultural Development One Hundred and Thirty-Ninth Meeting; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and thirty-ninth meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 8 a.m. to 1 p.m. on October 6, 2003 in the ground floor meeting room of the National Association of State Universities & Land Grant Colleges (NASULGC), at 1307 New York Avenue, NW., Washington, DC.

The BIFAD at this meeting will hear a report and act on recommendations from SPARE (Strategic Partnership for Agricultural Research & Education, a BIFAD committee), receive an update on the implementation of the BIFAD Long-Term Training initiative; and will consider the report on USAID-university relationships (a BIFAD-commissioned study).

The meeting is free and open to the public. Those wishing to attend the meeting or obtain additional information about BIFAD should contact Curtis Nissly, the Designated Federal Officer for BIFAD. Write him in care of the U.S. Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, NW., Room 2.11–085, Washington, DC 20523–2110 or telephone him at (202) 712–1064 or fax (202) 216–3010.

Dated: August 28, 2003.

Roger Sloan,

EGAT/AG/ARPG, Director.

[FR Doc. 03–22394 Filed 9–2–03; 8:45 am]

BILLING CODE 6116–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: October 1, 2003 (9 a.m. to 5 p.m.).

Location: National Press Club, 529 14th St., NW., 13th Floor, Washington, DC.

This meeting will feature discussion of gender issues in commemoration of the 30th anniversary of the Percy Amendment. Other topics to be covered include post-conflict reconstruction, the Millennium Challenge Corporation, as well as HIV/AIDS programs. Participants will have an opportunity to ask questions of the speakers and participate in the discussion.

The meeting is free and open to the public. Persons wishing to attend the meeting can fax or e-mail their name to Ashley Mattison, 202–347–9212, *pvcsupport@datexinc.com.*

Dated: August 26, 2003.

Noreen O'Meara,

Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA).

[FR Doc. 03–22395 Filed 9–2–03; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Brochure for Glenn/Colusa, (5) Ski-High Project/ Possible Action, (6) How To Solicit Projects, (7) November Committee Conference, (8) Status of Members, (9) Grants & Agreements, (10) General Discussion, (11) Next Agenda.

DATES: The meeting will be held on September 22, 2003, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individual wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by September 18, 2003, will have the opportunity to address the committee at those sessions.

Dated: August 24, 2003.

Robert McCabe,

Acting Designated Federal Official.

[FR Doc. 03–22360 Filed 9–2–03; 8:45 am]

BILLING CODE 3910–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee will meet in Ketchikan, Alaska, September 25, 2003, and October 23, 2003. The purpose of these meetings is to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: The meetings will be held September 25, 2003, and October 23, 2003.

ADDRESSES: The meetings will be held at Southeast Alaska Discovery Center Learning Center (back entrance), 50 Main Street, Ketchikan, Alaska. Send written comments to Ketchikan Resource Advisory Committee, c/o District Ranger, USDA Forest Service, 3031 Tongass Ave., Ketchikan, AK 99901, or electronically to *jingersoll@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jerry Ingersoll, District Ranger, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, (907) 228–4100.

SUPPLEMENTARY INFORMATION: The meetings are open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: August 25, 2003.

Virginia D. Nichols,

Acting Forest Supervisor.

[FR Doc. 03–22375 Filed 9–2–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Finding of No Significant Impact for Buck and Duck Creeks Watershed, Nemaha County, NE

Introduction

The Buck and Duck Creeks Watershed is a federally assisted action authorized for planning under Pub. L. 83–566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with the development of the watershed plan. This assessment was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, Nebraska 68508–3866.

Recommended Action

Proposed is the development of one floodwater retarding dam on Buck Creek with a permanent pool surface area of 45 acres, and one multi-purpose floodwater retarding and recreation dam on Duck Creek with a permanent pool surface area of 49 acres. The Buck and Duck Creeks Watershed contains 17,880 acres of which 4595 acres are upstream of the Buck Creek dam and 4096 acres are upstream of the Duck Creek dam.

Effect of Recommended Action

More efficient drainage will occur on 6000 acres of floodplain cropland, which will reduce standing crop and stored crop damages. An additional 188 acres of floodplain land, within the project area, will have floodwater totally eliminated.

Water quality will be enhanced by decreased concentrations of phosphorus and sediment bound pesticides downstream of the dams.

Sediment delivery to the Missouri floodplain, from this watershed, will be significantly reduced by the two structures, which will control most of the upland drainage area in the watershed. In total, sediment delivery to the Missouri floodplain, from the watershed, will be reduced by 76 percent or 20,700 tons annually. This project will eliminate need for any future construction of sediment basins by the Peru Drainage District.

Fish habitat will be improved by the addition of the pools behind the dams. Deliberate in lake measures, as recommended by the Nebraska Game and Parks Commission, will be installed in the Duck Creek reservoir to enhance fisheries.

Water based recreation will be planned at the Duck Creek dam. This will provide an estimated 9692 annual public recreational visits.

Based on cultural resource identification and evaluation efforts there are no significant historic properties in the project area of potential effect. Consultation has been completed with the Nebraska State Historic Preservation Officer and the nine Indian tribal governments who have indicated historic interests in the general area.

If cultural resources are discovered during construction, appropriate notice will be made by NRCS to the State Historic Preservation Officer, the National Park Service, and the Advisory Council on Historic Preservation. NRCS will take action as prescribed in NRCS GM 420, Part 401, to protect or recover any significant cultural resources discovered during construction.

No threatened or endangered species in the watershed will be affected by the project.

No significant adverse environmental impacts will result from installations except for minor inconveniences to local residents during construction.

Alternatives

Three alternatives were analyzed in the plan.

Alternative 1: Without Project. The problem of flooding and sedimentation requiring the Peru Drainage District to find another location for a sediment catchment basin would persist. The regional shortage of recreation would continue. The value of the Without Project Alternative damages is estimated to be $50,806 annually.

Alternative 2: National Economic Development (NED) Plan. This alternative, the selected alternative, consists of a floodwater retarding dam on Buck Creek. This dam has 345 acre feet of sediment storage and 1137 acre feet of floodwater storage. A multi-purpose floodwater retarding and recreation dam will be located on Duck Creek. This dam will have 379 acre feet of sediment storage, 321 acre feet of recreation storage, and 1123 acre feet of floodwater storage.

Alternative 3: This alternative consists of two floodwater retarding dams, one on Buck Creek and one on Duck Creek. The floodwater retarding dam on Buck Creek would have 345 acre feet of sediment storage and 1137 acre feet of floodwater storage. The floodwater retarding dam on Duck Creek would have 379 acre feet of sediment storage and 981 acre feet of floodwater storage.

Consultation-Public Participation

An application for assistance was submitted by the Nemaha Natural Resources District on November 19, 1999. The request was a result of local concern and interest in addressing flood protection, sedimentation, fish and wildlife, and recreation.

A scoping meeting was held June 27, 2001 to assemble an interdisciplinary team. The purpose of the interdisciplinary was to review all interest and or concerns of the project area. Nebraska Game and Parks Commission, Nebraska Department of Natural Resources, Resource Conservation and Development, Nemaha Natural Resources District, University of Nebraska, Cooperative Extension, local residents and the Natural Resources Conservation Service were in attendance.

Consultation was completed with the Nebraska State Historic Preservation Officer and with the nine Indian tribal governments who have identified historical interests in the watershed area.

The environmental assessment was transmitted to all participating and interested agencies, groups, and individuals for review and comment in January 2002. Public meetings were held throughout the planning process to keep all interested parties informed of the study progress and to obtain public input to the plan and environmental evaluation.

Agency consultation and public participation to date have shown no unresolved conflicts with the implementation of the selected plan.

Conclusion

The Environmental Assessment summarized above indicates that this Federal action will not cause significant local, regional, or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the Buck and Duck Creeks Watershed Plan is not required.

Dated: August 25, 2003.

Stephen K. Chick,

State Conservationist.

[FR Doc. 03–22419 Filed 9–2–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 42–2003]

Foreign-Trade Zone 210—Port Huron, MI; Application for Expansion of Scope of Manufacturing Authority, Cross Hüller-North America (Machine Tools)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Cross Hüller-North America, operator of FTZ 210—Site 2 (Port Huron Industrial Park), pursuant to section 400.32(b)(1) of the Board's regulations (15 CFR Part 400), requesting an expansion of the scope of manufacturing authority to include new foreign-origin components used in the production of metalworking machine tools under FTZ procedures. It was formally filed on August 25, 2003.

Cross Hüller operates a facility within FTZ 210—Site 2 at the Port Huron Industrial Park, in Port Huron, Michigan. The facility is used to produce metal-working equipment under FTZ procedures, including modular transfer machines, computer-controlled machining centers (drilling, boring, broaching, milling), lathes, and flexible manufacturing systems for the U.S. market and export (Board Order 1230, 67 FR 37384, 5–29–2002).

The applicant currently requests that the scope of authority for the sourcing of foreign components be extended to include the following items: Reinforced vulcanized rubber hoses, millstones/grindstones/grinding wheels of agglomerated abrasives or ceramics, laminated safety glass, socket wrenches, molding patterns, distributors, ignition coils, pyrometers and related instruments, revolution counters, production counters and parts thereof, lamps and lamp fittings of base metal, plastic and brass (2003 duty rate range: 1.4—9.0%, 5¢/kg+2%). The list represents an expanded scope of Cross Hüller's existing scope of sourcing authority.

FTZ procedures would continue to exempt Cross Hüller from Customs duty payments on the foreign components used in production for export. On its domestic sales and exports to NAFTA countries, the company can choose the lower duty rate that applies to finished metalworking equipment (3.3—4.4%) for the foreign inputs noted above. In accordance with section 400.32(b)(1) of the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or
2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is October 20, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 3, 2003).

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No. 1 listed above.

Dated: August 25, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–22435 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1284]

Approval for Expanded Manufacturing Authority (Construction Equipment) Within Foreign-Trade Subzone 57B; Volvo Construction Equipment North America, Inc., Asheville, North Carolina Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, Volvo Construction Equipment North America, Inc. (Volvo CENA), operator of Foreign-Trade Subzone 57B, has applied to expand the scope of manufacturing authority under zone procedures within Subzone 57B, at the Volvo CENA plant located at sites in the Asheville, North Carolina area, to include additional finished products (skid-steer loaders and compaction rollers) (FTZ Doc. 1–2003; filed 1–7–2003);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 1591, 1–13–2003); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby approves the request subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 21st day of August 2003.

Jeffrey May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–22441 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1295]

Expansion of Foreign-Trade Zone 40; Cleveland, Ohio Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Cleveland-Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, submitted an application to the Board for authority to expand FTZ 40–Site 8 at the Strongsville Industrial Park, Strongsville, Ohio, within the Cleveland Customs port of entry area (FTZ Docket 14–2003);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 13255, 3/19/03) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the

examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 40–Site 8 is approved, subject to the Act and the Board's regulations, including section 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 21st day of August, 2003.

Jeffrey May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–22433 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1290]

Expansion of Foreign-Trade Zone 40, Cleveland, Ohio Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Cleveland-Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, submitted an application to the Board for authority to expand FTZ 40–Site 1 by adding two parcels at the Cleveland Bulk Terminal (Site 1b) and the Tow Path Valley Business Park (Site 1c) in Cleveland, Ohio, within the Cleveland Customs port of entry area (FTZ Docket 6–2003; filed 1/23/03);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 5271, 2/3/03) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 40–Site 1 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 21st day of August 2003.

Jeffrey May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–22437 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1289]

Expansion of Foreign-Trade Zone 40; Cleveland, Ohio, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Cleveland-Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, submitted an application to the Board for authority to expand FTZ 40–Site 3 to include the Snow Road Industrial Park (42 acres) in Brook Park, Ohio, within the Cleveland Customs port of entry area (FTZ Docket 38–2002; filed 9/26/02);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 62696, 10/8/02) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 40–Site 3 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 21st day of August 2003.

Jeffrey May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–22443 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 35–2003]

Foreign-Trade Zone 33—Pittsburgh, PA; Application for Subzone Status, Mitsubishi Electric Power Products, Inc. (Circuit Breakers), Warrendale and Freedom, PA; Technical Correction of Application

Notice is hereby given that the application of Board (the Board) by the Regional Industrial Development Corporation of Southwestern Pennsylvania, grantee of FTZ 33, requesting special-purpose subzone status for the circuit breaker manufacturing facilities of Mitsubishi Electric Power Products, Inc. (MEPPI) (a subsidiary of Mitsubishi Electric Corporation, of Japan), located in Warrendale and Freedom, Pennsylvania (68 FR 44281, 7–28–03), has been corrected to revise the scope of manufacturing authority to include full, straight-time production capacity of 1,500 units per year.

The comment period is reopened until September 23, 2003. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. *Submissions via Express/Package Delivery Services*: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or

2. *Submissions via the U.S. Postal Service*: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

A copy of the application is available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No. 1 listed above and at the U.S. Department of Commerce Export Assistance Center, Suite 2002, 1000 Liberty Avenue, Pittsburgh, PA 15222.

Dated: August 28, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–22434 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1291]

Approval for Expansion of Subzone 33C, Sony Technology Center—Pittsburgh (Television Manufacturing Facility), Mount Pleasant, PA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Regional Industrial Development Corporation of Southwestern Pennsylvania, grantee of FTZ 33, has requested authority on behalf of Sony Technology Center—Pittsburgh (Sony), to expand the scope of authority under zone procedures within the Sony facility in Mt. Pleasant, Pennsylvania (FTZ Docket 56–2002, filed 12/2/2002);

Whereas, notice inviting public comment has been given in the **Federal Register** (67 FR 72915, 12/9/02);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand the scope of authority under zone procedures within Subzone 33C, is approved, subject to the FTZ Act and the Board's regulations, including 400.28.

Signed at Washington, DC, this 21st day of August 2003.

Jeffrey May,

Acting Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–22438 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1283]

Grant of Authority for Subzone Status, Faurecia Interior Systems (Inc.) (Automotive Interior Components), Fountain Inn, SC

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board (the Board) to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the South Carolina State Ports Authority, grantee of Foreign-Trade Zone 38, has made application for authority to establish special-purpose subzone status at the automotive interior components manufacturing plant of Faurecia Interior Systems (Inc.) (a.k.a. SIA Automotive USA), located in Fountain Inn, South Carolina (FTZ Docket 49–2002, filed 10–18–2002);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 66109, 10–30–2002);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval were subject to a restriction requiring that all foreign textile fabric must be admitted to the subzone under privileged foreign status (19 CFR 146.41);

Now, Therefore, the Board hereby grants authority for subzone status at the automotive interior components manufacturing plant of Faurecia Interior Systems (Inc.), located in Fountain Inn, South Carolina (Subzone 38D), at the location described in the application, subject to the FTZ Act and the Board's regulations, including Section 400.28 and the foregoing restriction.

Signed at Washington, DC, this 21st day of August 2003.

Jeffrey May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–22440 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1294]

Expansion of Foreign-Trade Zone 148, Knoxville, Tennessee, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Industrial Development Board of Blount County, grantee of Foreign-Trade Zone 148, submitted an application to the Board for authority to expand FTZ 148 to include a new site (Site 4) within the CoLinx warehousing facilities in Crossville, Tennessee, adjacent to the Knoxville Customs port of entry (FTZ Docket 9–2003; filed 2/6/03);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 9047, 2/27/03) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 148 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 21st day of August 2003.

Jeffrey May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–22439 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1288]

Expansion of Foreign-Trade Zone 62, Brownsville, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Brownsville Navigation District, grantee of Foreign-Trade Zone 62, submitted an application to the

Board for authority to expand FTZ 62 to include a site at the FINSA Industrial Park (758 acres; includes temporary site) in Los Indios (Site 4) and to restore 10 acres at the Harlingen Industrial Airpark in Harlingen (Site 2—Parcel A), Texas, within the Brownsville/Los Indios Customs port of entry (FTZ Docket 8–2003; filed 1/24/03);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 5272, 2/3/03) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 62 is approved, subject to the Act and the Board's regulations, including section 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 21st day of August 2003.

Jeffrey May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–22436 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1285]

Approval for Expanded Manufacturing Authority (20-inch TV/VCR and TV/DVD Player Combination Units) Within Foreign-Trade Subzone 86E Matsushita Kotobuki Electronics Industries of America, Inc.; Vancouver, WA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, Matsushita Kotobuki Electronics Industries of America, Inc. (MKA), operator of Foreign-Trade Subzone 86E, has applied to expand the scope of manufacturing authority under zone procedures within Subzone 86E, at the MKA plant located at sites in Vancouver, Washington, to include additional finished products (20-inch TV/VCR and TV/DVD player combination units) (FTZ Doc. 31–2002; filed 8–12–2002);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 54168, 8–21–2002); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest; Now, therefore, the Board hereby approves the request subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 21st day of August 2003.

Jeffrey May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–22442 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-357–812]

Honey from Argentina: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Partial Rescission of Antidumping Duty Administrative Review.

SUMMARY: On January 22, 2003, the Department of Commerce (the Department) published in the **Federal Register** (68 FR 3009) a notice announcing the initiation of the administrative review of the antidumping duty order on honey from Argentina. The period of review (POR) is May 11, 2001, to November 30, 2002. This review has now been partially rescinded for certain companies because the requesting parties withdrew their requests.

EFFECTIVE DATE: September 3, 2003

FOR FURTHER INFORMATION CONTACT: Phyllis Hall, Donna Kinsella or David Cordell, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 7866, Washington, D.C. 20230; telephone (202) 482–1398, (202) 482–0194, (202) 482–0408, respectively.

Scope of the Review

The merchandise under review is honey from Argentina. For purposes of this review, the products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise under review is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (Customs) purposes, the Department's written description of the merchandise under this order is dispositive.

BACKGROUND:

On December 31, 2002, the American Honey Producers Association and the Sioux Honey Association (collectively "petitioners") requested an administrative review of the antidumping duty order (*See Notice of Antidumping Duty Order: Honey from Argentina*, 66 FR 63672 (December 10, 2001)) on honey from Argentina in response to the Department's notice of opportunity to request a review published in the **Federal Register**. The petitioners requested the Department conduct an administrative review of entries of subject merchandise made by 21 Argentine producers/exporters. In addition, the Department received requests for reviews from 9 Argentine exporters. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 3009 (January 22, 2003).

The Department initiated the review for all companies. On January 17, 2003, petitioners requested a withdrawal of request for review of 14 companies and the Department granted this request in *Honey from Argentina: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 13895 (March 21, 2003).

On August 13, 2003, two Argentine exporters, Radix S.r.L. ("Radix") and Compania Europeo Americana S.A. ("CEASA"), submitted letters of withdrawal of request for review. On the same date, petitioners also submitted a letter of withdrawal of a request for review with respect to Radix and CEASA.

Ordinarily, parties have 90 days from the publication of the notice of initiation of review in which to withdraw a request for review. *See* 19 CFR 351.213(d)(1). We received

petitioners' and respondents' withdrawal requests after the 90-day period had elapsed. However, in accordance with 19 CFR 351.213(d)(1), the Secretary may extend this time limit if the Secretary decides it is reasonable to do so. In this case, the review has not progressed substantially, nor has the Department conducted verification of the questionnaire responses by Radix or CEASA. Furthermore, the Department has not issued its preliminary results with respect to these 2 companies. As a result, there would be no undue burden on the parties or the Department if the Department were to rescind the review on the basis of these requests. Therefore, the Department has determined that it would be reasonable to grant the withdrawal at this time. Additionally, we conclude that the withdrawal does not constitute an "abuse" of our procedures. *See Antidumping Duties: Countervailing Duties; Final Rule*, 62 FR 27296, 27317 (May 19, 1997). As such, with respect to Radix and CEASA, the Department is rescinding the reviews of the antidumping duty order on honey from Argentina covering the period May 11, 2001, through November 30, 2002.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(l) of the Act and 19 CFR 351.213(d)(4) of the Department's regulations.

Dated: August 26, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–22432 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Announcement of Fall 2003 U.S. Coral Reef Task Force Meeting

AGENCY: Department of Commerce.

ACTION: Notice of public meeting and opportunity for public comment.

SUMMARY: The Department of Commerce announces the October 2003 public meeting of the U.S. Coral Reef Task Force (CRTF) in CNMI and Guam. Through the coordinated efforts of its members, including the heads of eleven federal agencies, the Governors of seven states and territories, and the leaders of the Freely Associated States, the Task Force has helped lead U.S. efforts to address the coral reef crisis and sustainably manage the nation's valuable coral reef ecosystems.

Time and Date: Part I—8 a.m. to 5 pm Commonwealth of the Northern Mariana Islands, (CNMI) October 3, 2003; Part II—8 a.m. to 5 p.m. Guam, October 6, 2003. All times Chamorro Standard Time.

Place: Part I—Dai Ichi Hotel, Garapan, Saipan, CNMI; Part II—Hilton Guam Resort & Spa, Tumon Bay, Guam.

Matters To Be Considered: During the October 2003 public meeting, the CRTF will discuss implementation of the National Coral Reef Action Strategy, recognize significant contributions to coral reef conservation, discuss implementation and development of 3-year Local Action Strategies, and accept public comments. Once finalized, the agenda will be available from the contacts below and will also be published on the Web at *http://coralreef.gov/*.

Individuals and organizations will have opportunities to register for both exhibit space and to provide public comments. Wherever possible, those with similar viewpoints or messages are encouraged to make joint statements. Public comments will be received on the afternoons of October 3rd (in CNMI) and October 6th (in Guam). Written public statements may also be submitted to the Task Force prior to the meeting or following the meeting. The deadline for submission of written public statements is October 20, 2003.

Travel information and meeting updates are posted on the Web at *http://coralreef.gov*.

FOR FURTHER INFORMATION CONTACT: Organizations and individuals based outside of Guam and the Commonwealth of the Northern Mariana Islands wishing to register for public comments, submit written public statements or to obtain additional information should contact the CRTF meeting office: Lisa Dawson, Coral Reef Conservation Program, Office of Response and Restoration, N/ORR, 1305 East West Hwy, Silver Spring, MD 20910, Phone (301) 713–2989 x105, Fax (301) 713–4389, e-mail: *coralreef@noaa.gov*, subject: USCRTF meeting.

Organizations or individuals in Guam and CNMI should contact: Becky Cruz Lizama, CNMI Point of Contact, Coastal Resources Management Office, Office of the Governor, P.O. Box 10007, Saipan, MP 96950, Telephone: (670) 664–8305, e-mail: *crm.permit@saipan.com*, subject: USCRTF meeting.

Exhibit space reservations can be made on the on-line meeting registration form at *http://coralreef.gov*.

Dated: August 29, 2003.

Ted I. Lillestolen,

Captain/NOAA, Associate Deputy Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03–22531 Filed 9–2–03; 12:33 pm]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[r 082803A]

Endangered Species; File No. 1446

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that North Carolina Division of Marine Fisheries (Mr. Blake Price, Principal Investigator), P.O. Box 769, Morehead City, North Carolina 28557, has applied in due form for a permit to take threatened and endangered sea turtles for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before October 3, 2003.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Sarah Wilkin, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant proposes to test two types of large mesh gillnets to ascertain which type of net will better reduce sea turtle interactions while maintaining targeted fish catch rates. The control net will be constructed of 6.5 inch monofilament webbing with a twine diameter of 0.57mm, 25 meshes deep. The low profile net will be constructed

of 6.5 inch monofilament webbing with a twine diameter of 0.57 mm, eight meshes deep. Nets will be set at dusk and retrieved in the early morning. Captured sea turtles will be examined for any possible injuries and held for approximately two hours to ensure they are healthy before being transported away from the fishing area and released. Turtles will be identified to species, measured, photographed, and flipper and PIT tagged. Any comatose or debilitated turtles will be transported to a rehabilitation center. During the life of the permit, the applicant requests authorization to capture 21 animals, representing a combination of Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) sea turtles. An additional 2 hawksbill (*Eretmochelys imbricata*) and 2 leatherback (*Dermochelys coriacea*) turtles may also be captured. Of the captured turtles, 9 of the Kemp's/loggerhead/green turtle aggregate, 1 hawksbill, and 1 leatherback may be mortalities. Research will be conducted in Pamlico Sound, North Carolina and the permit would expire in December 2004.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile to (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Dated: August 28, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–22457 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by October 3, 2003.

Title and OMB Number: Defense Security Service—Industrial Security Review Data and Industrial Security Facility Clearance Survey Data; OMB Number 0704–[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 12,975.

Responses Per Respondent: 1.

Annual Responses: 12,975.

Average Burden Per Response: 3.2 hours (average).

Annual Burden Hours: 41,764.

Needs and Uses: Executive Order 12829, "National Industrial Security Program (NISP)," established the NISP to safeguard Federal government classified information. The Defense Security Service administers the Defense portion of the NISP and is the office of record for the maintenance of information pertaining to contractor facility clearance records and industrial security information regarding cleared contractors under its cognizance. Contractors are subject to an initial facility clearance survey and periodic government security reviews to determine their eligibility to participate in the NISP and ensure that safeguards employed are adequate for the protection of classified information. To the extent possible, information required as part of the survey or security review is obtained as a result of observation by the representative of the Cognizant Security Agency (CSA) or its designated Cognizant Security Office. Some of the information may be obtained in conference with key management personnel and/or employees of the company. The information is used to respond to all inquiries regarding the facility clearance status and storage capability of cleared contractors. It is also the basis for verifying whether contractors are appropriately implementing NISP security requirements.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, local or tribal government.

Frequency: On occasion; Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 26, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–22402 Filed 9–2–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGENCY: Defense Acquisition University, DoD.

ACTION: Notice.

SUMMARY: The meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held at the Defense Acquisition University, Capital and Northeast Region, 9820 Belvoir Road, Fort Belvoir, Virginia, from 0900–1500. The purpose of this meeting is to report back to the BoV on continuing items of interest.

DATES: September 24, 2003 from 9 a.m. to 3 p.m.

ADDRESSES: Defense Acquisition University, Capital and Northeast Region, 9820 Belvoir Road, Fort Belvoir, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Particia Cizmadia at 703–805–5134.

SUPPLEMENTARY INFORMATION: The meeting is open to the public; however, because of space limitations, allocation of seating will be made on a first-come, first-served basis. Persons desiring to attend the meeting should call Ms. Patricia Cizmedia at 703–805–5134.

Dated: August 27, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–22403 Filed 9–2–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board of Advisors Meeting

AGENCY: National Defense University.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of a forthcoming

meeting of the National Security Education Board Group of Advisors. The purpose of the meeting is to review and make recommendations to the Board concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Pub. L. 102–183, as amended.

DATES: September 23, 2003.

ADDRESSES: The Academy for Educational Development (AED), 1825 Connecticut Avenue, NW, 8th Floor, Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Director for Programs, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn P.O. Box 20010, Arlington, Virginia 22209–2248; (703) 696–1991. Electronic mail address: *colliere@ndu.edu.*

SUPPLEMENTARY INFORMATION: The National Security Education Board Group of Advisors meeting is open to the public.

Dated: August 27, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 03–22361 Filed 9–2–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board Meeting

AGENCY: National Defense University.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Secretary concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Pub. L. 102–183, as amended.

DATES: October 28, 2003.

ADDRESSES: The Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Deputy Director, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn, Virginia 22209–2248; (703) 696–1991. Electronic mail address: *colliere@ndu.edu.*

SUPPLEMENTARY INFORMATION: The Board meeting is open to the Public.

Dated: August 27, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 03–22362 Filed 9–2–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Education.

ACTION: Notice of computer matching program between the U.S. Department of Education (ED) and the Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Child Support Enforcement (OCSE).

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988 and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, this document gives notice of a computer matching program between ED and HHS.

Background: This computer matching program between the two agencies will become effective, as indicated in paragraph six of this notice. In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), the Office of Management and Budget (OMB) Final Guidelines on the Conduct of Matching Programs (*see* 54 FR 25818, June 19, 1989), and OMB Circular A–130, we provide the following information:

1. Participating Agencies. U.S. Department of Education (ED), recipient agency. Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Child Support Enforcement (OCSE), source agency.

2. Purpose of Match. The purpose of the match is to obtain address information on individuals who owe funds to the Federal government for defaulted student loans or grant overpayments. ED will use this information to initiate independent collection of these debts under the provisions of the Debt Collection Act of 1982 when voluntary payment is not forthcoming. For individuals whose annual wage level exceeds $16,000, these collection efforts will include orders by ED or a guaranty agency to the employing entity, pursuant to statutory, non-judicial, administrative wage garnishment authority, to withhold a portion of the disposable pay of the debtor until such time as the obligation is paid in full.

3. Authority for Conducting the Match. The legal authority for conducting this match is contained in the Social Security Act (42 U.S.C. 653(j)(6)), as amended (Pub. L. 106–113).

4. Records and Individuals Covered by the Match. The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows: ED: 18–11–07, Student Financial Assistance Collection Files, 64 FR 30166–30169 (June 4, 1999), as amended, 64 FR 72407 (December 27, 1999). OCSE: 09–90–0074, Location and Collection System, 65 FR 57817 (September 26, 2000).

5. Description of Computer Matching Program. ED administers student financial assistance programs under the Higher Education Act of 1965 (HEA). OCSE maintains a database that consists of three separate components. The first component, the W4 table, contains all newly hired employees as reported from the State Directory of New Hires (SDNH) and directly from Federal agencies. Component two, the QW table, contains quarterly wage information on individual employees, as received from Federal agencies and States. The final component, the UI table, contains, unemployment insurance information of individuals who have received, or made application for, unemployment benefits, as reported by State Employment Security Agency or other State agencies responsible for the implementation of the Unemployment Insurance Program.

This matching agreement between ED and OCSE will assist ED in locating and collecting funds from delinquent debtors. The identifying elements that the two agencies will match are as follows:

ED: Name and Social Security Number (SSN) of delinquent debtors.

OCSE: Name and SSN of all newly hired employees and individuals who have received, or made application for, unemployment benefits.

OCSE will perform the computer match using all nine digits of the SSN of the ED file against the OCSE computer database. OCSE will produce a file containing the name, SSN, current home address, employer and employer's address for each individual identified, based on the match. The file of matches will be returned to ED.

ED is responsible for verifying and determining that the data on the NDNH reply file is consistent with ED's source file and for resolving any discrepancies

or inconsistencies on an individual basis. ED will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts, as a result of the match.

6. Inclusive Dates of the Matching Program. The matching program will become effective at the latest of the following three dates: (1) 40 days after the signing of the transmittal letters sending the computer matching program report to Congress and OMB, unless OMB disapproves the agreement within the 40 day review period or grants a waiver of the review period for compelling reasons; (2) 30 days after publication of this notice in the **Federal Register**; or (3) July 22, 2003. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

7. Address for Receipt of Comments or Inquiries. If you wish to comment on this matching program or obtain additional information about the program including a copy of the computer matching agreement between ED and OCSE, contact Marian E. Currie, U.S. Department of Education, 400 Maryland Avenue, SW., Union Center Plaza, Room 41B4, Washington, DC 20202–5320, telephone: (202) 377–3212; or, as a secondary contact: Adara L. Walton, 400 Maryland Avenue, SW., Union Center Plaza, Room 44E3, Washington, DC 20202–5320, telephone: (202) 377–3236. If you use a telecommunications device for the deaf (TDD), you may call 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 contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have the 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.

You may also view this document in text or PDF at the following site: *http://ifap.ed.gov/csb_html/fedlreg.htm.*

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.access.gpo.gov/nara/index.html.*

Authority: (5 U.S.C. 5514(a); 5 U.S.C. 552a).

Dated: August 27, 2003.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 03–22452 Filed 9–2–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah; Notice of Meeting

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, September 18, 2003 5:30 p.m.–9:30 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: Dianna Feireisel, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, Paducah, Kentucky 42001, (270) 441–6812.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.—Informal Discussion.
6 p.m.—Call to Order; Introductions; Approve July and August Minutes; Review Agenda; Election of Chair and Vice-Chair.
6:10 p.m.—DDFO's Comments
- ES & H issues
- Budget Update
- EM Project Updates
- CAB Recommendation Status
- Cleanup Scope Update
- Other

6:30 p.m.—Federal Coordinator Comments
6:40 p.m.—Ex-officio Comments
6:50 p.m.—Public Comments and Questions
7 p.m.—Administrative Issues
- Review of Workplan
- Review Next Agenda
- September Chairs Meeting

7:20 p.m.—Review of Action Items
7:35 p.m.—Break
7:45 p.m.—Presentation
- S & T Landfills Scoping Plan
- North-South Diversion Ditch Workplan

8:20 p.m.—Public Comments and Questions
8:30 p.m.—Task Force and Subcommittee Reports
- Water Task Force
- Waste Operations Task Force
- Long Range Strategy/Stewardship
- Community Concerns
- Public Involvement/Membership
- Ad Hoc for Chairs' Meeting

9 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 August 27, 2003.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 03–22411 Filed 9–2–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–84–000, et al.]

Conectiv Delmarva Generation, Inc., et al.; Electric Rate and Corporate Filings

August 14, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Conectiv Delmarva Generation, Inc.

[Docket No. EG03–84–000]

Take notice that on August 5, 2003, Conectiv Delmarva Generation, Inc. (CDG) filed an amendment to Paragraph 6 of its July 24, 2003 Application for Determination of Exempt Wholesale Generator Status in the above-captioned proceeding.

CDG states that it has served this filing on the Maryland Public Service Commission, the Delaware Public Service Commission, the New Jersey Board of Public Utilities, the Virginia State Corporation Commission, the District of Columbia Public Service Commission and the Securities and Exchange Commission.

Comment Date: September 4, 2003.

2. Conectiv Atlantic Generation, L.L.C.

[Docket No. EG03–85–000]

Take notice that on August 5, 2003, Conectiv Atlantic Generation, L.L.C. (CAG) filed an amendment to Paragraph 6 of its July 24, 2003 Application for Determination of Exempt Wholesale Generator Status in the above-captioned proceeding.

CAG states that it has served this filing on the Maryland Public Service Commission, the Delaware Public Service Commission, the New Jersey Board of Public Utilities, the Virginia State Corporation Commission, the District of Columbia Public Service Commission and the Securities and Exchange Commission.

Comment Date: September 4, 2003.

3. San Marco Bioenergia S.p.A.

[Docket No. EG03–88–000]

Take notice that on August 8, 2003, San Marco Bioenergia S.p.A. (San Marco) with its principal office at Via G. de Castro 4, 20144 Milano, Italy, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

San Marco states that it is a company organized under the laws of Italy. San Marco further states that it will be engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, exclusively in owning, or both owning and operating an electric generating facility consisting of a 20 MW Power Plant in Italy, selling electric energy at wholesale and engaging in project development activities with respect thereto.

Comment Date: September 4, 2003.

4. Stonycreek WindPower LLC

[Docket No. EG03–89–000]

Take notice that on August 8, 2003, Stonycreek WindPower LLC (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to part 365 of the Commission's regulations.

Applicant states that it is developing a wind-powered eligible facility with a capacity of 72 megawatts, which will be located in Somerset County, Pennsylvania.

Comment Date: September 4, 2003.

5. PJM Interconnection, L.L.C.

[Docket No. EL01–122–006]

Take notice that on August 7, 2003, PJM Interconnection, L.L.C. (PJM) tendered for filing with the Federal Energy Regulatory Commission (Commission), minor revisions to Attachment M of the PJM Open Access Transmission Tariff which is in compliance with the Commission's July 2, 2003 order (104 FERC ¶ 61,020).

PJM states that copies of this filing have been served on all PJM members and utility regulatory commissions in the PJM region and on all parties listed on the official service list in the above-captioned proceeding.

Comment Date: August 26, 2003.

1. Central Iowa Power Cooperative; Clarke Electric Cooperative, Inc.; Consumers Energy Cooperative; East-Central Iowa Rural Electric Cooperative; Eastern Iowa Light & Power Cooperative; Farmers Electric Cooperative, Inc.; Guthrie County Rural Electric Cooperative Association; Maquoketa Valley Electric Cooperative; Midland Power Cooperative; Pella Cooperative Electric Association; Rideta Electric Cooperative, Inc.; South Iowa Municipal Electric Cooperative; Association; Southwest Iowa Service Cooperative; T.I.P. Rural Electric Cooperative

[Docket No. EL03–219–000]

Take notice that on August 8, 2003, the above-named non-regulated utilities have filed with the Federal Energy Regulatory Commission (Commission) a joint PURPA implementation plan pursuant to Section 292.402 of the Commission's regulations, for waiver of certain obligations imposed on these applicant utilities under Sections 292.303(a) and 292.303(b) of the Commission's regulations which implement Section 210 of the Public Utility Regulatory Policies Act of 1978.

Comment Date: September 8, 2003.

7. Otter Tail Corporation

[Docket No. ER00–3080–001]

Take notice that on August 11, 2003, Otter Tail Corporation, formerly known as Otter Tail Power Company (Otter Tail) filed an updated market analysis as required by the Commission's August 11, 2000 Order in Docket ER00–3080–000 granting Otter Tail market-based rate authority.

Comment Date: September 2, 2003.

8. Panda Gila River, L.P.

[Docket No. ER01–931–002]

Take notice that on August 6, 2003, Panda Gila River, L.P. filed with the Federal Energy Regulatory Commission a notice of change in status in connection with the transfer by Panda GS V, LLC and Panda GS VI, LLC of their respective interests in TECO-PANDA Generating Company, L.P. to TPS GP, Inc. and TPS LP, Inc.

Comment Date: August 27, 2003.

9. Occidental Power Services, Inc.

[Docket No. ER02–1947–004]

Take notice that on August 6, 2003, Occidental Power Services, Inc., (OPSI) filed a Notice of Change in Status in regard to the Asset Management Agreement with Elk Hills Power L.L.C.

Comment Date: August 27, 2003.

10. Sierra Pacific Power Company

[Docket Nos. ER03–37–004 and ER02–2609–004]

Take notice that on August 8, 2003, Sierra Pacific Power Company submitting a refund report in compliance with the Commission Order issued July 1, 2003 in Docket Nos. ER03–37–000 and ER02–2609–000.

Comment Date: August 29, 2003.

11. Idaho Power Company

[Docket No. ER03–488–004]

Take notice that on August 5, 2003, Idaho Power Company (Idaho Power) tendered for filing Second Revised Service Agreement No. 153, Second Revised Service Agreement No. 155, and Second Revised Service Agreement No. 156, under FERC Electric Tariff First Revised Volume No. 5 for Network

Integration Transmission Service between Idaho Power and Bonneville Power Administration. Idaho Power seeks an effective date of January 1, 2003.

Comment Date: August 26, 2003.

12. Devon Power LLC, Middletown Power LLC, Montville Power LLC Norwalk Power LLC and NRG Power Marketing Inc.

[Docket No. ER03–563–013]

Take notice that on August 5, 2003, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC (collectively Applicants) and NRG Power Marketing Inc., on May 28, 2003, tendered for filing in compliance with the Commission's Order, issued July 24, 2003 (July 24 Order) 104 FERC § 61,123, Third Revised Cost of Service Agreements (COS Agreements) among each of the Applicants, NRG Power Marketing Inc, as agent for each Applicant, and ISO New England Inc., and changes to Applicants' cost-of-service to reflect rate adjustments determined by the July 24 Order and supporting documents.

Applicants state that they have served a copy of its filing on ISO New England, Inc. and each person designated on the official service list in Docket No. ER03–563..

Comment Date: August 26, 2003.

13. Southern Company Services, Inc.

[Docket No. ER03–872–001]

Take notice that on August 11, 2003, Southern Company Services, Inc., (SCS), acting on behalf of Georgia Power Company (GPC), filed additional material relating to supplement their May 23, 2003 filing of an Interconnection Agreement between Southern Power Company and Georgia Power. The additional material was submitted in response to the Commission's Letter Order issued July 10, 2003 in Docket No. ER03–872–000.

Comment Date: September 2, 2003.

14. New York Independent System Operator, Inc.

[Docket No. ER03–873–001]

Take notice that on August 6, 2003, the New York Independent System Operator, Inc. (NYISO) tendered for filing a compliance filing in connection with the Commission's July 22, 2003, order in Docket No. ER03–873–000.

The NYISO states it has served a copy of this filing to all parties listed on the official service list. The NYISO also states it has served a copy of this filing on all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: August 27, 2003.

15. PPL Montana LLC

[Docket ER03–1133–001]

Take notice that on August 6, 2003, PPL Montana LLC (PPL), tendered for filing a supplement to its July 30, 2003 filing of Rate Schedule No. 13. PPL states that the supplemental filing contains a complete set of attachments to replace the attachments to the July 30, 2003 filing.

PPL Montana LLC states that copies of this filing have been served on all PNCA parties.

Comment Date: August 27, 2003.

16. Carolina Power & Light Company

[Docket No. ER03–1156–001]

Take notice that on August 8, 2003, Carolina Power & Light Company, d/b/a Progress Energy Carolinas, Inc., (CPL) filed Substitute Tariff Sheets for Rate Schedule No. 121, originally filed on August 4, 2003. CPL states that the substitute tariff sheets correct typographical errors and minor omissions in the August 4, 2003 filing.

Carolina Power & Light Company states that copies of the filing were served on the original list of recipients in the August 4, 2003 filing.

Comment Date: August 29, 2003.

17. Direct Commodities Trading, Inc.

[Docket No. ER03–1162–000]

Take notice that on August 5, 2003, Direct Commodities Trading, Inc (DCT) petitioned the Commission for acceptance of DCT Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

DCT states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. DCT states that it is not in the business of generating or transmitting electric power. DCT also states that it is an independent private corporation, has no affiliates and is not a subsidiary or parent of any other entity.

Comment Date: August 26, 2003.

18. Energy Cooperative Association of Pennsylvania

[Docket No. ER03–1165–000]

Take notice that on August 6, 2003, Energy Cooperative Association of Pennsylvania (ECAP) petitioned the Commission for acceptance of ECAP Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

ECAP states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. ECAP further states it is not in the business of generating or transmitting electric power and that it is not affiliated with any other organization

Comment Date: August 27, 2003.

19. Avista Corporation

[Docket No. ER03–1166–000]

Take notice that on August 6, 2003, Avista Corporation (Avista) tendered for filing revisions to its 18th Revised FERC Rate Schedule No. 105, the General Transfer Agreement between Avista and the Bonneville Power Administration. Avista states that the revisions to the rate schedule consist of changes to data in exhibits to the General Transfer Agreement to reflect changes in transmission facilities and Bonneville Power Administration's customers and correct certain clerical errors in the effective date. Avista requests an effective date for the changes of October 1, 2003.

Avista states that a copy of this filing was served upon the Bonneville Administration, the counterparty to the General Transfer Agreement.

Comment Date: August 27, 2003.

20. PJM Interconnection, L.L.C.

[Docket No. ER03–1167–000]

Take notice that on August 6, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an interconnection service agreement (ISA) among PJM, DuPont Textiles and Interiors, Inc., and Delmarva Power & Light Company d/b/a Conectiv Power Delivery and a notice of cancellation of an Interim ISA that has been superseded.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a July 17, 2003 effective date for the ISA. PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: August 27, 2003.

21. PJM Interconnection, L.L.C.

[Docket No. ER03–1168–000]

Take notice that on August 6, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an interconnection service agreement (ISA) among PJM, U.S. General Service Administration, Heating Operation and Transmission District, and Potomac Electric Power Company.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a July 14, 2003 effective date for the ISA. PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: August 27, 2003.

22. PJM Interconnection, L.L.C.

[Docket No. ER03–1169–000]

Take notice that on August 6, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an interconnection service agreement (ISA) among PJM, Bethesda Triangle LLC, and Potomac Electric Power Company.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a July 29, 2003 effective date for the ISA. PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: August 27, 2003.

23. Entegra North America, L.P.

[Docket No. ER03–1170–000]

Take notice that on August 6, 2003, Entegra North America, L.P. (Entegra) petitioned the Commission for acceptance of Entegra Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Entegra states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. Entegra also states that it is not in the business of generating or transmitting electric power.

Comment Date: August 27, 2003.

24. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER03–1171–000]

Take notice that on August 6, 2003, Deseret Generation & Transmission Co-operative, Inc. (Deseret) tendered an informational filing in compliance with Service Agreements on file with the Commission. Deseret states that the filing sets forth the revised approved costs for member-owned generation resources and the revised approved reimbursements under its Resource Integration Agreements with two of its members, Garkane Power Association, Inc. and Moon Lake Electric Association, Inc.

Deseret states that a copy of this filing has been served upon all of Deseret's members.

Comment Date: August 27, 2003.

25. Midwest Energy, Inc.

[Docket No. ER03–1172–000]

Take notice that on August 6, 2003, Midwest Energy, Inc. (Midwest) submitted for filing an amendment to FERC Rate Schedule No. 19, superseding Westar Energy, Inc. First Revised FERC No. 264, Transmission Service Contract between Midwest and Kansas Electric Power Cooperative, Inc., (KEPCo).

Midwest states that a copy of this filing was served upon the Kansas Corporation Commission and KEPCo.

Comment Date: August 27, 2003.

26. Nicole Energy Marketing, Inc.

[Docket No. ER03–1179–000]

Take notice that on August 8, 2003, Nicole Energy Marketing, Inc., submitted for filing a Notice of Cancellation of the Market-based Rate Authority for Nicole Energy Marketing of Illinois, Inc., issued in Docket No. ER00–3637–000. Nicole Energy Marketing of Illinois, Inc., states it is no longer in business.

Comment Date: August 29, 2003.

27. Nicole Energy Services, Inc.

[Docket No. ER03–1180–000]

Take notice that on August 8, 2003, Nicole Energy Services, Inc., submitted for filing a Notice of Cancellation of the Market-based Rate Authority for Nicole Energy Services, Inc., issued in Docket No. ER98–2683–000. Nicole Energy Services, Inc. states that it is dissolved and will not be doing any business.

Comment Date: August 29, 2003.

28. New England Power Pool

[Docket No. ER03–1181–000]

Take notice that on August 8, 2003, the New England Power Pool (NEPOOL) Participants Committee submitted a filing pursuant to Section 203 of the Federal Power Act requesting acceptance of Amendment No. 4 (Amendment) to the Interim Independent System Operator Agreement (ISO Agreement) dated July 1, 1997 between ISO New England Inc. (ISO) and the NEPOOL Participants. NEPOOL states that the Amendment is solely to extend the term of the ISO Agreement by up to one year, to December 31, 2004. NEPOOL has requested that the Commission issue an order approving the Amendment on or before October 7, 2003.

NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: August 29, 2003.

29. Tyr Energy, LLC

[Docket No. ER03–1182–000]

Take notice that on August 7, 2003, Tyr Energy, LLC tendered for filing a request for acceptance of Tyr Energy, LLC's FERC Rate Schedule No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Tyr Energy, LLC states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. Tyr Energy, LLC also states that it is not in the business of generating or transmitting electric power.

Comment Date: August 28, 2003.

30. White River Electric Association, Inc.

[Docket No. ER03–1184–000]

Take notice that on August 8, 2003, White River Electric Association, Inc. (White River) filed a rate schedule and a service agreement for the provision of emergency service to Moon Lake Electric Association, Inc., pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d and 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations. White River requests that the Commission grant all waivers necessary to allow the rate schedule to have an effective date of October 26, 1999. White River states that its filing is available for public inspection at its offices in Meeker, Colorado.

White River states that a copy of the filing was served upon Moon Lake Electric Association Inc. and the Colorado Public Utilities Commission.

Comment Date: August 29, 2003.

31. Commonwealth Edison Company

[Docket No. ER03–1196–000]

Take notice that on August 8, 2003, Commonwealth Edison Company (ComEd) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Dynamic Scheduling Agreement (DSA) entered into between ComEd and Wisconsin Electric Power Company (Wisconsin Electric) under ComEd's Open Access Transmission Tariff. ComEd states that the executed DSA replaces the unexecuted DSA filed in connection with seven Service Agreements which were previously accepted for filing. ComEd requests effective dates of June 1, 2003 and June 1, 2004 for the respective Service Agreements and associated DSA.

ComEd states that copies of the filing were served upon Wisconsin Electric,

the Illinois Commerce Commission and Wisconsin Public Service Commission.

Comment Date: August 29, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22590 Filed 9–2–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7552–4]

Investigator Initiated Grants for Fellowships: Request for Applications

AGENCY: Environmental Protection Agency.

ACTION: Notice of requests for applications.

SUMMARY: This notice provides information on the availability of fiscal year 2004 fellowship program announcements, in which the areas of research interest, eligibility and submission requirements, evaluation criteria, and implementation schedules are set forth. Grants will be competitively awarded following peer review.

DATES: Receipt dates vary depending on the specific research areas within the solicitations.

SUPPLEMENTARY INFORMATION: In its Requests for Applications (RFA) the U.S. Environmental Protection Agency invites fellowship applications in the following areas of special interest to its mission: (1) Fall 2004 EPA Science to Achieve Results (STAR) Fellowships for Graduate Study, (2) Fall 2004 Minority Academic Institutions (MAI) Fellowships for Graduate Study, and (3) Fall 2004 Minority Academic Institutions (MAI) Undergraduate Student Fellowships.

CONTACTS: (1) Fall 2004 EPA Science to Achieve Results (STAR) Fellowships for Graduate Study, Virginia Broadway (phone: 202–564–6923, e-mail: *broadway.virginia@epa.gov*), (2) Fall 2004 Minority Academic Institutions (MAI) Fellowships for Graduate Study, Virginia Broadway (phone: 202–564–6923, e-mail: *broadway.virginia@epa.gov*), and (3) Fall 2004 Minority Academic Institutions (MAI) Undergraduate Student Fellowships, Georgette Boddie, (phone: 202–564–6926, e-mail: *boddie.georgette@epa.gov*).

FOR FURTHER INFORMATION CONTACT: The complete program announcement can be accessed on the Internet at *http://www.epa.gov/ncer,* under "announcements." The required forms for applications with instructions are accessible on the Internet at *http://www.epa.gov/ncer/fellow/*. Forms may be printed from this site.

Dated: August 27, 2003.

John C. Puzak,

Acting Director, National Center for Environmental Research.

[FR Doc. 03–22451 Filed 9–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0170; FRL–7320–7]

Diazinon; Product Registrations Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's cancellation order for the cancellations, as requested by Syngenta Crop Protection, Inc., of all of Syngenta's registrations for products containing diazinon (*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate) and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up a May 30, 2003 Notice of Receipt of Requests from Syngenta for cancellations of all of Syngenta's diazinon product registrations. In the May 30, 2003 Notice, EPA indicated that it would issue an order granting the voluntary product registration cancellations, unless the Agency received substantive comments within the comment period that would merit its further review of these requests. The Agency received one set of comments, which were in support of the cancellation requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: The cancellations are effective immediately.

FOR FURTHER INFORMATION CONTACT: Stephanie Plummer, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0076; e-mail address: *plummer.stephanie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0170. 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. EPA also

established two dockets containing documents in support of the diazinon IRED. They are dockets OPP–34225 and OPP–2002–0251. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

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

II. What Action is the Agency Taking?

This notice announces cancellation, as requested by Syngenta, of all of Syngenta's diazinon products registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Tables 1, 2, and 3 of this unit.

A. Background Information

Diazinon is an organophosphorous insecticide and is one of the most widely used insecticides in the U.S. It is used for outdoor non-agricultural, as well as agricultural, pest control.

Under a December 5, 2000 Memorandum of Agreement (MOA) between Syngenta Crop Protection, Inc. and EPA, Syngenta requested, under FIFRA section 6(f), that EPA cancel, effective as of June 30, 2003, the registrations of all of Syngenta's diazinon manufacturing-use products permitting formulation for outdoor non-agricultural use. In the MOA, EPA expressed that it would not contemplate permitting sale, distribution or use of existing stocks of these outdoor non-agricultural manufacturing-use products, except for return to the Registrant for purposes of re-labeling for export or disposal. In a letter dated April 8, 2003, Syngenta Crop Protection, Inc. requested a voluntary cancellation of all its remaining registrations for products containing diazinon, to be effective June 30, 2003. The request applied to outdoor non-agricultural end-use products and agricultural products. The request is contingent upon EPA's granting of certain existing stocks provisions, which are set forth in Unit V. EPA announced its receipt of the above-mentioned cancellation requests in a **Federal Register** Notice dated May 30, 2003 (68 FR 32501) (FRL–7309–2).

Syngenta's April 8, 2003 request for cancellations is consistent with the December 5, 2000 MOA. EPA has approved both the December 5, 2000 and the April 8, 2003 requests to terminate registrations for all of Syngenta's diazinon products and has published its cancellation order in this Notice. All of Syngenta's diazinon products subject to cancellation, which include outdoor non-agricultural and agricultural product registrations, are identified in Tables 1, 2, and 3 of this unit.

The Reregistration Eligibility Decision (RED) document summarizes the findings of EPA's reregistration process for individual chemical cases, and reflects the Agency's decision on risk assessment and risk management for uses of the individual pesticides known as organophosphates (OPs). EPA has issued an Interim Reregistration Eligibility Decision (IRED) document assessing the risks of exposure from agricultural uses of diazinon.

B. Requests for Voluntary Cancellations

The manufacturing-use product registrations for which cancellation was requested are identified below in Table 1. The end-use product registrations for which cancellation was requested are identified below in Tables 2 and 3. EPA did not receive any substantive comments regarding these product registrations. Accordingly, the Agency has issued an order in this notice canceling the registrations identified in Tables 1, 2, and 3.

TABLE 1.—MANUFACTURING-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Registration No.	Product Name	Chemical Name
100–977	D·z·n diazinon MG 56% WBC AG	Diazinon
100–978	D·z·n diazinon MG 22.4% WBC HG	Diazinon
100–979	D·z·n diazinon MG 87% HG	Diazinon
100–980	D·z·n diazinon MG 87% AG	Diazinon

TABLE 2.—OUTDOOR NON-AGRICULTURAL END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Registration No.	Product Name	Chemical Name
100–456	D·z·n Lawn & Garden Insect Control	Diazinon
100–468	D·z·n Granular Lawn Insect Control	Diazinon
100–528	D·z·n 6000 Lawn & Garden Insect Control	Diazinon
100–770	D·z·n diazinon Lawn & Garden WBC	Diazinon

TABLE 2.—OUTDOOR NON-AGRICULTURAL END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS—Continued

Registration No.	Product Name	Chemical Name
100–926	D·z·n diazinon Garden Insect Dust	Diazinon

TABLE 3.—AGRICULTURAL END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Registration No.	Product Name	Chemical Name
100–460	D·z·n diazinon 50W	Diazinon
100–461	D·z·n diazinon AG500	Diazinon
100–469	D·z·n diazinon 14G	Diazinon
100–784	D·z·n diazinon AG600 WBC	Diazinon

Table 4 of this unit includes the name and address of record for the registrant of the products in Tables 1, 2, and 3 of this unit:

TABLE 4.—REGISTRANT REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
100	Syngenta Crop Protection, Inc, P.O. Box 18300, Greensboro, NC 27419–8300

III. Cancellation Order

Pursuant to section 6(f) of FIFRA, EPA hereby approves the requested cancellations of diazinon product registrations identified in Tables 1, 2, and 3 in Unit II. Accordingly, the Agency orders that the diazinon manufacturing-use product registrations identified in Table 1 in Unit II., as well as the end-use product registrations listed in Tables 2 and 3 in Unit II., are hereby canceled. Any distribution, sale, or use of existing stocks of the products identified in Tables 1, 2, and 3 in Unit II. in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth below in Unit V. will be considered a violation of FIFRA.

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The cancellation order issued in this Notice includes the following existing stocks provisions.

A. Outdoor Non-Agricultural Manufacturing-Use Products

1. *Distribution or sale.* The distribution or sale of existing stocks of any outdoor non-agricultural manufacturing-use product identified in Table 1 in Unit II. is no longer lawful under FIFRA, except for the purposes of export consistent with FIFRA section 17 and proper disposal in accordance with applicable law.

2. *Use for producing other products.* The use of existing stocks of any manufacturing-use product identified in Table 1 in Unit II. for formulation into any other product labeled for outdoor non-agricultural use is no longer lawful under FIFRA.

B. Outdoor Non-Agricultural End-Use Products

1. *Distribution or sale by registrant.* The distribution, or sale, of existing stocks by Syngenta of any product listed in Table 2 in Unit II. will not be lawful under FIFRA after August 31, 2003, except for purposes of shipping such stocks for export consistent with the requirements of FIFRA section 17 or proper disposal in accordance with applicable law.

2. *Retail and other distribution or sale.* The distribution or sale of existing stocks by persons other than Syngenta will be prohibited after December 31, 2004, except for purposes of product recovery pursuant to the 2000 MOA, shipping such stocks for export consistent with the requirements of FIFRA section 17, or proper disposal in accordance with applicable law.

3. *Use of existing stocks.* Use of existing stocks may continue until stocks are exhausted. Any such use must be in accordance with the label.

C. Agricultural Manufacturing-Use Products

1. *Distribution or sale, or use by registrant.* The distribution, sale, or use of existing stocks by Syngenta of any manufacturing-use product identified in Table 1 in Unit II. for formulation into any other product labeled for agricultural use will not be lawful under FIFRA after August 31, 2003, except for purposes of shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or proper disposal in accordance with applicable law.

2. *Retail and other distribution, sale, or use.* The distribution, sale, or use of existing stocks of any manufacturing-use product identified in Table 1 in Unit II. for formulation into any other product labeled for agricultural use by any person other than Syngenta may continue until stocks are exhausted. Any such use must be in accordance with the label.

D. Agricultural End-Use Products

1. *Distribution or sale by registrant.* The distribution or sale of existing stocks by Syngenta of any product listed in Table 3 in Unit II. will not be lawful under FIFRA after August 31, 2003, except for purposes of shipping for exports consistent with the requirements of FIFRA section 17 or

proper disposal in accordance with the applicable law.

2. *Retail and other distribution, sale, or use.* The distribution, sale, or use of existing stocks by any person other than Syngenta may continue until stocks are exhausted. Any such use must be in accordance with the label.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 20, 2003.

Betty Shackleford,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–22317 Filed 9–2–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7552–3]

Notice of Vacature of Specific Applicability Determinations Concerning National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that EPA has vacated two applicability determinations concerning the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Secondary Aluminum Production, 40 CFR part 63, subpart RRR, which were previously made by EPA in response to requests submitted by the U.S. Granules Corporation. EPA has determined that these two applicability determinations reflect conflicting constructions concerning the applicability of Subpart RRR to operations like those conducted at the U.S. Granules facilities, and that the retention of such conflicting constructions is inappropriate as a matter of law and policy. Now that these determinations have been vacated, EPA will commence a process to adopt a single uniform construction of Subpart RRR which will apply to all operations like those conducted at the U.S. Granules facilities.

FOR FURTHER INFORMATION CONTACT: For specific questions concerning the actions described in this notice, contact Scott Throwe at EPA by phone at: (202) 564–7013, or by e-mail at: *throwe.scott@epa.gov*. For general questions concerning the Applicability Determination Index maintained by the EPA Office of Enforcement and Compliance Assurance (OECA), contact Maria Malave at EPA by phone at: (202) 564–7027, or by e-mail at: *malave.maria@epa.gov*.

SUPPLEMENTARY INFORMATION: This notice announces the vacature of two applicability determinations made concerning the NESHAP for Secondary Aluminum, 40 CFR part 63, subpart RRR. An applicability determination concerning the U.S. Granules facility in Plymouth, Indiana was made by the EPA Region 5 Air Enforcement and Compliance Assurance Branch on August 21, 2002, in response to a request for such a determination by U.S. Granules dated August 14, 2002. Notice of this applicability determination (Control No. M020112) was published in the **Federal Register** on February 13, 2003. 68 FR 7373. The decision to vacate this determination was subsequently announced in a letter to U.S. Granules dated June 19, 2003.

An applicability determination concerning the U.S. Granules facility in Henrietta, Missouri was made by the EPA Region 7 Air Permitting and Compliance Branch on October 22, 2002, in response to a request for such a determination by U.S. Granules dated October 11, 2002. Notice of this applicability determination (Control No. M020117) was also published in the **Federal Register** on February 13, 2003. 68 FR 7373. The decision to vacate this determination was subsequently announced in a letter to U.S. Granules dated June 23, 2003.

After issuance of these two applicability determinations, EPA determined that these determinations reflect conflicting constructions concerning the applicability of Subpart RRR to operations like those conducted at the U.S. Granules facilities. EPA also determined that the retention of such conflicting constructions would be inappropriate as a matter of law and policy. Accordingly, EPA decided to vacate both of these applicability determinations and to commence a process to adopt a single uniform construction of Subpart RRR which will apply to all operations like those conducted at the U.S. Granules facilities.

The vacature of each of the applicability determinations concerning U.S. Granules facilities described in this notice was final and effective on the date that the letter announcing that vacature was signed. This notice is being published to assure that parties other than U.S. Granules who may be interested in these determinations are also notified that they have been vacated. In addition to this notice, EPA will update the Applicability Determination Index maintained by OECA to reflect the vacature of these determinations.

Dated: August 20, 2003.

Michael S. Alushin,

Director, Compliance Assessment and Media Programs Division, Office of Compliance.

[FR Doc. 03–22450 Filed 9–2–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 26, 2003.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. KNBT Bancorp Inc., Bethlehem, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Keystone Savings Bank, Bethlehem, Pennsylvania, and

First Colonial Group, Inc., Nazareth, Pennsylvania, and Nazareth National Bank and Trust Company, Nazareth, Pennsylvania.

B. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Sky Financial Group, Inc., Bowling Green, Ohio; to acquire 100 percent of the voting shares of GLB Bancorp, Inc., Mentor, Ohio, and thereby indirectly acquire voting shares of Great Lakes Bank, Mentor, Ohio.

C. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Greene County Bancshares, Inc., Greeneville, Tennessee; to merge with Independent Bankshares Corporation, Gallatin, Tennessee, and thereby indirectly acquire First Independent Bank, Gallatin, Tennessee, and Rutherford Bank & Trust, Murfreesboro, Tennessee.

Board of Governors of the Federal Reserve System, August 27, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03-22373 Filed 9-2-03; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

Party name	ET req status	Trans No.	ET date
Invitrogen Corporation	G	20030795	11-Aug-03
Dr. Richard P. Haugland and Dr. Rosaria Haugland	G		
Molecular Probes, Inc	G		
Cypress Merchant Banking Partners II L.P	G	20030833	
J.W. Childs Equity Partners II, L.P	G		
Meow Mix Holdings, Inc	G		
Alliance Data Systems Corporation	G	20030847	
Stage Stores, Inc	G		
Stage Stores, Inc	G		
Cumberland Farms, Inc	G	20030697	12-Aug-03
ConocoPhillips Corp	G		
ConocoPhillips Corp	G		
American International Group, Inc	G	20030824	
General Electric Company	G		
GE Property & Casualty Insurance Company	G		
Crown Finance Foundation	G	20030844	
StoryFirst Communications, Inc	G		
StoryFirst Communications, Inc	G		
Whitney V, L.P	G	20030855	
Matt J. Wollman	G		
Interactive Health LLC	G		
BASF Aktiengesellschaft	G	20030846	13-Aug-03
Mine Safety Appliances Company	G		
Mine Safety Appliances Company	G		
nVIDIA Corporation	G	20030828	15-Aug-03
MediaQ, Inc	G		
MediaQ, Inc	G		
Cisco Systems, Inc	G	20030849	
Andiamo Systems, Inc	G		
Andiamo Systems, Inc	G		
Dex Holdings LLC	G	20030869	
Qwest Communications International Inc	G		
SGN LLC	G		
GPP LLC	G		
Thoma Cressey Fund VII, LP	G	20030831	18-Aug-03
Kings Holdings, LLC	G		
Daticon, Inc	G		
Abbott Laboratories	G	20030832	
Mr. Christopher P. Baker	G		
ZonePerfect Nutrition Company	G		
Associated Materials Holdings, Inc	G	20030848	
Gentek Holdings, Inc	G		
Gentek Holdings, Inc	G		
Bruckmann, Rosser, Sherrill & Co., L.P	G	20030853	
Nestle S.A	G		

TRANSACTION GRANTED EARLY TERMINATION—Continued

Party name	ET req status	Trans No.	ET date
Nestle Prepared Foods Company	G		
Phelps Dodge Corporation	G	20030850	19–Aug–03
Phelps Dodge Corporation	G		
Chino Mines Company	G		
Intelsat Ltd	G	20030852	
Loral Space & Communications Ltd	G		
Loral Space & Communications Corporation ("LSCC")	G		
Loral Satellite, Inc	G		
Loral SpaceCom Corporation	G		
Chico's FAS, Inc	G	20030859	
The White House, Inc	G		
The White House, Inc	G		
Fidelity National Financial, Inc	G	20030863	
WebTone Technologies, Inc	G		
WebTone Technologies, Inc	G		
Fox Paine Capital Fund II, L.P	G	20030876	
Alfonso Romo Garza	G		
Seminis, Inc	G		
Globespan Virata, Inc	G	20030820	20–Aug–03
Intersil Corporation	G		
SICOM, Inc	G		
Choice-Intersil Microsystems, Inc	G		
Intersil B.V. and No Wires Needed	G		
Intersil Corporation	G	20030827	
Globespan Virata, Inc	G		
Globespan Virata, Inc	G		
Morgenthaler Partners, VII, L.P	G	20030857	
Tomkins plc	G		
Gates Formed Fibre LLC	G		
Trelleborg AB	G	20030839	21–Aug–03
Smiths Group plc	G		
Smiths Polymer Sealing Solutions	G		
Citigroup Inc	G	20030821	22–Aug–03
Sears, Roebuck and Co	G		
Sears Life Insurance Company	G		
Sears Financial Holding Corporation	G		
Sears Roebuck de Puerto Rico, Inc	G		
SRFG, Inc	G		
Sears Brands LLC	G		
Sears Intellectual Property Management Company	G		
Sears Insurance Agency of Massachusetts, Inc	G		
Sears Insurance Services of Alabama, LLC	G		
Sears Insurance Agency, Inc	G		
Sears Insurance Services, LLC	G		
SLRR, Inc	G		
SVFT, Inc	G		
SMTB, Inc	G		
Sears Life Holding Corporation	G		
Sears National Bank	G		
Bain Capital Fund VII, L.P	G	20030838	
Allan R. Dragone, Jr	G		
Graphic Communications Holdings, Inc	G		
Macquarie Global Infrastructure Fund A	G	20030841	
KASP Management, L.P	G		
Airport Satellite Parking Newark, L.L.C	G		
Airport Satellite Parking Riteway, LLC	G		
Airport Satellite Parking New Jersey, LLC	G		
Airport Satellite Parking Hartford, L.L.C	G		
Airport Satellite Parking O'Hare, L.L.C	G		
Macquarie Global Infrastructure Fund B	G	20030842	
KASP Management, L.P	G		
Airport Satellite Parking Newark, L.L.C	G		
Airport Satellite Parking Riteway, LLC	G		
Airport Satellite Parking New Jersey, LLC	G		
Airport Satellite Parking Hartford, L.L.C	G		
Airport Satellite Parking O'Hare, L.L.C	G		
Smithfield Foods, Inc	G	20030854	
Cumberland Gap Provision Company	G		
Cumberland Gap Provision Company	G		
General Dynamics Corporation	G	20030862	
Datron Inc	G		

TRANSACTION GRANTED EARLY TERMINATION—Continued

Party name	ET req status	Trans No.	ET date
Intercontinental Manufacturing Company	G		
Exelon Corporation	G	20030877	
Exelon Corporation	G	20030877	22-Aug-03
National Energy Development, Inc	G		
Exelon Corporation	G	20030883	
Equilease Holding Corp	G		
National Energy Development, Inc	G		

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative; or Renee Hallman, Legal Technician, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission

Donald S. Clark,

Secretary.

[FR Doc. 03–22412 Filed 9–2–03; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–190]

Availability of the Draft Online Learning Program, Identifying Exposure Pathways, Public Comment Release

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability and request for public comment on the draft online learning program, Identifying Exposure Pathways.

SUMMARY: This program was developed to provide environmental and public health professionals information about the ATSDR public health assessment process through simulation and interactive learning using the Internet. The program provides learn-by-doing steps on how ATSDR's cooperative agreement partners (agents of ATSDR), ATSDR staff, and other environmental and public health professionals can identify how persons come into contact with hazardous and toxic substances. This program is an interactive simulation involving internal and external communications, site document review, mock site review, video clip review, community involvement activities, and completion of an exposure pathway table.

ATSDR conducts public health assessments to evaluate whether people have come in contact with hazardous substances released into the environment and whether contact with the substances has affected the health of people exposed to those substances.

The process used to conduct public health assessments includes gathering information from community members about how they might have come in contact with hazardous substances released into the environment and the concerns they have about the effect of the substances on their health. In addition to information gathered from community members, ATSDR also evaluates environmental data pertaining to the release, evaluates toxicologic and epidemiologic data relevant to exposures, and evaluates existing health outcome data if appropriate. Recommendations might be made to eliminate or reduce exposure to harmful levels of hazardous substances that have been released into the environment. The online learning program provides information on the basic concepts used by ATSDR staff and agents of ATSDR in conducting public health assessments, specifically how to identify pathways of exposure.

This online learning program is intended to assist environmental public health professionals understand the basic steps and coordination necessary to identify exposure pathways. It is part of the exposure evaluation component of the public health assessment process. Because interaction with the public's environmental public health professionals is a critical component of the public health assessment process, ATSDR believes that public comments may help us improve the quality of the program. All comments received during the public comment period will be considered when making improvements to the program.

Availability: The draft online program, Identifying Exposure Pathways, will be available to the public on or about August 29, 2003. The public comment period will begin on the date the program is first available on the ATSDR Web site. The close of the public comment period will be 60 days from the date of publication and will be indicated on the first page of the Web site. Comments received after the close of the public comment period will be considered at the discretion of ATSDR on the basis of what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for more information about accessing the online learning program should be sent to the Chief, Program Evaluation, Records, and Information Services Branch; Agency for Toxic Substances and Disease Registry; 1600 Clifton Road, NE (MS E–56); Atlanta, GA 30333. The online learning program can be accessed in the Education and Training section of the ATSDR Home page (*http://www.atsdr.cdc.gov*).

Comments may be submitted online through the "Feedback" section of the program, which is accessible through a link at the top of each page. You may also send written comments and supporting documents to the address provided in the previous paragraph. Comments should be received by the end of the comment period. All written comments and data submitted in response to this notice and the draft online learning program should bear the docket control number ATSDR–190.

FOR FURTHER INFORMATION CONTACT: Further information may be obtained by contacting Bob Kay, telephone (404) 498–0382, ATSDR, 1600 Clifton Road, NE (MS E–32), Atlanta, GA 30333, or calling, toll free, 1–888–42–ATSDR (1–888–422–8737). You may also reach Bob Kay through e-mail at *bkay@cdc.gov.*

SUPPLEMENTARY INFORMATION: ATSDR is mandated to conduct public health assessments under Section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) [42 U.S.C. 9604(i)] and the Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6939a(c)].

The general procedures for the conduct of public health assessments are included in the ATSDR Final Rule on Health Assessments and Health

Effects Studies of Hazardous Substances Releases and Facilities (55 FR 5136, February 13, 1990, codified at 42 CFR Part 90).

Areas emphasized in the online learning program include community involvement, exposure assessment, weight-of-evidence approaches to decision making, and developing public health action plans to address any public health hazards found during investigations.

The online learning program may be used by individuals to learn more about the public health assessment process, by community groups during meetings, and by individuals and groups as a communication tool when discussing concerns with the public health assessment team assigned to a site in their community. The program may also be used by agents of ATSDR to introduce new staff to the concepts of the public health assessment process and as a tool to stimulate communications with community members.

This notice announces the projected availability of the draft online learning program. The program has undergone extensive internal review. ATSDR encourages the public's participation and comment on the further development of this online learning program.

Dated: August 27, 2003.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 03–22376 Filed 9–2–03; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control Initial Review Group (Formerly Injury Research Grant Review Committee): Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the National Center for Injury Prevention and Control Initial Review Group (formerly Injury Research Grant Review Committee), Centers for Disease Control and Prevention of the Department of Health and Human Services, has been renewed for a 2-year period extending through August 20, 2005.

For further information, contact Lynda S. Doll, Ph.D., Acting Executive Secretary, National Center for Injury Prevention and Control Initial Review Group (formerly Injury Research Grant Review Committee), Centers for Disease Control and Prevention of the Department of Health and Human Services, 4770 Buford Highway, NE., M/S K02, Atlanta, Georgia 30341–3717, telephone 770–488–4233.

The Director, Management and Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 26, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–22378 Filed 9–2–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8:30 a.m.–5 p.m., October 1, 2003; 8:30 a.m.–12 p.m., October 2, 2003.

Place: Corporate Square, Building 8, 1st Floor Conference Room, Atlanta, Georgia 30333. Telephone (404) 639–8008.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis (TB). Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating TB.

Matters To Be Discussed: Agenda items include issues pertaining to improving TB efforts in the Southeast, TB among the Foreign-born, and other TB-related topics. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Paulette Ford-Knights, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE., M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8008.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 26, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–22377 Filed 9–2–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee on Mental Retardation; Name Change to President's Committee for People With Intellectual Disabilities; Membership Addition

AGENCY: President's Committee on Mental Retardation (PCMR), HHS.

ACTION: Notice of Amendments to Executive Order 12994, renaming the President's Committee on Mental Retardation, the addition of four members to the Committee and continuation of the Committee until September 30, 2005.

DATES: Friday, July 25, 2003.

In conjunction with the 13th Anniversary of the Americans with Disabilities Act, on Friday, July 25, 2003, President Bush amended Executive Order 12994 of March 21, 1996, to change the name of the President's Committee on Mental Retardation to the "President's Committee for People with Intellectual Disabilities." The name change was recommended to the President by the Committee members after a majority vote during the Committee's Third Quarterly Meeting held on May 12, 2003. The name change reflects efforts to promote equality for people with intellectual disabilities.

The President also amended the executive order by adding four additional members to the Committee: The Secretary of Commerce; The Secretary of Transportation; The Secretary of the Interior and the Secretary of Homeland Security.

The Amendment continues the Committee until September 30, 2005.

FOR FURTHER INFORMATION CONTACT: Sally Atwater, Executive Director, President's Committee on Mental Retardation, Aerospace Center Building, Suite 701, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone—(202) 619–0634, Fax—(202) 205–9519, e-mail—*satwater @acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: The President's Committee for People with Intellectual Disabilities acts in an advisory capacity to the President and the Secretary of the U.S. Department of Health and Human Services on a broad range of topics relating to programs, services, and supports for persons with mental retardation. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs, services and supports for persons with mental retardation, and for reviewing legislative proposals that impact on the quality of life that is experienced by citizens with mental retardation and their families.

Dated: August 6, 2003.

Sally Atwater,

Executive Director, President's Committee for People With Intellectual Disabilities.

[FR Doc. 03–22367 Filed 9–2–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002N–0178]

Canned Tomatoes Deviating From Identity Standard; Extension of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the extension of a temporary permit issued to Del Monte Corp. to market test canned tomato products that deviate from the U.S. standard of identity for canned tomatoes. The extension will allow the permit holder to continue to collect data on consumer acceptance of the products while the agency takes action on a petition to amend the standard of identity for canned tomatoes that was submitted by the permit holder.

DATES: The new expiration date of the permit will be either the effective date of a final rule to amend the standard of identity for canned tomatoes that may result from the petition or 30 days after termination of such rulemaking.

FOR FURTHER INFORMATION CONTACT: Ritu Nalubola, Center for Food Safety and Applied Nutrition (HFS–822), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2371.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17, FDA issued a temporary permit to Del Monte Corp., One Market @ The Landmark, P.O. Box 193575, San Francisco, CA 94119–3575, to market test canned tomato products that deviate from the U.S. standards of identity for canned tomatoes § 155.190 (21 CFR 155.190) (67 FR 43325, June 27, 2002). The agency issued the permit to facilitate market testing of foods deviating from the requirements of the standards of identity issued under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

The permit covered limited interstate marketing tests of products identified as "Stewed Tomatoes, Original Recipe," "Chunky Tomatoes, Pasta Style," "Diced Tomatoes, basil, garlic & oregano," "Diced Tomatoes, garlic & onion," "Diced Tomatoes, green pepper & onion," "Tomato Wedges," "Zesty Chunky Tomatoes, Chili Style," "Stewed Tomatoes, Cajun Recipe with pepper, garlic, and Cajun spices," "Stewed Tomatoes, Italian Recipe with basil, garlic & oregano," "Stewed Tomatoes, Mexican Recipe with garlic, cumin, and jalapeños," and "Stewed Tomatoes, no salt added." These canned tomato products deviate from the U.S. standard of identity for canned tomatoes (§ 155.190) in two ways. First, a liquid carbohydrate sweetener, either corn syrup or high fructose corn syrup, is used as an optional ingredient in lieu of dry nutritive carbohydrate sweeteners. The liquid carbohydrate sweetener, corn syrup or high fructose corn syrup, is used in a quantity reasonably necessary to compensate for the tartness resulting from added organic acids, except that such addition of the liquid sweetener, in no case, may result in a finished canned tomato product with a tomato soluble solids content of less than 5.0 percent by weight as defined in 21 CFR 155.3(e) (which accounts for any added salt) and accounting for the soluble solids of the liquid sweetener. Second, the permit provided for use of the term "chunky" in lieu of the styles (i.e., whole, sliced, diced, and wedges) required by the standard. Except for the use of a liquid sweetener and the use of the alternative term "chunky" on some products, the test products meet all the requirements of the standard.

On April 23, 2003, Del Monte Corp. requested that its temporary marketing permit be extended to allow for additional time for the market testing of its test products. The petitioner requested FDA to amend the standard of identity for canned tomatoes. In addition, Del Monte Corp. also requested that additional varieties of canned tomatoes be included under this permit extension. The additional products are as follows: (1) Del Monte Brand "Diced Tomatoes, Petite Cut, garlic and olive oil;" (2) Contadina Brand "Stewed Tomatoes with onions, celery, and green peppers," "Stewed Tomatoes with garlic, oregano, and basil, Italian Style," "Diced Tomatoes with roasted garlic," "Diced Tomatoes, Italian Herbs," "Diced Tomatoes with Roasted Red Pepper," "Diced Tomatoes, Primavera with zucchini, bell peppers, and carrots," "Diced Tomatoes, Marinara with burgundy wine and olive oil;" and (3) S&W Brand "Stewed Tomatoes, Italian Recipe, sliced pear tomatoes with oregano and basil, 14 1/2 ounces," "Stewed Tomatoes, Italian Recipe, sliced pear tomatoes with oregano and basil, 28 ounces," "Diced Tomatoes in tomato juice with roasted garlic," "Stewed Tomatoes with onion, celery, and bell pepper," "Stewed Tomatoes with bell pepper, celery, and onion, no salt added," "Diced tomatoes, Petite Cut, with roasted garlic and sweet onions," "Stewed Tomatoes, Mexican Recipe with mild chili and Mexican seasoning," and "Stewed Tomatoes, Cajun Recipe with bell pepper, onion, and Creole spices."

The agency finds that it is in the interest of consumers to issue an extension of the time period for the market testing of products identified in the original permit (67 FR 43325) as well as to permit limited interstate marketing tests of additional canned tomato products identified in the previous paragraph. FDA is inviting interested persons to participate in the market test under the conditions that apply to Del Monte Corp. except that the designated area of distribution shall not apply. Any person who wishes to participate in the extended market test must notify, in writing, the Team Leader, Regulations and Review Team, Division of Food Labeling and Standards, Office of Nutritional Products, Labeling, and Dietary Supplements, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. The notification must include a description of the test product to be distributed, a justification statement for the amount requested, the area of distribution, and the labeling that will

be used for the test product (i.e., a draft label for each size of container and each brand of product to be market tested). The information panel of the label must bear nutrition labeling in accordance with 21 CFR 101.9. Each of the ingredients used in the food must be declared on the label as required by applicable sections of 21 CFR part 101.

Therefore, under the provisions of 21 CFR 130.17(i), FDA is extending the temporary permit granted to Del Monte Corp., One Market @ The Landmark, P.O. Box 193575, San Francisco, CA 94119–3575 to provide for continued marketing tests of approximately 10.3 million cases (226.6 million pounds or 103.0 million kilograms in weight) annually of canned tomatoes previously identified . FDA is extending the expiration date of the permit so that the permit expires either on the effective date of a final rule to amend the standard of identity for canned tomatoes that may result from the petition, or 30 days after termination of such rulemaking. All other conditions and terms of this permit remain the same.

Dated: August 22, 2003.

Christine Taylor,

Director, Office of Nutritional Products, Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition.

[FR Doc. 03–22420 Filed 9–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0369]

Solvay Pharmaceuticals, Inc.; Withdrawal of Approval of Two New Drug Applications; Determination That LUVOX (Fluvoxamine Maleate) 25-Milligram, 50-mg, 100-mg, and 150-mg Tablets Was Not Withdrawn for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of the new drug applications (NDAs) for ROWASA (mesalamine) Rectal Suppositories, 500 milligrams (mg), and LUVOX (fluvoxamine maleate) 25-mg, 50-mg, 100-mg, and 150-mg tablets, held by Solvay Pharmaceuticals, Inc., 901 Sawyer Rd., Marietta, GA 30062. Solvay has voluntarily withdrawn these NDAs in response to audit findings indicating possible inaccuracies noted in the chemistry, manufacturing, and controls (CMC) section of the applications. Solvay has agreed to permit FDA to withdraw approval of the applications, thereby waiving its opportunity for a hearing. In addition, FDA has determined that LUVOX (fluvoxamine maleate) 25-mg, 50-mg, 100-mg, and 150-mg tablets was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to continue to approve abbreviated new drug applications (ANDAs) for fluvoxamine maleate 25-mg, 50-mg, 100-mg, and 150-mg tablets.

DATES: Effective September 3, 2003.

FOR FURTHER INFORMATION CONTACT: Florine P. Purdie, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: FDA recently became aware of possible inaccuracies in the CMC section of two of Solvay's applications approved by the agency. The two Solvay NDAs involved were: (1) NDA 19–919 for ROWASA (mesalamine) Rectal Suppositories, 500 mg, and (2) NDA 20–243 for LUVOX (fluvoxamine maleate) 25-mg, 50-mg, 100-mg, and 150-mg tablets. These findings, along with other information submitted to the agency by Solvay, provided sufficient justification to initiate proceedings to withdraw approval of these two products. The agency notified Solvay in writing of these eterminations and, in accordance with § 314.150(d) (21 CFR 314.150(d)), offered Solvay the opportunity to permit FDA to withdraw approval of the applications.

Subsequently, in letters dated March 28, 2002, and May 14, 2002, respectively, Solvay requested withdrawal of the NDAs under § 314.150(d), thereby waiving its opportunity for a hearing. Solvay also withdrew these drug products from the market. Under § 314.150(d), approval of these two NDAs is being withdrawn.

In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved under an NDA. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162). Under § 314.161(a), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved or, (2) whenever a listed drug is voluntarily withdrawn from sale, and ANDAs that referred to the listed drug have been approved. FDA may not approve an ANDA that does not refer to a listed drug.

The agency has already determined that ROWASA (mesalamine) Rectal Suppositories, 500 mg, was not withdrawn from sale for reasons of safety and effectiveness. On May 24, 2001, FDA published its determination in the **Federal Register** (66 FR 28753). Since that time, ANDAs that refer to ROWASA (mesalamine) Rectal Suppositories, 500 mg, may be approved by the agency.

Because numerous approved ANDAs for fluvoxamine maleate relied on LUVOX as the reference listed drug in their applications, FDA must also make a determination of reasons for voluntary withdrawal of LUVOX under § 314.161(a)(2). The agency has determined that Solvay Pharmaceuticals, Inc.'s, LUVOX (fluvoxamine maleate) 25-mg, 50-mg, 100-mg, and 150-mg tablets was not withdrawn from sale for reasons of safety or effectiveness.

LUVOX is indicated for the treatment of obsessions and compulsions in patients with obsessive compulsive disorder. In the course of an audit, FDA discovered inaccuracies in the CMC section of the LUVOX (fluvoxamine maleate) application. Although these findings raised concerns about the drug product as manufactured by Solvay, they do not affect the safety or efficacy of fluvoxamine maleate in treating obsessive compulsive disorder. LUVOX was withdrawn from sale following

FDA's written request under § 314.150(d). The agency's independent evaluation of relevant information has not found any data that would indicate LUVOX (fluvoxamine maleate) was withdrawn for reasons of safety or effectiveness.

After reviewing its records, FDA determines that, for the reasons outlined in the previous paragraph, LUVOX (fluvoxamine maleate) 25-mg, 50-mg, 100-mg, and 150-mg tablets was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will list Solvay's LUVOX (fluvoxamine maleate) 25-mg, 50-mg, 100-mg, and 150-mg tablets in the "Discontinued Drug Product List" section of the "Orange Book." The "Discontinued Drug Product List" identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs for fluvoxamine maleate 25-mg, 50-mg, 100-mg, and 150-mg tablets may continue to be approved by the agency.

Therefore, under section 505(e) of the act approval of the NDAs listed above, and all amendments and supplements thereto, is withdrawn, effective September 3, 2003.

Dated: August 21, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–22359 Filed 9–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Safe Schools/Healthy Students Sustainability Study—New—This study, a project of SAMHSA's Center for Mental Health Services (CMHS), involves a survey of project directors or other designated staff associated with the Safe Schools/Healthy Students (SS/HS) Initiative. The SS/HS Initiative is a collaborative effort between the U.S. Departments of Education, Health and Human Services, and Justice. Under this initiative, Local education agencies (LEAs) were awarded grants in partnership with their local mental health agency and their local juvenile justice agency. Between September 1999 and September 2002, 143 communities received three-year awards under the SS/HS Initiative.

As this Initiative was designed to facilitate sustainable change within communities, CMHS would like to determine the extent to which systems-level changes, programs, and services initiated as part of SS/HS continue when the grant ends. A web-based survey of project directors will be conducted annually for three years. Respondents will be project directors or other designated staff responsible for continuing programs and services following the SS/HS grant.

This information will be used by CMHS to improve the grant making process and the provision of technical assistance. The following table describes the response burden associated with this data collection.

Year	Number of respondents	Responses per respondent	Hours per response	Total burden hours
One	77	3	.5	116
Two	20	2	.5	20
Three	46	1	.5	23
Total	143			159
3-yr. Annual Average	106			53

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Lauren Wittenberg, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: August 26, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–22379 Filed 9–2–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Border and Transportation Security; Meeting of the Data Management Improvement Act of 2000 Task Force

AGENCY: Border and Transportation Security Directorate, DHS

ACTION: Notice of meeting.

Committee meeting: Department of Homeland Security (DHS), Data Management Improvement Act of 2000 (DMIA) Task Force.

Date and Time: Tuesday, September 23, 2003, 9 a.m. to 5 p.m.

Place: Double Tree Hotel, 300 Army Navy Drive, Arlington, VA 22202.

Status: Closed meeting. Notice is hereby given that the Data Management Improvement Act Task Force will meet on Tuesday, September 23, 2003, from 9 a.m. to 5 p.m. All times noted are Eastern Time. The information that will be discussed at this meeting could seriously compromise the security and integrity of existing data collection systems as well as the proposed new entry/exit system and integration. Due to the nature of the issues being discussed, the Department of Homeland Security has determined that the meeting will be closed to the public (Section 10(d) of the Federal Advisory Committee Act (FACA)). The information discussed at this meeting is protected from disclosure under the Government in the sunshine Act, 5 U.S.C. 552b(c)(9)(B). In accordance with the provisions of the Federal Advisory Committee Act, minutes of the meeting will be kept for department and congressional review.

Purpose: The DMIA Task Force is focusing on the development of recommendations directly related to the

design and development of an integrated, automated entry and exit system. The Task Force will be discussing, in detail, issues related to United States national security, border security and existing and proposed information technology systems. The discussion will include recommendations on data collection and use, facility and infrastructure issues and information and technology issues. None of this information has been previously disclosed publicly.

Public participation: The meeting is closed to the public, however the Task Force will accept written comments from the public for discussion. Only written comments receive on or before September 16, 2003, will be considered for discussion at the meeting. Written comments may be faxed or e-mailed to the contact persons indicated below.

Contact person: Michael Defensor or Deborah Hemmes, Department of Homeland Security, 425 I Street, NW., Room 7257, Washington, DC 20536; telephone (202) 305–9863; fax: (202) 305–9871; e-mail: *michael.defensor@dhs.gov* or *deborah.hemmes@dhs.gov*.

Dated: August 25, 2003.

Asa Hutchinson,

Under Secretary for Border Transportation and Security.

[FR Doc. 03–22431 Filed 9–2–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

[CIS No. 2292–03]

RIN 1650–AB06

Extension of the Designation of Burundi Under Temporary Protected Status Program

AGENCY: Bureau of Citizenship and Immigration Services, Homeland Security.

ACTION: Notice.

SUMMARY: The designation of Burundi under the Temporary Protected Status (TPS) Program will expire on November 2, 2003. This notice extends the Secretary of Homeland Security's designation of Burundi for 12 months until November 2, 2004, and sets forth procedures necessary for nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) with TPS to re-register and to apply for an extension of their employment authorization documentation for the additional 12-month period. Re-registration is limited to persons who registered no later than November 3, 1998 under the initial designation and also timely re-registered under each subsequent extension of the designation, or who registered under the re-designation no later than November 2, 2000 and also timely re-registered under the extension of the re-designation. Certain nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) who previously have not applied for TPS may be eligible to apply under the late initial registration provisions.

EFFECTIVE DATES: The extension of Burundi's TPS designation is effective November 2, 2003, and will remain in effect until November 2, 2004. The 60-day re-registration period begins September 3, 2003 and will remain in effect until November 3, 2003.

FOR FURTHER INFORMATION CONTACT: Jonathan Mills, Residence and Status Services, Office of Programs and Regulations, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 425 "I" Street, NW., Room 3040, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Authority Does the Secretary of the Department of Homeland Security Have To Extend the Designation of Burundi Under the TPS Program?

On March 1, 2003, the functions of the Immigration and Naturalization Service (Service) transferred from the Department of Justice to the Department of Homeland Security (DHS) pursuant to the Homeland Security Act of 2002, Pub. L. 107–296. The responsibilities for administering the TPS program held by the Service were transferred to the Bureau of Citizenship and Immigration Services (BCIS).

Under section 244 of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a, the Secretary of DHS, after consultation with appropriate agencies of the Government, is authorized to designate a foreign state or (part thereof) for TPS. The Secretary of DHS may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state).

Section 244(b)(3)(A) of the Act requires the Secretary of DHS to review, at least 60 days before the end of the TPS designation or any extension thereof, the conditions in a foreign state designated under the TPS program to determine whether the conditions for a TPS designation continue to be met and, if so, the length of an extension of TPS. 8 U.S.C. 1254a(b)(3)(A). If the Secretary of DHS determines that the foreign state no longer meets the conditions for TPS designation, he shall terminate the designation, as provided in section 244(b)(3)(B) of the Act. 8 U.S.C. 1254a(b)(3)(B). Finally, if the Secretary of DHS does not determine that a foreign state (or part thereof) no longer meets the conditions for designation at least 60 days before the designation or extension is due to expire, section 244(b)(3)(C) of the Act provides for an automatic extension of TPS for an additional period of 6 months (or, in the discretion of the Secretary of DHS, a period of 12 or 18 months). 8 U.S.C. 1254a(b)(3)(C).

Why Did the Secretary of DHS Decide To Extend the TPS Designation for Burundi?

On November 4, 1997, the Attorney General published a notice in the **Federal Register** designating Burundi under the TPS program based upon ongoing armed conflict occurring within the country. 62 FR 59735. The Attorney General extended this TPS designation annually and re-designated Burundi by publishing a notice on November 9, 1999, determining in each instance that the conditions warranting such designation continued to be met. 64 FR 61123.

Since the date of the last extension, the Departments of Homeland Security and State have continued to review conditions in Burundi. It is determined that a 12-month extension is warranted due to ongoing armed conflict within Burundi that would pose a serious threat to the personal safety of returning nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi). 8 U.S.C. 1254a(b)(1)(A).

The BCIS Resource Information Center (RIC) notes that, although there have been important advances in the Burundi peace process, fighting between the government and rebel forces has intensified. RIC Report (June 26, 2003). Both sides are still committing serious human rights violations. *Id.* The humanitarian situation remains dire. *Id.*

Burundi has seen some progress. *Id.* The transitional government of Burundi and two of the three main rebel forces signed ceasefire agreements in December 2002. *Id.* In addition, there has been some headway in implementing the Burundian peace accords. *Id.* Cooperation between the major Hutu and Tutsi political parties has improved, laws have been enacted to address past human rights violations and prevent future abuses, and civil service and provincial administration

reforms have been initiated. *Id.* Most significantly, there was a smooth transition of power in May 2003 from a Tutsi to a Hutu president to lead the second half of the three-year transitional power-sharing government set forth in the peace accords. *Id.*

The Department of State (DOS) notes that, despite these advances, the December 2002 ceasefire has been largely ignored. DOS Recommendation (June 19, 2003). The conflict between the government forces and rebel groups continues unabated in many areas of the country. *Id.* Rebel attacks on the military are followed by army reprisals against civilians suspected of cooperating with the insurgents. *Id.* Rebels reportedly often kill persons for suspected collaboration with the government and for their refusal to pay "taxes" to the rebels. *Id.*

The prospects for a sustained halt to the armed conflict are uncertain. *Id.* While the United Nations High Commissioner for Refugees (UNHCR) is currently facilitating voluntary repatriations to the northern provinces of Burundi, much of the country remains unsafe for repatriation. *Id.* UNHCR has yet to begin facilitated returns to the southern and central provinces of Burundi because those regions have not yet been deemed secure. *Id.*

Based upon this review, the Secretary of DHS, after consultation with appropriate government agencies, finds that the conditions that prompted designation of Burundi under the TPS program continue to be met. 8 U.S.C. 1254a(b)(3)(A). There is an ongoing armed conflict within Burundi and, due to such conflict, requiring the return of aliens who are nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) would pose a serious threat to their personal safety. 8 U.S.C. 1254a(b)(1). On the basis of these findings, the Secretary of DHS concludes that the TPS designation for Burundi should be extended for an additional 12-month period. 8 U.S.C. 1254a(b)(3)(C).

If I Currently Have TPS Through the Burundi TPS Program, Do I Still Re-register for TPS?

Yes. If you already have received TPS benefits through the Burundi TPS program, your benefits will expire on November 2, 2003. Accordingly, individual TPS beneficiaries must comply with the re-registration requirements described below in order to maintain their TPS benefits through November 2, 2004. TPS benefits include temporary protection against removal from the United States, as well as employment authorization, during the TPS designation period and any extension thereof. 8 U.S.C. 1254a(a)(1).

If I Am Currently Registered for TPS, How Do I Re-Register for an Extension?

All persons previously granted TPS under the Burundi program who wish to maintain such status must apply for an extension by filing (1) a Form I–821, Application for Temporary Protected Status, without the filing fee; (2) a Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches × 1½ inches). See the chart below to determine whether you must submit the one hundred and twenty dollar ($120) filing fee with Form I–765. Applicants for an extension of TPS benefits do not need to be re-fingerprinted and thus need not pay the $50 fingerprint fee. Children beneficiaries of TPS who have reached the age of fourteen (14) but were not previously fingerprinted must pay the fifty dollar ($50) fingerprint fee with the application for extension.

An application submitted without the required fee and/or photos will be returned to the applicant. Submit the completed forms and applicable fee, if any, to the BCIS District Office having jurisdiction over your place of residence during the 60-day re-registration period that begins September 3, 2003 and ends November 3, 2003.

If	Then
You are applying for employment authorization until November 2, 2004	You must complete and file the Form I–765, Application for Employment Authorization, with the $120 fee.
You already have employment authorization or do not require employment authorization.	You must complete and file Form I–765 with no fee.[1]
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file: 1) Form I–765 and 2) a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

[1] An applicant who does not seek employment authorization documentation does not need to submit the $120 fee, but must still complete and submit Form I–765 for data gathering purposes.

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. Denial of an application for asylum or any other immigration benefit does not affect an applicant's TPS eligibility, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2)(A)(ii); 8 U.S.C. 1254a(c)(2)(B)(ii).

Does This Extension Allow Nationals of Burundi (or Aliens Having No Nationality Who Last Habitually Resided in Burundi) Who Entered the United States After November 9, 1999, To File for TPS?

No. This is a notice of an extension of TPS, not a notice of re-designation of Burundi under the TPS program. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand TPS availability to those who do not meet the current eligibility requirements for Burundi. To be eligible for benefits under this extension, nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) must have been continuously physically present and continuously resided in the United States since November 9, 1999.

What Is Late Initial Registration?

Some persons may be eligible for late initial registration under 8 U.S.C. 1254a(c)(1)(A) and 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must:

(1) Be a national of Burundi (or alien who has no nationality and who last habitually resided in Burundi);

(2) Have been continuously physically present in the United States since November 9, 1999;

(3) Have continuously resided in the United States since November 9, 1999; and

(4) Be both admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that during the registration period for the initial designation (from November 4, 1997 to November 3, 1998), or during the registration period for the redesignation (from November 9, 1999 to November 2, 2000), he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant.

An applicant for late initial registration must file an application for late registration no later than 60 days after the expiration or termination of the conditions described above. 8 CFR 244.2(g).

What Happens When This Extension of TPS Expires on November 2, 2004?

At least 60 days before this extension of TPS expires on November 2, 2004, the Secretary of DHS will review conditions in Burundi and determine whether the conditions for designation under the TPS program continue to be met at that time, or whether the TPS designation should be terminated. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

If the TPS designation is extended at that time, an alien who has received TPS benefits must re-register under the extension in order to maintain TPS benefits. If, however, the Secretary of DHS terminates the TPS designation, TPS beneficiaries will maintain the immigration status they had before TPS (unless that status had since expired or been terminated) or any other status they may have acquired while registered for TPS. Accordingly, if an alien had no lawful immigration status prior to receiving TPS and did not obtain any status during the TPS period, he or she will revert to that unlawful status upon termination of the TPS designation.

Notice of Extension of Designation of Burundi Under the TPS Program

By the authority vested in me as Secretary of DHS under sections 244(b)(1)(A), (b)(3)(A), and (b)(3)(C) of the Act, I have consulted with the appropriate government agencies and determine that the conditions that prompted designation of Burundi for TPS continue to be met. 8 U.S.C. 1254a(b)(3)(A). Accordingly, I order as follows:

(1) The designation of Burundi under section 244(b)(1)(A) of the Act is extended for an additional 12-month period from November 2, 2003, to November 2, 2004. 8 U.S.C. 1254a(b)(3)(C).

(2) There are approximately 30 nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) who have been granted TPS and who are eligible for re-registration.

(3) To maintain TPS, a national of Burundi (or an alien having no nationality who last habitually resided in Burundi) who was granted TPS during the initial designation period or redesignation period must re-register for TPS during the 60-day re-registration period from September 3, 2003 until November 3, 2003.

(4) To re-register, the applicant must file the following: (1) Form I–821, Application for Temporary Protected Status; (2) Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches by 1½ inches). Applications submitted without the required fee and/or photos will be returned to the applicant. There is no fee for filing a Form I–821 for re-registration application. If the applicant requests employment authorization, he or she must submit one hundred and twenty dollars ($120) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but is not required to submit the fee. The fifty-dollar ($50) fingerprint fee is required only for children beneficiaries of TPS who have reached the age of 14 but were not previously fingerprinted. Failure to re-register without good cause will result in the withdrawal of TPS. 8 CFR 244.17(c). Some persons who had not previously applied for TPS may be eligible for late initial registration under 8 CFR 244.2.

(5) At least 60 days before this extension terminates on November 2, 2004, the Secretary will review the designation of Burundi under the TPS program and determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. 8 U.S.C. 1254a(b)(3)(A).

(6) Information concerning the extension of designation of Burundi under the TPS program will be available at local BCIS offices upon publication of this notice and on the BCIS Web site at *http://www.bcis.gov*.

Dated: August 28, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–22508 Filed 8–29–03; 12:00 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

[CIS No. 2294–03]

RIN 1650–AB06

Termination of the Designation of Sierra Leone Under the Temporary Protected Status Program; Extension of Employment Authorization Documentation

AGENCY: Bureau of Citizenship and Immigration Services, Homeland Security.

ACTION: Notice.

SUMMARY: The designation of Sierra Leone under the Temporary Protected Status (TPS) Program will expire on November 2, 2003. After reviewing country conditions and consulting with the appropriate Government agencies, the Secretary of Homeland Security has determined that conditions in Sierra Leone no longer support TPS designation and is therefore terminating the TPS designation of Sierra Leone. This termination is effective May 3, 2004, six months from the end of the current extension. To provide for an orderly transition, nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) who have been granted TPS under the Sierra Leone designation or redesignation will automatically retain their temporary protected status and have their current Employment Authorization Documents (EADs) extended until the termination date. However, an individual's TPS may still be withdrawn because of ineligibility for TPS, prior failure to timely re-register if there was not good cause for such failure, or failure to maintain continuous physical presence in the United States. On May 3, 2004, nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) who have been granted TPS under the Sierra

Leone designation or redesignation will no longer have TPS status.

EFFECTIVE DATE: The TPS designation of Sierra Leone is terminated effective May 3, 2004.

FOR FURTHER INFORMATION CONTACT: Jonathan Mills, Residence and Status Services, Office of Programs and Regulations, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 425 "I" Street, NW., Room 3040, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Authority Does the Secretary of the Department of Homeland Security Have To Terminate the Designation of Sierra Leone Under the TPS Program?

On March 1, 2003, the functions of the Immigration and Naturalization Service (Service) transferred from the Department of Justice to the Department of Homeland Security (DHS) pursuant to the Homeland Security Act of 2002, Public Law 107–296. The responsibilities for administering the TPS program held by the Service were transferred to the Bureau of Citizenship and Immigration Services (BCIS).

Under section 244 of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a, the Secretary of DHS, after consultation with appropriate agencies of the Government, is authorized to designate a foreign state or (part thereof) for TPS. The Secretary of DHS may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state).

Section 244(b)(3)(A) of the Act requires the Secretary of DHS to review, at least 60 days before the end of the TPS designation or any extension thereof, the conditions in a foreign state designated under the TPS program to determine whether the conditions for a TPS designation continue to be met and, if so, the length of an extension of TPS. 8 U.S.C. 1254a(b)(3)(A). If the Secretary of DHS determines that the foreign state no longer meets the conditions for TPS designation, he shall terminate the designation, but such termination may not take effect earlier than 60 days after the date the **Federal Register** notice of termination is published. 8 U.S.C. 1254a(b)(3)(B). The Secretary of DHS may determine the appropriate effective date of the termination in order to provide an orderly transition. 8 U.S.C. 1254a(d)(3).

Why Did the Secretary of DHS Decide To Terminate the TPS Designation for Sierra Leone as of May 3, 2004?

On November 4, 1997, the Attorney General published a notice in the **Federal Register** designating Sierra Leone under the TPS program based upon ongoing armed conflict occurring within the country. 62 FR 59736. The Attorney General extended this TPS designation annually and re-designated Sierra Leone by publishing a notice on November 9, 1999, determining in each instance that the conditions warranting such designation continued to be met. 64 FR 61125.

Since the date of the last extension, the Departments of Homeland Security and State have continued to review conditions in Sierra Leone. It is determined that termination of the TPS designation of Sierra Leone is warranted because there is no longer an ongoing armed conflict within Sierra Leone that would pose a serious threat to the personal safety of returning nationals of Sierra Leone (or aliens having no nationality who last habitually resided in Sierra Leone). 8 U.S.C. 1254a(b)(1)(A) and (B).

The Department of State (DOS) notes that the armed conflict that provided the basis for the Sierra Leone TPS designation is over. DOS Recommendation (June 19, 2003). Most of Sierra Leone has been at peace for nearly three years. *Id.* More than 66,000 ex-combatants have entered into a program of disarmament, demobilization, and reintegration into society. *Id.* Disarmament was largely complete by January 2002, and there has been no fighting since that time. *Id.* Peaceful multiparty presidential and parliamentary elections took place in May 2002. *Id.*

A year ago, the overall political situation was fragile. *Id.* Since then, however, human rights abuses have decreased dramatically nationwide. *Id.* The United Nations High Commissioner for Refugees (UNHCR) considers no area of the country unsafe to return. *Id.* More than 400,000 refugees have returned home to participate in the reconstruction of their country. *Id.* Of the approximately 45,000 refugees remaining in neighboring countries, two-thirds are expected to return home by December 2003. *Id.* In addition, reintegration of the 300,000 internally displaced persons (IDPs) is nearly complete. *Id.*

While there are approximately 60,000 Liberian refugees in Sierra Leone, they are concentrated along the eastern border with Liberia and have not caused any instability in Sierra Leone. *Id.* Furthermore, there have been no recent cross-border attacks from Liberia into Sierra Leone. *Id.*

The BCIS Resource Information Center (RIC) notes additional indications of stability. RIC Report (July 10, 2003). A special court has been created to bring to justice those most responsible for war crimes and other major human rights violations. *Id.* A Truth and Reconciliation Commission has been established to establish a record of the conflict and promote reconciliation. *Id.* Humanitarian and economic conditions have improved markedly. *Id.*

The newly elected government enjoys significant international support and has extended police control across the country. DOS Recommendation. A British-trained police force is in place. RIC Report. The British government continues to assist and train Sierra Leone's 10,000-member armed forces and has committed to providing significant support for at least six years. DOS Recommendation. The United Nations (U.N.) Security Council has determined that security conditions have improved so much that the international U.N. peacekeeping force, which once numbered 17,500 troops, can be phased out. *Id.* The peacekeeping force currently numbers 14,000, and will further decrease to about 9,000 by year's end. *Id.*

Based upon this review, the Secretary of DHS, after consultation with appropriate government agencies, finds that the conditions that prompted designation of Sierra Leone under the TPS program no longer exist. 8 U.S.C. 1254a(b)(3). There is not an ongoing armed conflict within Sierra Leone that would pose a serious threat to the personal safety of returning aliens who are nationals of Sierra Leone (or aliens having no nationality who last habitually resided in Sierra Leone). 8 U.S.C. 1254a(b)(1)(A). Based upon these findings, the Secretary of DHS is terminating the TPS designation for Sierra Leone as of May 3, 2004. 8 U.S.C. 1254a(b)(3)(B).

To provide for an orderly transition, nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) who have been granted TPS under the Sierra Leone designation or redesignation will automatically retain TPS status and have their current employment authorization documents (EADs) extended until the termination date. 8 U.S.C. 1254a(a)(2) and (d)(3). These persons are urged to use the time before termination of their TPS to apply for any other immigration benefits they are eligible for or, in the alternative, prepare

for and arrange their return to Sierra Leone.

If I Currently Have TPS Through the Sierra Leone TPS Program, Do I Need to Re-Register To Keep My TPS Until May 3, 2004, the Termination Date?

No. If you already have been granted TPS benefits through the Sierra Leone TPS program, you do not have to re-register to keep your TPS benefits. You will automatically retain TPS until the termination date. However, your TPS status may still be withdrawn pursuant to section 244(c)(3) of the Act because of ineligibility for TPS, prior failure to timely re-register if there was not good cause for such failure, or failure to maintain continuous physical presence in the United States. 8 U.S.C. 1254a(c)(3), 8 CFR 244.14. When termination occurs on May 3, 2004, you will no longer have TPS.

Why Is the Secretary of DHS Automatically Extending the Validity of EADs From November 2, 2003, to May 3, 2004?

The Secretary of DHS has decided to extend automatically the validity of EADs to provide for an orderly transition leading up to the effective date for the termination of the Sierra Leone TPS designation. Therefore, the validity of the applicable EADs is extended for a period of 6 months, to May 3, 2004. 8 U.S.C. 1254a(a)(2) and (d)(3).

Who Is eligible To Receive an Automatic Extension of His or Her EAD?

To receive an automatic extension of his or her EAD, an individual must be a national of Sierra Leone (or an alien having no nationality who last habitually resided in Sierra Leone) who has applied for and received an EAD under the TPS designation or redesignation of Sierra Leone. This automatic extension is limited to EADs issued on either Form I–766, Employment Authorization Document, or Form I–688B, Employment Authorization Card, bearing an expiration date of November 2, 2003. The EAD must also be either (1) a Form I–766 bearing the notation "A–12" or "C–19" on the face of the card under "Category"; or (2) a Form I–688B bearing the notation "274A.12(A)(12)" or "274A.12(C)(19)" on the face of the card under "Provision of Law".

Must Qualified Individuals Apply for the Automatic Extension of Their TPS–Related EADs Until May 3, 2004?

No. Qualified individuals do not have to apply for this extension of their TPS-related EADs to May 3, 2004.

What Documents May a Qualified Individual Show to His or Her Employer as Proof of Employment Authorization and Identity When Completing the Employment Eligibility Verification Form (Form I–9)?

For completion of the Form I–9 at the time of hire or re-verification, qualified individuals who have received an extension of their EADs by virtue of this **Federal Register** notice may present to their employer a TPS-related EAD as proof of identity and employment authorization until May 3, 2004. To minimize confusion over this extension at the time of hire or re-verification, qualified individuals may also present to their employer a copy of this **Federal Register** notice regarding the automatic extension of employment authorization documentation to May 3, 2004. In the alternative, any legally acceptable document or combination of documents listed in List A, List B, or List C of the Form I–9 may be presented as proof of identity and employment eligibility; it is the choice of the employee.

How May Employers Determine Whether an EAD Has Been Automatically Extended Through May 3, 2004 and Is Therefore Acceptable for Completion of the Form I–9?

For purposes of verifying identity and employment eligibility or re-verifying employment eligibility on the Form I–9 until May 3, 2004, employers of Sierra Leone TPS class members whose EADs have been automatically extended by this notice must accept such EAD if presented. An EAD that has been automatically extended by this notice will contain an expiration date of November 2, 2003, and must be either (1) a Form I–766 bearing the notation "A–12" or "C–19" on the face of the card under "Category", or (2) a Form I–688B bearing the notation "274A.12(A)(12)" or "274A.12(C)(19)" on the face of the card under "Provision of Law". New EADs or extension stickers showing the May 3, 2004 expiration date will not be issued.

Employers should not request proof of Sierra Leone citizenship. Employers presented with an EAD that this **Federal Register** notice has extended automatically, that appears to be genuine and appears to relate to the employee should accept the document as a valid "List A" document and should not ask for additional Form I–9 documentation. This action by the Secretary of the DHS through this **Federal Register** notice does not affect the right of an employee to present any legally acceptable document as proof of identity and eligibility for employment.

Employers are reminded that the laws prohibiting unfair immigration-related employment practices remain in full force. For questions, employers may call the BCIS Office of Business Liaison Employer Hotline at 1–800–357–2099 to speak to a BCIS representative. Also, employers may call the U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155 or 1–800–362–2735 (TDD). Employees or applicants may call the OSC Employee Hotline at 1–800–255–7688 or 1–800–237–2515 (TDD) for information regarding the automatic extension. Additional information is available on the OSC Web site at *http://www.usdoj.gov/crt/osc/index.html.*

What May I Do if I Believe That Returning to Sierra Leone Would Be Unsafe?

This notice terminates the designation of Sierra Leone for TPS. For nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) in the United States who believe that their particular circumstances make return to Sierra Leone unsafe, there may be avenues of immigration relief and protection available. Such avenues may include, but are not limited to, asylum, withholding of removal, or protection under Article 3 of the Torture Convention.

Eligibility for these and other immigration benefits is determined individually on a case-by-case basis. For information on eligibility and how to apply, visit the BCIS web site at *http://www.bcis.gov* or call the BCIS National Customer Service Center at 1–800–375–5283.

How Does the Termination of TPS Affect Former TPS Beneficiaries?

After the designation of Sierra Leone for TPS is terminated on May 3, 2004, former TPS beneficiaries will maintain the same immigration status they held prior to TPS (unless that status has since expired or been terminated) or any other status they may have acquired while registered for TPS. Accordingly, if an alien held no lawful immigration status prior to receiving TPS benefits and did not obtain any other status during the TPS period, he or she will maintain that

unlawful status upon the termination of the TPS designation.

Former TPS beneficiaries will no longer be eligible for a stay of removal or an EAD pursuant to the TPS program. TPS-related EADs will expire on May 3, 2004, and will not be renewed.

Termination of the TPS designation for Sierra Leone does not necessarily affect pending applications for other forms of immigration relief or protection, though former TPS beneficiaries will begin to accrue unlawful presence as of May 3, 2004, if they have not been granted any other immigration status or protection or if they have no pending application for certain benefits.

Notice of Termination of Designation of Sierra Leone Under the TPS Program

By the authority vested in me as Secretary of the Department of Homeland Security under section 244(b)(3) of the Act, I have consulted with the appropriate agencies of government concerning conditions in Sierra Leone. 8 U.S.C. 1254a(b)(3). Based on these consultations, I have determined that Sierra Leone no longer meets the conditions for designation of TPS under section 244(b)(1) of the Act. 8 U.S.C. 1254a(b)(1).

Accordingly, I order as follows:

(1) Pursuant to sections 244(b) of the Act, the TPS designation of Sierra Leone for TPS terminated effective May 3, 2004, six months from the end of the current extension.

(2) I estimate that there are approximately 2,700 nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) who currently receive TPS benefits.

(3) To provide for an orderly transition, nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) who have been granted TPS under the Sierra Leone designation or redesignation will automatically retain temporary protected status until the termination date. However, an individual's TPS may still be withdrawn pursuant to section 244(c)(3) of the Immigration and Nationality Act and 8 CFR 244.14 because of ineligibility for TPS, prior failure to timely re-register if there was not good cause for such failure, or failure to maintain continuous physical presence in the United States.

(4) TPS-related Employment Authorization Documents that expire on November 2, 2003, are extended automatically until May 3, 2004, for qualified nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone).

(5) Information concerning the termination of the TPS program for nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) will be available at local BCIS offices upon publication of this notice and through the BCIS National Customer Service Center at 1–800–375–5283. This information will also be published on the BCIS Web site at *http://www.bcis.gov.*

Dated: August 28, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–22488 Filed 8–29–03; 11:16 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

[CIS No. 2293–03]

RIN 1650–AB06

Extension of the Designation of Sudan Under Temporary Protected Status Program

AGENCY: Bureau of Citizenship and Immigration Services, Homeland Security.

ACTION: Notice.

SUMMARY: The designation of Sudan under the Temporary Protected Status (TPS) Program will expire on November 2, 2003. This notice extends the Secretary of Homeland Security's designation of Sudan for 12 months until November 2, 2004, and sets forth procedures necessary for nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) with TPS to re-register and to apply for an extension of their employment authorization documentation for the additional 12-month period. Re-registration is limited to persons who registered no later than November 3, 1998, under the initial designation and also timely re-registered under each subsequent extension of the designation, or who registered under the re-designation no later than November 2, 2000, and also timely re-registered under the extension of the re-designation. Certain nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) who previously have not applied for TPS may be eligible to apply under the late initial registration provisions.

EFFECTIVE DATES: The extension of Sudan's TPS designation is effective November 2, 2003, and will remain in effect until November 2, 2004. The 60-day re-registration period begins September 3, 2003, and will remain in effect until November 3, 2003.

FOR FURTHER INFORMATION CONTACT: Jonathan Mills, Residence and Status Services, Office of Programs and Regulations, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 425 "I" Street, NW., Room 3040, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Authority Does the Secretary of the Department of Homeland Security Have To Extend The Designation of Sudan Under the TPS Program?

On March 1, 2003, the functions of the Immigration and Naturalization Service (Service) transferred from the Department of Justice to the Department of Homeland Security (DHS) pursuant to the Homeland Security Act of 2002, Pub. L. 107–296. The responsibilities for administering the TPS program held by the Service were transferred to the Bureau of Citizenship and Immigration Services (BCIS).

Under section 244 of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a, the Secretary of DHS, after consultation with appropriate agencies of the Government, is authorized to designate a foreign state or (part thereof) for TPS. The Secretary of DHS may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state).

Section 244(b)(3)(A) of the Act requires the Secretary of DHS to review, at least 60 days before the end of the TPS designation or any extension thereof, the conditions in a foreign state designated under the TPS program to determine whether the conditions for a TPS designation continue to be met and, if so, the length of an extension of TPS. 8 U.S.C. 1254a(b)(3)(A). If the Secretary of DHS determines that the foreign state no longer meets the conditions for TPS designation, he shall terminate the designation, as provided in section 244(b)(3)(B) of the Act. 8 U.S.C. 1254a(b)(3)(B). Finally, if the Secretary of DHS does not determine that a foreign state (or part thereof) no longer meets the conditions for designation at least 60 days before the designation or extension is due to expire, section 244(b)(3)(C) of the Act provides for an automatic extension of TPS for an additional period of 6 months (or, in the discretion of the Secretary of DHS, a

period of 12 or 18 months). 8 U.S.C. 1254a(b)(3)(C).

Why Did the Secretary of DHS Decide To Extend the TPS Designation for Sudan?

On November 4, 1997, the Attorney General published a notice in the **Federal Register** designating Sudan under the TPS program based upon ongoing armed conflict occurring within the country. 62 FR 59735. The Attorney General extended this TPS designation annually and re-designated Sudan by publishing a notice on November 9, 1999, determining in each instance that the conditions warranting such designation continued to be met. 64 FR 61123.

Since the date of the last extension, the Departments of Homeland Security and State have continued to review conditions in Sudan. It is determined that a 12-month extension is warranted due to ongoing armed conflict within Sudan that would pose a serious threat to the personal safety of returning nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan). 8 U.S.C. 1254a(b)(1)(A).

The Department of State observes that civil war continues to endanger thousands of Sudanese civilians. DOS Recommendation (June 19, 2003). Despite the signing of an October 2002 agreement, fighting between government and rebel forces has continued in several regions, especially those rich in oil. *Id.* In July 2002, warring parties signed the Machakos Protocol, a general framework for peace. *Id.* Peace talks continue in Kenya. *Id.* It remains to be seen whether a working peace agreement will be achieved; past efforts have failed. *Id.*

The BCIS Resource Information Center (RIC) notes that, despite a period of relative peace and stability in southern Sudan, there is a general consensus among human rights monitors and other close observers of Sudan that there the human rights situation in Sudan has not improved significantly. RIC Report (July 16, 2003). The lessening of conflict following the October 2002 agreement appears to have resulted in fewer war-related human rights violations. *Id.* However, human rights abuses, including massacres and the targeting and displacement of civilians, have continued in the South and in other conflicted areas, including the Upper Nile and Darfur regions. *Id.* Detention and harassment of human rights advocates and political opponents remains in the North despite increased organization by civil society groups. *Id.*

The government's human rights record remains extremely poor and includes extrajudicial killings, disappearances, arbitrary arrest and detention, rape, slavery, forced labor, and forced conscription of male children. DOS Recommendation. Rebel groups are also responsible for serious abuses, including killings, beatings, rapes, arbitrary detention, and forced conscription of boys. *Id.*

Based upon this review, the Secretary of DHS, after consultation with appropriate government agencies, finds that the conditions that prompted designation of Sudan under the TPS program continue to be met. 8 U.S.C. 1254a(b)(3). There is an ongoing armed conflict within Sudan and, due to such conflict, requiring the return of aliens who are nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) would pose a serious threat to their personal safety. 8 U.S.C. 1254a(b)(1)(A). On the basis of these findings, the Secretary of DHS concludes that the TPS designation for Sudan should be extended for an additional 12-month period. 8 U.S.C. 1254a(b)(3)(C).

If I Currently Have TPS Through the Sudan TPS Program, Do I Still Re-Register for TPS?

Yes. If you already have received TPS benefits through the Sudan TPS program, your benefits will expire on November 2, 2003. Accordingly, individual TPS beneficiaries must comply with the re-registration requirements described below in order to maintain their TPS benefits through November 2, 2004. TPS benefits include temporary protection against removal from the United States, as well as employment authorization, during the TPS designation period and any extension thereof. 8 U.S.C. 1254a(a)(1).

If I am Currently Registered for TPS, How Do I Re-Register for an Extension?

All persons previously granted TPS under the Sudan program who wish to maintain such status must apply for an extension by filing (1) a Form I–821, Application for Temporary Protected Status, without the filing fee; (2) a Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches x 1½ inches). See the chart below to determine whether you must submit the one hundred and twenty dollar ($120) filing fee with Form I–765. Applicants for an extension of TPS benefits do not need to be re-fingerprinted and thus need not pay the $50 fingerprint fee. Children beneficiaries of TPS who have reached the age of fourteen (14) but were not previously fingerprinted must pay the fifty dollar ($50) fingerprint fee with the application for extension.

An application submitted without the required fee and/or photos will be returned to the applicant. Submit the completed forms and applicable fee, if any, to the BCIS District Office having jurisdiction over your place of residence during the 60-day re-registration period that begins September 3, 2003 and ends November 3, 2003.

If	Then
You are applying for employment authorization until November 2, 2004	You must complete and file the Form I–765, Application for Employment Authorization, with the $120 fee.
You already have employment authorization or do not require employment authorization.	You must complete and file Form I–765 with no fee.[1]
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file: 1) Form I–765 and 2) a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

[1] An applicant who does not seek employment authorization documentation does not need to submit the $120 fee, but must still complete and submit Form I–765 for data gathering purposes.

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. Denial of an application for asylum or any other immigration benefit does not affect an applicant's TPS eligibility, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2)(A)(ii); 8 U.S.C. 1254a(c)(2)(B)(ii).

Does This Extension Allow Nationals of Sudan (or Aliens Having No Nationality Who Last Habitually Resided in Sudan) Who Entered the United States After November 9, 1999, to File for TPS?

No. This is a notice of an extension of TPS, not a notice of re-designation of Sudan under the TPS program. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand TPS availability to those beyond the current TPS eligibility requirements of Sudan. To be eligible for benefits under this extension, nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) must have been continuously physically present and continuously resided in the United States since November 9, 1999.

What Is Late Initial Registration?

Some persons may be eligible for late initial registration under 8 U.S.C. 1254a(c)(1)(A) and 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must:

(1) Be a national of Sudan (or alien who has no nationality and who last habitually resided in Sudan);

(2) Have been continuously physically present in the United States since November 9, 1999;

(3) Have continuously resided in the United States since November 9, 1999; and

(4) Be both admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that during the registration period for the initial designation (from November 4, 1997 to November 3, 1998), or during the registration period for the redesignation (from November 9, 1999 to November 2, 2000), he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant.

An applicant for late initial registration must file an application for late registration no later than 60 days after the expiration or termination of the conditions described above. 8 CFR 244.2(g).

What Happens When This Extension of TPS Expires on November 2, 2004?

At least 60 days before this extension of TPS expires on November 2, 2004, the Secretary of DHS will review conditions in Sudan and determine whether the conditions for designation under the TPS program continue to be met at that time, or whether the TPS designation should be terminated. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

If the TPS designation is extended at that time, an alien who has received TPS benefits must re-register under the extension in order to maintain TPS benefits. If, however, the Secretary of DHS terminates the TPS designation, TPS beneficiaries will maintain the immigration status they had before TPS (unless that status had since expired or been terminated) or any other status they may have acquired while registered for TPS. Accordingly, if an alien had no lawful immigration status prior to receiving TPS and did not obtain any status during the TPS period, he or she will revert to that unlawful status upon termination of the TPS designation.

Notice of Extension of Designation of Sudan Under the TPS Program

By the authority vested in me as Secretary of DHS under sections 244(b)(1)(B), (b)(3)(A), and (b)(3)(C) of the Act, I have consulted with the appropriate government agencies and determine that the conditions that prompted designation of Sudan for TPS continue to be met. 8 U.S.C. 1254a(b)(3)(A). Accordingly, I order as follows:

(1) The designation of Sudan under section 244(b)(1) of the Act is extended for an additional 12-month period from November 2, 2003, to November 2, 2004. 8 U.S.C. 1254a(b)(3)(C).

(2) There are approximately 520 nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) who have been granted TPS and who are eligible for re-registration.

(3) To maintain TPS, a national of Sudan (or an alien having no nationality who last habitually resided in Sudan) who was granted TPS during the initial designation period or redesignation period must re-register for TPS during the 60-day re-registration period from September 3, 2003 until November 3, 2003.

(4) To re-register, the applicant must file the following: (1) Form I–821, Application for Temporary Protected Status; (2) Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches by 1½ inches). Applications submitted without the required fee and/or photos will be returned to the applicant. There is no fee for filing a Form I–821 for re-registration application. If the applicant requests employment authorization, he or she must submit one hundred and twenty dollars ($120) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but is not required to submit the fee. The fifty-dollar ($50) fingerprint fee is required only for children beneficiaries of TPS who have reached the age of 14 but were not previously fingerprinted. Failure to re-register without good cause will result in the withdrawal of TPS. 8 CFR 244.17(c). Some persons who had not previously applied for TPS may be eligible for late initial registration under 8 CFR 244.2.

(5) At least 60 days before this extension terminates on November 2, 2004, the Secretary will review the designation of Sudan under the TPS program and determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. 8 U.S.C. 1254a(b)(3)(A).

(6) Information concerning the extension of designation of Sudan under the TPS program will be available at local BCIS offices upon publication of this notice and on the BCIS Web site at *http://www.bcis.gov*.

Dated: August 28, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–22509 Filed 8–29–03; 12:00 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Customs Declaration (Form 6059B)

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 3, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Rm 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Customs Declaration.

OMB Number: 1651–0009.

Form Number: CBP Form 6059B.

Abstract: The Customs Declaration, CBP Form 6059B, requires basic information to facilitate the clearance of persons and goods arriving in the United States and helps CBP officers determine if any duties of taxes are due. The form is also used for the enforcement of CBP and other agencies laws and regulations. CBP is proposing to revise this form by expanding question number 11 (which asks about agricultural items entering the U.S.) to include "vegetables" and "seeds."

Current Actions: This information collection includes some increases due to new information that will be collected. This submission is being submitted as a revision to a current collection.

Type of Review: Revision to an existing collection.

Affected Public: Traveling public.

Estimated Number of Respondents: 60,000,000.

Estimated Time Per Respondent: 4 minutes and 5 seconds.

Estimated Total Annual Burden Hours: 4,038,000.

Estimated Total Annualized Cost on the Public: N/A.

Dated: August 25, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–22389 Filed 9–2–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Declaration for Free Entry of Unaccompanied Articles

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; Comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Declaration for Free Entry of Unaccompanied Articles. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 20397) on April 25, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 3, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components' 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 collections 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.

Title: Declaration for Free Entry of Unaccompanied Articles.

OMB Number: 1651–0014.

Form Number: CBP Form 3299.

Abstract: The Declaration for Free Entry of Unaccompanied Articles, Form

3299, is prepared by the individual or the broker acting as agent for the individual, or in some cases, the CBP officer. It serves as a declaration for duty-free entry of merchandise under one of the applicable provisions of the tariff schedule.

Current Actions: This submission is being submitted to extend the expiration date with no change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 150,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 25,000.

Estimated Total Annualized Cost on the Public: $660,000.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: August 20, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–22390 Filed 9–2–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Centralized Examination Station

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Centralized Examination Station. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 19559) on April 21, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 3, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections 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.

Title: Application to Establish Centralized Examination Station.

OMB Number: 1651–0061.

Form Number: N/A.

Abstract: If a port director decides their port needs one or more Centralized Examination Stations (CES), they solicit applications to operate a CES. The information contained in the application will be used to determine the suitability of the applicant's facility, fairness of fee structure, knowledge of cargo handling operations and of CBP procedures.

Current Actions: This submission is to extend the expiration date without a change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 2 hours (120 minutes).

Estimated Total Annual Burden Hours: 100.

Estimated Total Annualized Cost on the Public: $1,450.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: August 20, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–22391 Filed 9–2–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Application for Allowance in Duties

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Application for Allowance in Duties. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 20397) on April 25, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 3, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections 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.

Title: Application for Allowance in Duties.

OMB Number: 1651–0007.

Form Number: Form CBP–4315.

Abstract: This collection is required by the CBP in instances of claims of damaged or defective merchandise on which an allowance in duty is made in the liquidation of the entry. The information is used to substantiate importer's claims for such duty allowances.

Current Actions: This submission is to extend the expiration date without a change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 12,000.

Estimated Time Per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 1,600.

Estimated Total Annualized Cost on the Public: $29,000.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: August 25, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–22392 Filed 9–2–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Delivery Ticket

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Delivery Ticket. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 19560) on April 21, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 3, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections 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.

Title: Delivery Ticket (Form 6043).

OMB Number: 1651–0081.

Form Number: Form-6043.

Abstract: This information is used by CBP to ensure compliance with regulations pertaining to the movement of merchandise into general order facilities. importer, exporter, shipper, or cruise line.

Current Actions: This submission is being submitted to extend the expiration date with a change to the burden hours.

Type of Review: Extension (with change).

Estimated Number of Respondents: 200,000

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 66,000.

Estimated Total Annualized Cost on the Public: $825,000.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: August 20, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–22393 Filed 9–2–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4814–N–08]

Notice of Proposed Information Collection: Comment Request Rural Housing and Economic Development

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 3, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Sheila E. Jones, Reports Liaison Officer; Department of Housing and Urban Development, 451 7th Street, SW., Room 7232, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Holly A. Kelly, (202) 708–2290 ext. 6324 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Rural Housing and Economic Development.

OMB Control Number, if applicable: 2506–0169.

Description of the need for the information and proposed use: The information collection is essential so that HUD staff may determine the eligibility, qualifications and capacity of applicants to carry out activities under the Rural Housing and Economic Development program. HUD will review the information provided by the applicants against the selection criteria contained in the NOFA in order to rate and rank the applications and select the best and most qualified applicant for funding. The selection criteria are: (1) Capacity of the Applicant and Relevant Organizational Experience; (2) Need/Extent of the Problem; (3) Soundness of Approach; (4) Leveraging of Resources; and (5) Achieving Results and Program Evaluation.

Agency form numbers, if applicable: SF 424 (including a maximum 15 page application narrative in response to the factors for award).

Members of affected public: Eligible applicants include local rural non-profit organizations, Community Development Corporations, State Housing Finance Agencies, state and community development agencies and Federally Recognized Indian Tribes.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The total number of applicants for Fiscal Years 2000, 2001, and 2002 is 1,252, with 314 awardees. The proposed frequency of the response to the collection of the information is one time; the application needs to be submitted only one time.

Status of the proposed information collection: Reinstatement of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 26, 2003.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 03–22364 Filed 9–2–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–62]

Notice of Submission of Proposed Information Collection to OMB: Certified Eligibility for Adjustments for Damage or Neglect

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

One-time certification by mortgagees to show that they have acquired hazard insurance acceptable to HUD at a reasonable rate and that the mortgagee may convey fire damaged properties without a surcharge to the claim.

DATES: *Comments Due Date:* October 3, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0349) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the relevant documentation are available from Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will

be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Certified Eligibility for Adjustments for Damage or Neglect.

OMB Approval Number: 2502–0349.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: One-time certification by mortgagees to show that they have acquired hazard insurance acceptable to HUD at a reasonable rate and that the mortgagee may convey fire damaged properties without a surcharge to the claim.

Respondents: Business or other for-profit.

Frequency of Submission: On occasion.

Reporting Burden: Number of Respondents 250: Average annual responses per respondent 1; Total annual responses 250; Average burden per response 30 minutes.

Total Estimated Burden Hours: 125.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 26, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–22365 Filed 9–2–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–63]

Notice of Submission of Proposed Information Collection to OMB: Single Family Application for Insurance Benefits

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection is used to provide HUD the information needed to process and pay claims on defaulted FHA-insured home mortgage loans.

DATES: *Comments Due Date:* October 3, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0429) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the documentation submitted to OMB can be obtained from Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Single Family Application for Insurance Benefits.

OMB Approval Number: 2502–0429.

Form Numbers: HUD–27011, Parts A, B, C, D & E.

Description of the Need for the Information and Its Proposed Use: This information collection is used to provide HUD the information needed to process and pay claims on defaulted FHA-insured home mortgage loans.

Respondents: Business or other for-profit.

Frequency of Submission: On occasion.

Reporting Burden: Number of Respondents 450: Average annual responses per respondent 1–5,000; Total annual responses 200,000; Average burden per response 45 minutes.

Total Estimated Burden Hours: 150,000.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 27, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–22366 Filed 9–2–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4491–C–14]

Corrected Notice of Availability of a Draft Environmental Impact Statement for the Salishan Revitalization Project, City of Tacoma, WA

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Corrected notice.

SUMMARY: This document republishes and corrects a notice appearing in the **Federal Register** on August 27, 2003 (68 FR 51588). The Department of Housing and Urban Development gives notice to the public, agencies, and Indian tribes that the City of Tacoma, WA acting under its authority as the Responsible Entity for compliance with the National Environmental Policy Act (NEPA) in accordance with 24 CFR 58.4, and jointly the City of Tacoma and Tacoma Housing Authority (THA) acting under their authority as lead agencies in accordance with the State Environmental Policy Act (SEPA) (RCW 43.21) that a Draft Environmental Impact Statement (DEIS) for the redevelopment of the Salishan housing project will be available for review and comment on September 5, 2003. This notice is given in accordance with the Council on Environmental Quality regulations at 40 CFR parts 1500–1508.

Notice is also given that the City of Tacoma as Responsible Entity has

decided to combine the National Historic Preservation Act, Section 106 process with the NEPA Environmental Impact Statement (EIS) in accordance with 36 CFR 800.8(c). Comments are also being requested on the Section 106 information presented in the Draft EIS as well as on the Section 106 process itself.

DATES: *Comments Due Date:* Comments must be received on or before October 19, 2003. Written comments on the Draft EIS should be addressed to the individual named below under the heading **FOR FURTHER INFORMATION CONTACT.**

Public Meeting: A public comment meeting will be held during the comment period in order to ensure public participation. The public meeting will be held on September 22, 2003, from 5 p.m. to 8 p.m. (childcare and language translation services will be available at the meeting). The public comment meeting will be held at the following location: Tacoma Housing Authority, Salishan Meeting Rooms, 1724 E. 44th Street, Tacoma, Washington 98404.

FOR FURTHER INFORMATION CONTACT: The DEIS is available on the Internet and can be viewed or downloaded at: *http://govme.cityoftacoma.org/govme/panelBeta/permitInfo/LandUse/landUse.aspx*. Copies of the DEIS are also available from: Karie Hayashi, Land Use Administration Planner, City of Tacoma, 747 Market Street, Tacoma, Washington, 98402; Phone (253) 591–5387; FAX: (253) 591–5433; e-mail: *khayashi@cityoftacoma.org*.

SUPPLEMENTARY INFORMATION: The Salishan Public Housing Development (Salishan) was originally constructed in 1942 as war-time housing. Located in what is known as the East Side neighborhood, Salishan is bordered on the west by Portland Avenue and on the east by Swan Creek. There are currently 786 housing units on the site, of which 778 are occupied, and other related community/social service buildings.

In 2000, THA submitted a successful HOPE VI grant application for the redevelopment of Salishan. The amount of the HOPE VI grant awarded in connection with the Salishan revitalization project was $35 million. Under the proposed Revitalization Plan, existing housing will be demolished and Salishan will be redeveloped into a mixed-use, mixed-income community of approximately 1,270 to 1,500 units. The project will require the relocation of all existing residents. The new unit mix will incorporate low-income, affordable, and market rate housing with single- and multi-family dwellings, and senior and special needs housing. The redevelopment project will also include a mixture of commercial uses and improvements to community facilities such as expanding the existing health clinic, day care, family investment center, and gymnasium. Alternatives to be considered in the EIS include a no action alternative, a 1,270-unit alternative, and a 1,500-unit development.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Dated: August 29, 2003.

Patricia Carlile,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 03–22534 Filed 8–29–03; 1:55 pm]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Vieques National Wildlife Refuge

AGENCY: Fish and Wildlife Service.

ACTION: Notice of intent to prepare a Comprehensive Conservation Plan and Environmental Impact Statement for Vieques National Wildlife Refuge, located in the Commonwealth of Puerto Rico.

SUMMARY: This notice advises the public that the Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a comprehensive conservation plan and environmental impact statement pursuant to the National Environmental Policy Act and its implementing regulations. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd et seq.), to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues to include in the environmental document.

Special mailings, newspaper articles, and other media announcements will be used to inform Commonwealth and Municipal governments and the public of the opportunities for input throughout the planning process.

ADDRESSES: Address comments, questions, and requests for more information to the following: Ms. Susan Silander, Project Leader, Caribbean Islands National Wildlife Refuge Complex, P.O. Box 510, Boqueron, Puerto Rico 00622, Telephone: 787/851–7258; Fax: 787/851–7440; E-mail: *CaribbeanIsland@fws.gov*.

SUPPLEMENTARY INFORMATION: By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved comprehensive conservation plan. The plan guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements including wildlife and habitat management, public recreational activities, and cultural resource protection. Public input in the planning process is essential as the Service establishes management priorities and explores opportunities for non-invasive and low-impact activities such as ecotourism. Restoration of degraded habitats through reforestation, reestablishment of hydrology, and removal of exotic species will be a priority.

Vieques National Wildlife Refuge, comprising just over 18,000 acres, is the largest national wildlife refuge in Puerto Rico. The refuge includes beaches used by threatened and endangered sea turtles for nesting, subtropical dry forests, mangrove lagoons, salt flats, and bioluminescent bays.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: July 28, 2003.

J. Mitch King,

Acting Regional Director.

[FR Doc. 03–22380 Filed 9–2–03; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–487]

Certain Agricultural Vehicles and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Granting Complainant's Motion to Amend the Complaint and Notice of Investigation Relating to the Leaping Deer Trademark Registration

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the initial determination ("ID") of the presiding administrative law judge ("ALJ") granting the motion of

complainant Deere & Company ("Deere") to amend the complaint and notice of investigation by identifying the registration number of its "leaping deer" trademark.

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Esq, Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3095. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). *The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On February 13, 2003, the Commission instituted this investigation based on a complaint filed by Deere, alleging a violation of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and sale within the United States after importation of certain agricultural vehicles and components thereof by reason of infringement and dilution of U.S. registered Trademark Nos. 1,254,339, 1,502,103, 1,503,576, and 91,860. The complaint further alleged that an industry in the United States exists as required by subsections (a)(1)(A) and (a)(2) of section 337.

In the complaint, Deere stated that it owned an unregistered "leaping deer" mark, in addition to its registered trademarks. It stated also that it had applied for federal registration of the mark, and that it "intend[ed] to amend this Complaint to include the leaping deer registration as soon as the registration is issued." (Complaint at ¶¶ 46–47). In the motion, Deere represented that its application for registration of the mark was granted on June 24, 2003, and it attached certified copies of the registration (U.S. Trademark Registration No. 2,729,766).

By Commission rule 210.14(b), the complaint and notice of investigation may be amended after the institution of the investigation "only * * * for good cause shown and upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties to the investigation." The ALJ found good cause for the amendment because the trademark registration in question did not issue until June 24, 2003. The ALJ also found that the amendment would not result in any prejudice to any of the parties in the investigation. The ALJ noted that Deere disclosed in the original complaint that it intended to assert infringement of the "leaping deer" mark when the registration issued. The ALJ found that the proposed amendments will not change the scope of the investigation in terms of either the products or issues involved. Finally, he noted that "Deere has not asserted infringement of the 'leaping deer' mark by any products other than the agricultural vehicles already at issue."

No party petitioned for review of the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

By order of the Commission.

Issued: August 27, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–22400 Filed 9–2–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Number D–11047]

Proposed Amendment to Prohibited Transaction Exemption (PTE) 84–14 for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers

AGENCY: Employee Benefits Security Administration.

ACTION: Notice of Proposed Amendment to PTE 84–14.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 84–14. The exemption permits various parties that are related to employee benefit plans to engage in transactions involving plan assets if, among other conditions, the assets are managed by "qualified professional asset managers" (QPAMs), which are independent of the parties in interest and which meet specified financial standards. Additional exemptive relief is provided for employers to furnish limited amounts of goods and services to a managed fund in the ordinary course of business. Limited relief is also provided for leases of office or commercial space between managed funds and QPAMs or contributing employers. Finally, relief is provided for transactions involving places of public accommodation owned by a managed fund.

The proposed amendment would affect participants and beneficiaries of employee benefit plans, the sponsoring employers of such plans, and other persons engaging in the described transactions.

DATES: Written comments must be received by the Department on or before October 20, 2003.

ADDRESSES: All written comments (preferably three copies) should be addressed to the U.S. Department of Labor, Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5649, 200 Constitution Avenue NW., Washington, DC 20210 (attention: PTE 84–14 Amendment). Interested persons are also invited to submit comments to EBSA via e-mail or fax. Any such comments should be sent either by e-mail to *lloyd.karen@dol.gov* or by fax to 202–219–0204 by the end of the scheduled comment period. All comments received will be available for public inspection at the Public Documents Room, Employee Benefits Security Administration, Room N–1513, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Karen E. Lloyd, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Room N–5649, 200 Constitution Avenue NW., Washington DC 20210, (202) 693–8540 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 84–14 (49 FR 9494, March 13, 1984, as corrected at 50 FR 41430, October 10, 1985). PTE 84–14 provides an exemption from certain of the restrictions of section 406 of ERISA, and from certain taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code. The Department is proposing this amendment to PTE 84–14 on its own motion, pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part

2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This proposed amendment has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this proposed amendment is not a "significant regulatory action" under Executive Order 12866, section 3(f). Accordingly, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that order.

Paperwork Reduction Act Analysis

This Notice of Proposed Rulemaking is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain a "collection of information" as defined in 44 U.S.C. 3502(3).

Background

PTE 84–14, which was proposed on the Department's own motion on December 21, 1982, was granted as part of a continuing effort by the Department to improve the administration of the prohibited transaction rules of ERISA. The rules set forth in section 406 of ERISA prohibit various transactions between a plan and a party in interest (including a fiduciary) with respect to such plan. Unless a statutory or administrative exemption applies to the transaction, section 406(a) of ERISA prohibits, among other things: sales, leases, loans or the provision of services between a party in interest and a plan, as well as a use of plan assets by or for the benefit of, or a transfer of plan assets to, a party in interest. In addition, unless exempted, a fiduciary of a plan is not permitted to engage in any acts of self-dealing or make decisions on behalf of a plan if the fiduciary is in a conflict of interest situation.

The Department has frequently exercised its statutory authority under section 408(a) of ERISA to grant both individual and class exemptions from the prohibited transaction provisions where it has been able to find that the criteria for granting such exemptions have been satisfied. Based on its experience considering requests for individual and class exemptions, and in dealing with instances of abusive violations of the fiduciary responsibility rules of ERISA, the Department determined that as a general matter, transactions entered into on behalf of plans with parties in interest are most likely to conform to ERISA's general fiduciary standards where the decision to enter into the transaction is made by an independent fiduciary. As granted, PTE 84–14 provides broad relief for various party in interest transactions that involve plan assets that are transferred to a qualified professional asset manager (QPAM) for discretionary management.

Description of Existing Relief

PTE 84–14 consists of four separate parts. The General Exemption, set forth in Part I, permits an investment fund managed by a QPAM to engage in a wide variety of transactions described in ERISA section 406(a)(1)(A) through (D) with virtually all parties in interest except the QPAM which manages the assets involved in the transaction and those parties most likely to have the power to influence the QPAM. In this regard, under section I(a), the exemption would not be available if a QPAM caused the investment fund to enter into a transaction with a party in interest dealing with the fund, if the party in interest or its "affiliate," (1) was authorized to appoint or terminate the QPAM as a manager of any of the plan's assets, (2) was authorized to negotiate the terms of the management agreement with the QPAM (including renewals or modifications thereof) on behalf of the plan, or (3) had exercised such powers in the immediately preceding one year. Additionally, under section I(d), the QPAM may not cause the investment fund which it manages to engage in a transaction with itself or a "related" party. Section V(h) provides generally that a party in interest and a QPAM are "related" if either entity (or parties controlling or controlled by either entity) owns a five percent or more interest in the other entity. Section I(e) makes explicit the Department's view that a plan (and its sponsor) which provides a significant portion of the QPAM's business as a manager of plan funds would, in many cases, be in a position to improperly influence investment decisions of the QPAM. Accordingly, the exemption would not be available for transactions with parties in interest of a plan if the amount of the plan's assets that are managed by a QPAM, together with the assets managed by the same QPAM that are attributable to other plans maintained by the same employer (or its affiliate), represent more than 20 percent of all client assets under the management of the QPAM at the time of the transaction.

Part II of the exemption provides limited relief under both section 406(a) and (b) of ERISA for certain transactions involving those employers and certain of their affiliates which could not qualify for the General Exemption provided by Part I. Section II(a) of the exemption provides conditional relief for employers and their affiliates to furnish limited amounts of goods and services to an investment fund managed by a QPAM. Section II(b) of the exemption permits such employers and their affiliates to lease office or commercial space from an investment fund managed by a QPAM.

Part III of the exemption provides limited relief under section 406(a) and (b) of ERISA for the leasing of office or commercial space by an investment fund to the QPAM, an affiliate of the QPAM, or a person who could not qualify for the General Exemption provided by Part I because it held the power of appointment described in section I(a).

Part IV of the exemption provides limited relief under section 406(a) and 406(b)(1) and (2) of ERISA for the furnishing of services and facilities by a place of public accommodation owned by an investment fund managed by a QPAM, to all parties in interest, if the services and facilities are furnished on a comparable basis to the general public.

[1] Section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), generally transferred the authority of the Secretary of Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Description of the Proposed Amendments

Although the Department is proposing this amendment on its own motion, its proposal is based, in part, on information received from a number of interested persons concerning the difficulties encountered in complying with several conditions contained in PTE 84–14. The Department has been informed that, due to the consolidation in the financial services industry and the large size of the resulting institutions, many financial institutions have found it more difficult to ensure that section I(a) (power of appointment) and section I(d) (parties "related" to the QPAM), are satisfied.

As understood by the Department, the difficulties encountered by large financial institutions under the current exemption may be illustrated by the following examples:

EXAMPLE 1: A registered investment adviser, QPAM I, manages Commingled Investment Fund F. Fund F has 75 plan investors, all of which utilize various service providers in the administration of their respective plans. Broker-Dealer B is a party in interest to several plan investors. Corporation C was the named fiduciary of Plan P until December 31, 2002, and invested part of the assets of Plan P in Fund F on December 15, 2002. Corporation C is also an affiliate of Broker-Dealer B. On March 1, 2003, QPAM I used Fund F assets to purchase securities from Broker-Dealer B. The exemption would not be available for this transaction because an affiliate of a party in interest involved in the transaction exercised, within the immediately preceding year, its authority to acquire an interest in Fund F.

EXAMPLE 2: Bank B, a QPAM, is a wholly-owned subsidiary of a large financial services institution, Corporation C, and has been retained to manage a fund established by Plan P. Corporation C has numerous subsidiaries, joint ventures and other business structures, including a 10 percent interest in Joint Venture J. Joint Venture J provides actuarial services to Plan P. Bank B uses Plan P assets to purchase, on several occasions, debt instruments issued by Joint Venture J. The general exemption set forth in Part I would not be available for this transaction because Corporation C controls the QPAM and has an interest in the party in interest which exceeds five percent.

EXAMPLE 3: Bank C is a QPAM that manages several investment funds. Bank C also serves as a custodian for employee benefit plan assets and, as a result, holds legal title to securities owned on behalf of the plans. Bank C owns a three percent interest in Corporation Y. Ten employee benefit plans (the Client Plans), for which Bank C acts as custodian and also exercises voting rights for securities holdings, own stock in Corporation Y in varying amounts up to one percent each. Bank C uses assets of one of its investment funds to purchase a parcel of unimproved real property from Corporation Y, a party in interest with respect to a plan investor in the investment fund. The general exemption set forth in Part I may not be available for this transaction because Bank C owns three percent of Corporation Y and also is considered to own, for purposes of the exemption, the interests of the Client Plans in Corporation Y for which it holds legal title and exercises voting rights. Depending on the holdings of the Client Plans, from time to time, Bank C's aggregate ownership interest could exceed five percent of Corporation Y.

To address these concerns, the interested persons made a number of suggestions to modify several of the conditions of PTE 84–14 without sacrificing the protections embodied in the class exemption. First, with respect to section I(a) (power of appointment), several persons suggested that the Department delete the "one year look-back rule" under which the exemption would be unavailable to a party in interest if it had exercised the power of appointment within the one-year period preceding the transaction. Second, the interested persons suggested that the Department clarify that section I(a)'s power of appointment refers only to the power to appoint the QPAM as manager of the assets involved in the transaction, as opposed to any of the plan's assets.

The Department has determined to adopt these suggested modifications. The Department recognizes that the burdens of compliance in the current financial marketplace outweigh the benefits of the one year look-back rule. The Department believes that deletion of the rule would not significantly diminish the safeguards contained in the exemption. In addition, the Department believes that the focus of the "power of appointment" rule should be on the assets involved in the transaction, as opposed to all of the plan's assets. This proposed modification is consistent with the approach taken by the Department in more recent class exemptions.[2]

As amended, section I(a) would provide that at the time of the transaction, the party in interest or its affiliate does not have the authority to: (i) Appoint or terminate the QPAM as a manager of the plan assets involved in the transaction, or (ii) negotiate on behalf of the plan the terms of the management agreement with the QPAM (including renewals or modifications thereof) with respect to the plan assets involved in the transaction.

In addition, one of the interested persons suggested a modification to section I(a) in connection with commingled investment funds. In the preamble to PTE 84–14, the Department explained that a party in interest who has the authority to redeem or acquire units of such a fund is considered, for purposes of the exemption, to have the authority to appoint or terminate the QPAM as a manager of plan assets. To further reduce administrative burdens, it was suggested that section I(a) be amended to make the class exemption available to a party in interest with respect to a plan investing in a commingled investment fund, notwithstanding that the party in interest has the authority to redeem or acquire units of such a fund on behalf of the plan, if the plan's interest in the fund represents less than 25 percent of the investment fund's total assets. According to the interested person, a party in interest to a plan with a relatively small interest in a commingled investment fund is less likely to be in a position to exercise undue influence over the QPAM's investment decisions. On the basis of this suggestion, the Department has proposed an amendment to section I(a) of the class exemption. However, contrary to the opinion of the interested person, the Department views 10 percent, and not 25 percent, as the meaningful measure for determining whether a QPAM may be susceptible to undue influence.

Therefore, the Department proposes to further amend the class exemption by adding the following paragraph at the end of section I(a):

Notwithstanding the foregoing, in the case of an investment fund in which two or more unrelated plans have an interest, a transaction with a party in interest with respect to an employee benefit plan will be deemed to satisfy the requirements of section I(a) if the assets of the plan managed by the QPAM in the investment fund, when combined with the assets of other plans established or maintained by the same employer (or affiliate thereof described in section V(c)(1) of the exemption) or by the same employee organization, and managed in the same investment fund, represent less than 10 percent of the assets of the investment fund.

Finally, the Department proposes to amend section V(c), the definition of affiliate as it applies to section I(a) and Part II. The definition currently provides that "an affiliate of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, 5 percent or more partner, or employee (but only if the

[2] See *e.g.*, PTE 94–20 (59 FR 8022, February 17, 1994) and PTE 98–54 (63 FR 63503, November 13, 1998).

employer or such employee is the plan sponsor), and

(3) Any director of the person or any employee of the person who is a highly compensated employee, as defined in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility or control regarding the custody, management or disposition of the plan assets. A named fiduciary (within the meaning of section 402(a)(2) of ERISA) of a plan and an employer any of whose employees are covered by the plan will also be considered affiliates with respect to each other for purposes of section I(a) if such an employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement."

Interested persons requested that the Department narrow those persons and entities listed as affiliates under section V(c) of the exemption. According to the interested persons, the definition is difficult to monitor, particularly the portion of the definition that includes 5 percent or more partners and employees. Accordingly, after considering the suggestion, the Department has determined to delete those partnerships in which the person has less than a 10 percent interest. In addition, the Department proposes to amend section V(c)(2) to only include highly compensated employees as defined in section 4975(e)(2)(H) of the Code.

Over the years, a number of interested persons have sought clarification regarding the application of section I(b) of PTE 84–14. Section I(b) excludes from exemptive relief those transactions described in PTEs 81–6 (relating to securities lending arrangements), 83–1 (relating to acquisitions by plans of interests in mortgage pools) and 82–87 (relating to certain mortgage financing arrangements). According to the interested persons, there is uncertainty regarding the application of PTE 84–14 to certain types of transactions that, although similar to the transactions that are the subject of the three specialized exemptions, are beyond the scope of relief provided by those exemptions. Thus, for example, PTE 81–6 would not provide relief for the lending of securities that are assets of a plan to a foreign broker-dealer.[3] It is the view of the Department that PTE 84–14 would provide relief for such transactions if the conditions of that exemption were otherwise met. The Department cautions, however, that PTE 84–14 would not be available for any transaction specifically described in PTEs 81–6, 83–1 or 82–87, if a person determines not to satisfy one or more of the conditions of the specialized exemptions solely in order to take advantage of the relief provided by PTE 84–14.

With respect to section I(d) and the definition of "related" under section V(h), interested persons suggested that the threshold for determining whether a party in interest is related to the QPAM should be increased from a 5 percent ownership interest to a 20 percent ownership interest, and that the definition of "interest" under section V(h)(1) should be narrowed to exclude ownership interests held for the benefit of clients. Additionally, one interested person suggested that section I(d) be revised to make it easier to monitor for compliance. In this regard, the interested person suggested that the exemption permit a determination as to whether a party in interest is related to the QPAM to be made as of the last day of the preceding calendar quarter.

After considering the suggestions, the Department recognizes that compliance with section I(d) may create administrative burdens for a number of financial institutions. However, the Department does not believe that raising the percentage limitation to 20 percent would be appropriate in all cases. For example, while it may be more difficult to monitor the ownership interests of entities that "control" or are "controlled by" the QPAM and the party in interest, the Department believes that the QPAM and the party in interest should be able to determine any ownership interests in each other without excessive administrative burden. Accordingly, the Department is proposing to amend section V(h) to provide that a QPAM is "related" to a party in interest for purposes of section I(d) if:

- The QPAM or the party in interest owns a ten percent or more interest in the other entity;
- A person controlling or controlled by the QPAM or the party in interest owns a twenty percent or more interest in the other entity; or
- A person controlling, or controlled, by the QPAM or the party in interest owns less than a twenty percent interest in the other entity, but nevertheless exercises control over the management or policies of the other party by reason of its ownership interest.

In addition, the Department proposes to modify section V(h) to provide that generally determinations of whether the QPAM is "related" to a party in interest for purposes of section I(d) may be made as of the last day of the most recent calendar quarter. Finally, the Department is proposing to amend section V(h)(1) to provide that shares held in a fiduciary capacity need not be considered in applying the percentage limitation. The Department believes that these modifications should further lessen the compliance burdens under the class exemption.

Accordingly, the Department is proposing to amend the definition of "related" to in section V(h) as follows:

A QPAM is "related" to a party in interest for purposes of section I(d) of this exemption if, as of the last day of its most recent calendar quarter: (i) The QPAM owns a ten percent or more interest in the party in interest; (ii) a person controlling, or controlled by, the QPAM owns a twenty percent or more interest in the party in interest; (iii) the party in interest owns a ten percent or more interest in the QPAM; or (iv) a person controlling, or controlled by, the party in interest owns a twenty percent or more interest in the QPAM. Notwithstanding the foregoing, a party in interest is "related" to a QPAM if: (i) A person controlling, or controlled by, the party in interest owns less than a twenty percent interest in the QPAM and such person exercises control over the management or policies of the QPAM by reason of its ownership interest; or (ii) a person controlling, or controlled by, the QPAM owns less than a twenty percent interest in the party in interest and such person exercises control over the management or policies of the party in interest by reason of its ownership interest.

(1) The term "interest" means with respect to ownership of an entity—(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation, (B) The capital interest or the profits interest of an entity if the entity is a partnership, or (C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest if, other than in a fiduciary capacity, the person has or shares the authority—(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or (B) To dispose or to direct the disposition of such interest.

An interested person also requested that the Department clarify the language in section V(a)(4) which defines a QPAM to include "[a]n investment adviser registered under the Investment Advisers Act of 1940 that has, as of the last day of its most recent fiscal year, total client assets under its management and control in excess of $50,000,000, and either (A) shareholders' or partners' equity (as defined in section V(m)) in excess of $750,000* * *" The interested person noted that section V(m) provides that:

[3] PTE 81–6 does provide relief for broker-dealers registered under the Securities Exchange Act of 1934 (the 1934 Act) or exempted from registration under section 15(a)(1) of the 1934 Act as a dealer in exempted Government securities (as defined in section 3(a)(12) of the 1934 Act).

For purposes of section V(a)(4), the term "shareholders" or partners' equity" means the equity shown in the most recent balance sheet prepared within the two years immediately preceding a transaction undertaken pursuant to this exemption, in accordance with generally accepted accounting principles.

According to the interested person, the two-year time period referenced in section V(m), which defines the term "shareholders" or partners' equity," appears to conflict with the phrase "as of the last day of its most recent fiscal year" contained in section V(a)(4). The Department proposes to amend section V(a)(4) to clarify that the phrase "as of the last day of its most recent fiscal year" only modifies the term "total client assets under management and control in excess of $50,000,000," and does not refer to the shareholders' or partners' equity requirement.

The Department also notes that the $50 million of client assets under management standard utilized in section V(a)(4) for investment advisers has not been revised since 1984 and may no longer provide significant protections for plans in the current financial marketplace. The Department has determined to adjust the $50 million figure to $85 million, to reflect the change in the Consumer Price Index. Additionally, the Department proposes to increase the shareholders' and partners' equity requirement from $750,000 to $1,000,000, to correspond to the preceding subsections of section V(a).

As amended, section V(a)(4) would read as follows:

An investment adviser registered under the Investment Advisers Act of 1940 that has total client assets under its management and control in excess of $85,000,000 as of the last day of its most recent fiscal year, and either (A) shareholders' or partners' equity (as defined in section V(m)) in excess of $1,000,000, or (B) payment of all its liabilities including any liabilities that may arise by reason of a breach or violation of a duty described in sections 404 and 406 of ERISA is unconditionally guaranteed by—(i) A person with a relationship to such investment adviser described in section V(c)(1) if the investment adviser and such affiliate have, as of the last day of their most recent fiscal year, shareholders' or partners' equity, in the aggregate, in excess of $1,000,000, or (ii) A person described in (a)(1), (a)(2) or (a)(3) of section V above, or (iii) A broker-dealer registered under the Securities Exchange Act of 1934 that has, as of the last day of its most recent fiscal year, net worth in excess of $1,000,000; provided that such bank, savings and loan association, insurance company or investment adviser has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

In response to inquiries regarding the definition of QPAM contained in section V(a), the Department proposes to modify the exemption to specifically provide that a QPAM must be independent of an employer with respect to a plan whose assets are managed by the QPAM. As the Department noted in the preamble to PTE 84–14 (49 FR 9497):

This class exemption was developed, and is being granted, by the Department based on the essential premise that broad exemptive relief from the prohibitions of section 406(a) of ERISA can be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto, are the sole responsibility of an independent investment manager.

To avoid further uncertainty on this issue, the Department has amended the definition of QPAM accordingly.

The Department also has received inquiries about section V(i) of PTE 84–14, which defines "the time as of which any transaction occurs." The Department understands there is uncertainty regarding the role of a QPAM in a continuing transaction. Section V(i) states the following with respect to a continuing transaction:

[I]n the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after December 21, 1982, or a renewal that requires the consent of a QPAM occurs on or after December 21, 1982 and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Notwithstanding the foregoing, this exemption shall cease to apply to a transaction exempt by virtue of Part I or Part II at such times as the percentage requirement contained in section I(e) is exceeded, unless no portion of such excess results from an increase in the assets transferred for discretionary management to a QPAM. For this purpose, assets transferred do not include the reinvestment of earnings attributable to those plan assets already under the discretionary management of the QPAM. Nothing in this paragraph shall be construed as exempting a transaction entered into by an investment fund which becomes a transaction described in section 406 of ERISA or section 4975 of the Code while the transaction is continuing, unless the conditions of this exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

In the Department's view, the exemption would be available for a continuing transaction (*e.g.*, a loan or lease), provided that all the conditions of the exemption are satisfied on the date on which the transaction is entered into (or on the date of a renewal that requires the consent of the QPAM), notwithstanding the subsequent failure to satisfy one or more of the conditions of the exemption. The only exception to the availability of the exemption for a continuing transaction is the requirement that section I(e) must be satisfied throughout the duration of the transaction. Nonetheless, the Department cautions that, although Part I may continue to be available for the entire term of a continuing transaction which subsequently fails to satisfy one or more of the conditions of that Part, no relief would be provided for an act of self-dealing described in section 406(b)(1) of ERISA if the QPAM has an interest in the person which may affect the exercise of its best judgment as a fiduciary. Although Part I provides an exemption from section 406(a)(1)(A) through (D) of ERISA, it does not provide relief from acts described in section 406(b) of ERISA. The Department urges fiduciaries to take appropriate steps to avoid engaging in 406(b) violations should circumstances change during the course of a continuing transaction.

An interested person also was concerned about the availability of Part I in the context of a continuing transaction where the QPAM becomes unable to continue to serve as a QPAM, or is terminated, prior to the appointment of a replacement QPAM. In the Department's view, the exemption would continue to be available provided no decisions were required to be made by the QPAM on behalf of the investment fund with respect to the transaction (*e.g.*, how to respond to a default in payments on a lease) during the interim period before the appointment of the replacement QPAM.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting plan solely in the interests of the participants and beneficiaries of the plan. Additionally, the fact that a transaction is the subject of an exemption does not affect the

requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of ERISA and 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) If granted, the proposed amendment is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(4) The proposed amendment, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments

The Department invites all interested persons to submit written comments on the proposed amendment to the address and within the time period set forth above. All comments received will be made a part of the record. Comments should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection at the above address.

Proposed Amendment

Under section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990), the Department proposes to amend PTE 84–14 as set forth below:

Part I—General Exemption

Effective as of the date of publication of the final class exemption in the **Federal Register**, the restrictions of ERISA section 406(a)(1)(A) through (D) and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (D), shall not apply to a transaction between a party in interest with respect to an employee benefit plan and an investment fund (as defined in section V(b)) in which the plan has an interest, and which is managed by a qualified professional asset manager (QPAM) (as defined in section V(a)), if the following conditions are satisfied:

(a) At the time of the transaction (as defined in section V(i)) the party in interest, or its affiliate (as defined in section V(c)), does not have the authority to—

(1) Appoint or terminate the QPAM as a manager of the plan assets involved in the transaction, or

(2) Negotiate on behalf of the plan the terms of the management agreement with the QPAM (including renewals or modifications thereof) with respect to the plan assets involved in the transaction;

Notwithstanding the foregoing, in the case of an investment fund in which two or more unrelated plans have an interest, a transaction with a party in interest with respect to an employee benefit plan will be deemed to satisfy the requirements of section I(a) if the assets of the plan managed by the QPAM in the investment fund, when combined with the assets of other plans established or maintained by the same employer (or affiliate thereof described in section V(c)(1) of the exemption) or by the same employee organization, and managed in the same investment fund, represent less than 10 percent of the assets of the investment fund;

(b) The transaction is not described in—

(1) Prohibited Transaction Exemption 81–6 (46 FR 7527; January 23, 1981) (relating to securities lending arrangements),

(2) Prohibited Transaction Exemption 83–1 (48 FR 895; January 7, 1983) (relating to acquisitions by plans of interests in mortgage pools), or

(3) Prohibited Transaction Exemption 82–87 (47 FR 21331; May 18, 1982) (relating to certain mortgage financing arrangements);

(c) The terms of the transaction are negotiated on behalf of the investment fund by, or under the authority and general direction of, the QPAM, and either the QPAM, or (so long as the QPAM retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by the QPAM, makes the decision on behalf of the investment fund to enter into the transaction, provided that the transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest;

(d) The party in interest dealing with the investment fund is neither the QPAM nor a person related to the QPAM (within the meaning of section V(h));

(e) The transaction is not entered into with a party in interest with respect to any plan whose assets managed by the QPAM, when combined with the assets of other plans established or maintained by the same employer (or affiliate thereof described in section V(c)(1) of this exemption) or by the same employee organization, and managed by the QPAM, represent more than 20 percent of the total client assets managed by the QPAM at the time of the transaction;

(f) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the QPAM, the terms of the transaction are at least as favorable to the investment fund as the terms generally available in arm's length transactions between unrelated parties;

(g) Neither the QPAM nor any affiliate thereof (as defined in section V(d)), nor any owner, direct or indirect, of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of: Any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary; income tax evasion; any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or any other crime described in section 411 of ERISA. For purposes of this section (g), a person shall be deemed to have been "convicted" from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

Part II—Specific Exemption for Employers

Effective December 21, 1982, the restrictions of sections 406(a), 406(b)(1) and 407(a) of ERISA and the taxes imposed by section 4975(a) and (b) of the Code, by reason of Code section 4975(c)(1)(A) through (E), shall not apply to:

(a) The sale, leasing, or servicing of goods (as defined in section V(j)), or to the furnishing of services, to an investment fund managed by a QPAM by a party in interest with respect to a plan having an interest in the fund, if—

(1) The party in interest is an employer any of whose employees are

covered by the plan or is a person who is a party in interest by virtue of a relationship to such an employer described in section V(c),

(2) The transaction is necessary for the administration or management of the investment fund,

(3) The transaction takes place in the ordinary course of a business engaged in by the party in interest with the general public,

(4) Effective for taxable years of the party in interest furnishing goods and services after the date this exemption is granted, the amount attributable in any taxable year of the party in interest to transactions engaged in with an investment fund pursuant to section II(a) of this exemption does not exceed one (1) percent of the gross receipts derived from all sources for the prior taxable year of the party in interest, and

(5) The requirements of sections I(c) through (g) are satisfied with respect to the transaction;

(b) The leasing of office or commercial space by an investment fund maintained by a QPAM to a party in interest with respect to a plan having an interest in the investment fund, if—

(1) The party in interest is an employer any of whose employees are covered by the plan or is a person who is a party in interest by virtue of a relationship to such an employer described in section V(c),

(2) No commission or other fee is paid by the investment fund to the QPAM or to the employer, or to an affiliate of the QPAM or employer (as defined in section V(c)), in connection with the transaction,

(3) Any unit of space leased to the party in interest by the investment fund is suitable (or adaptable without excessive cost) for use by different tenants,

(4) The amount of space covered by the lease does not exceed fifteen (15) percent of the rentable space of the office building, integrated office park, or of the commercial center (if the lease does not pertain to office space),

(5) In the case of a plan that is not an eligible individual account plan (as defined in section 407(d)(3) of ERISA), immediately after the transaction is entered into, the aggregate fair market value of employer real property and employer securities held by investment funds of the QPAM in which the plan has an interest does not exceed 10 percent of the fair market value of the assets of the plan held in those investment funds. In determining the aggregate fair market value of employer real property and employer securities as described herein, a plan shall be considered to own the same proportionate undivided interest in each asset of the investment fund or funds as its proportionate interest in the total assets of the investment fund(s). For purposes of this requirement, the term "employer real property" means real property leased to, and the term "employer securities" means securities issued by, an employer any of whose employees are covered by the plan or a party in interest of the plan by reason of a relationship to the employer described in subparagraphs (E) or (G) of ERISA section 3(14), and

(6) The requirements of sections I(c) through (g) are satisfied with respect to the transaction.

Part III—Specific Lease Exemption for QPAMs

Effective December 21, 1982, the restrictions of section 406(a)(1)(A) through (D) and 406(b)(1) and (2) of ERISA and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall not apply to the leasing of office or commercial space by an investment fund managed by a QPAM to the QPAM, a person who is a party in interest of a plan by virtue of a relationship to such QPAM described in subparagraphs (G), (H), or (I) of ERISA section 3(14) or a person not eligible for the General Exemption of Part I by reason of section I(a), if—

(a) The amount of space covered by the lease does not exceed the greater of 7500 square feet or one (1) percent of the rentable space of the office building, integrated office park or of the commercial center in which the investment fund has the investment,

(b) The unit of space subject to the lease is suitable (or adaptable without excessive cost) for use by different tenants,

(c) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the QPAM, the terms of the transaction are not more favorable to the lessee than the terms generally available in arm's length transactions between unrelated parties, and

(d) No commission or other fee is paid by the investment fund to the QPAM, any person possessing the disqualifying powers described in section I(a), or any affiliate of such persons (as defined in section V(c)), in connection with the transaction.

Part IV—Transactions Involving Places of Public Accommodation

Effective December 21, 1982, the restrictions of section 406(a)(1)(A) through (D) and 406(b)(1) and (2) of ERISA and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall not apply to the furnishing of services and facilities (and goods incidental thereto) by a place of public accommodation owned by an investment fund managed by a QPAM to a party in interest with respect to a plan having an interest in the investment fund, if the services and facilities (and incidental goods) are furnished on a comparable basis to the general public.

Part V—Definitions and General Rules

For purposes of this exemption:

(a) The term "qualified professional asset manager" or "QPAM" means an independent fiduciary (as defined in section V(n)) which is—

(1) A bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940 that has the power to manage, acquire or dispose of assets of a plan, which bank has, as of the last day of its most recent fiscal year, equity capital (as defined in section V(k)) in excess of $1,000,000 or

(2) A savings and loan association, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, that has made application for and been granted trust powers to manage, acquire or dispose of assets of a plan by a State or Federal authority having supervision over savings and loan associations, which savings and loan association has, as of the last day of its most recent fiscal year, equity capital (as defined in section V(k)) or net worth (as defined in section V(l)) in excess of $1,000,000 or

(3) An insurance company which is qualified under the laws of more than one State to manage, acquire, or dispose of any assets of a plan, which company has, as of the last day of its most recent fiscal year, net worth (as defined in section V(l)) in excess of $1,000,000 and which is subject to supervision and examination by a State authority having supervision over insurance companies, or

(4) An investment adviser registered under the Investment Advisers Act of 1940 that has total client assets under its management and control in excess of $85,000,000 as of the last day of its most recent fiscal year, and either (A) shareholders' or partners' equity (as defined in section V(m)) in excess of $1,000,000, or (B) payment of all of its liabilities including any liabilities that may arise by reason of a breach or violation of a duty described in sections 404 and 406 of ERISA is unconditionally guaranteed by—(i) A person with a relationship to such investment adviser described in section

V(c)(1) if the investment adviser and such affiliate have, as of the last day of their most recent fiscal year, shareholders' or partners' equity, in the aggregate, in excess of $1,000,000, or (ii) A person described in (a)(1), (a)(2) or (a)(3) of section V above, or (iii) A broker-dealer registered under the Securities Exchange Act of 1934 that has, as of the last day of its most recent fiscal year, net worth in excess of $1,000,000; Provided that such bank, savings and loan association, insurance company or investment adviser has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

(b) An "investment fund" includes single customer and pooled separate accounts maintained by an insurance company, individual trusts and common, collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of the QPAM) is subject to the discretionary authority of the QPAM.

(c) For purposes of section I(a) and Part II, an "affiliate" of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, 10 percent or more partner (except with respect to part II this figure shall be 5 percent), or highly compensated employee as defined in section 4975(e)(2)(H) of the Code (but only if the employer of such employee is the plan sponsor), and

(3) Any director of the person or any employee of the person who is a highly compensated employee, as defined in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets. A named fiduciary (within the meaning of section 402(a)(2) of ERISA) of a plan and an employer any of whose employees are covered by the plan will also be considered affiliates with respect to each other for purposes of section I(a) if such employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

(d) For purposes of section I(g) an "affiliate" of a person means—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any director of, relative of, or partner in, any such person,

(3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and

(4) Any employee or officer of the person who—

(A) Is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or

(B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.

(e) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) The term "party in interest" means a person described in ERISA section 3(14) and includes a "disqualified person," as defined in Code section 4975(e)(2).

(g) The term "relative" means a relative as that term is defined in ERISA section 3(15), or a brother, a sister, or a spouse of a brother or sister.

(h) A QPAM is "related" to a party in interest for purposes of section I(d) of this exemption if, as of the last day of its most recent calendar quarter: (i) The QPAM owns a ten percent or more interest in the party in interest; (ii) a person controlling, or controlled by, the QPAM owns a twenty percent or more interest in the party in interest; (iii) the party in interest owns a ten percent or more interest in the QPAM; or (iv) a person controlling, or controlled by, the party in interest owns a twenty percent or more interest in the QPAM. Notwithstanding the foregoing, a party in interest is "related" to a QPAM if: (i) a person controlling, or controlled by, the party in interest owns less than a twenty percent interest in the QPAM and such person exercises control over the management or policies of the QPAM by reason of its ownership interest; (ii) a person controlling, or controlled by, the QPAM owns less than a twenty percent interest in the party in interest and such person exercises control over the management or policies of the party in interest by reason of its ownership interest. For purposes of this definition:

(1) The term "interest" means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership, or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest if, other than in a fiduciary capacity, the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(i) The time as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after December 21, 1982, or a renewal that requires the consent of the QPAM occurs on or after December 21, 1982 and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Notwithstanding the foregoing, this exemption shall cease to apply to a transaction exempt by virtue of Part I or Part II at such time as the percentage requirement contained in section I(e) is exceeded, unless no portion of such excess results from an increase in the assets transferred for discretionary management to a QPAM. For this purpose, assets transferred do not include the reinvestment of earnings attributable to those plan assets already under the discretionary management of the QPAM. Nothing in this paragraph shall be construed as exempting a transaction entered into by an investment fund which becomes a transaction described in section 406 of ERISA or section 4975 of the Code while the transaction is continuing, unless the conditions of this exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(j) The term "goods" includes all things which are movable or which are fixtures used by an investment fund but does not include securities, commodities, commodities futures, money, documents, instruments, accounts, chattel paper, contract rights and any other property, tangible or intangible, which, under the relevant

facts and circumstances, is held primarily for investment.

(k) For purposes of section V(a)(1) and (2), the term "equity capital" means stock (common and preferred), surplus, undivided profits, contingency reserves and other capital reserves.

(l) For purposes of section V(a)(3), the term "net worth" means capital, paid-in and contributed surplus, unassigned surplus, contingency reserves, group contingency reserves, and special reserves.

(m) For purposes of section V(a)(4), the term "shareholders" or partners' equity" means the equity shown in the most recent balance sheet prepared within the two years immediately preceding a transaction undertaken pursuant to this exemption, in accordance with generally accepted accounting principles.

(n) For purposes of section V(a), the term "independent fiduciary" means a fiduciary managing the assets of a plan in an investment fund that is independent of and unrelated to the employer sponsoring such plan. For purposes of this exemption, the independent fiduciary will not be deemed to be independent of and unrelated to the employer sponsoring the plan if such fiduciary directly or indirectly controls, is controlled by, or is under common control with the employer sponsoring the plan.

Signed at Washington, DC, this 28th day of August, 2003.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–22383 Filed 9–2–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Working Group on Optional Professional Management in Defined Contribution Plans, Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, an open public teleconference meeting will be held Monday, September 22, 2003, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study optional professional management for defined contribution plans.

The session will take place in Room N–3437 C–D, U.S. Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 10:30 a.m. to approximately 1 p.m., is for Working Group members to discuss their findings and begin drafting the Advisory Council's report for the Secretary of Labor.

Organizations or members of the public wishing to submit a written statement pertaining to the topic may do so by submitting 20 copies to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Statements received on or before September 17, 2003 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary at the above address or via telephone at (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Sharon Morrissey by September 17 at the address indicated in this notice.

Signed at Washington, DC, this 26th day of August, 2003.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 03–22384 Filed 9–2–03; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

123rd Full Meeting, Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 123rd open meeting of the full Advisory Council on Employee Welfare and Pension Benefit Plans will be held via teleconference on Tuesday, September 23, 2003.

The session will take place in Room N–3437 C–D, U.S. Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the meeting, which will begin at 2 p.m. and end at approximately 3 p.m., is for the chairpersons of the Advisory Council's Working Groups to provide progress reports on their individual study topics.

Organizations or members of the public wishing to submit a written statement pertaining to any topics under consideration by the Advisory Council may do so by submitting 20 copies to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Statements received on or before September 17, 2003 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary at the above address or via telephone at (202) 693–8668. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Sharon Morrissey by September 17 at the address indicated in this notice.

Signed at Washington, DC, this 26th day of August, 2003.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 03–22385 Filed 9–2–03; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Working Group on Defined Benefit Funding and Discount Rate Issues, Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, an open public teleconference meeting will be held Tuesday, September 23, 2003, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study defined benefit plan funding and discount rate issues.

The session will take place in Room N–3437 C–D, U.S. Department of Labor Building, 200 Constitution Avenues, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 10:30 a.m. to approximately 1:30 p.m., is for Working Group members to discuss their findings and begin drafting the Advisory Council's report for the Secretary of Labor.

Organizations or members of the public wishing to submit a written statement pertaining to the topic may do so by submitting 20 copies to Sharon

Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Statements received on or before September 17, 2003 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary at the above address or via telephone at (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Sharon Morrissey by September 17 at the address indicated in this notice.

Signed at Washington, DC, this 26th day of August, 2003.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 03–22386 Filed 9–2–03; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Working Group on Health Care Security Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, an open public teleconference meeting will be held Monday, September 22, 2003, of the Advisory Council on Employee Welfare and Pension Benefits Plans Working Group assigned to study the issue of health care security, including consumer-directed health plans and self-insured plans.

The session will take place in Room N–3437 C–D, U.S. Department of Labor Building, 200 Constitution Avenue, NW., Washington DC 20210. The purpose of the open meeting, which will run from 1:30 p.m. to approximately 5 p.m., is for Working Group members to discuss their findings and begin drafting the Advisory Council's report for the Secretary of Labor.

Organizations or members of the public wishing to submit a written statement pertaining to the topic may do so by submitting 20 copies to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Statements received on or before September 17, 2003 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary at the above address or via telephone at (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Sharon Morrissey by September 17 at the address indicated in this notice.

Signed at Washington, DC, this 26th day of August, 2003.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 03–22387 Filed 9–2–03; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts Teleconference

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held by teleconference on September 12, 2003, from 2 p.m.–3 p.m. from Room 520 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

The Council will meet for discussion of the American Jazz Masters award. If, in the course of the discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may participate, as observers, in Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this teleconference meeting can be obtained from the Council Operations office, National Endowment for the Arts, Washington, DC 20506, at 202/682–5433.

Dated: August 26, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 03–22401 Filed 9–2–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (P.L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Modification Received under the Antarctic Conservation Act of 1978, P.L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 3, 2003. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Description of Permit Modification Requested: The Foundation issued a permit (2001–011) to Dr. Wayne Z.

Trivelpiece on September 28, 2000. The issued permit allows the applicant to capture and release up to 1,000 Adelie, Gentoo, Chinstrap penguins, and other various seabirds for banding, weighing, blood sampling, stomach pumping and attaching radio Txs, PTTs, and TDRs. The collection of samples and data will be used to study the behavioral ecology and population biology of the penguins and the interaction among these species and their principal seabird predators.

The applicant requests a modification to his permit to allow: capture and release of 10 individuals each of Brown and South Polar Skuas; collect tissue samples from dead individuals of all species of birds; collect up to 12 uropygial gland oil from 3 species of penguin; and, collect up to 12 eggs each from 3 species of penguins (1 egg per nest) for egg yolk lipid analysis.

Location: ASPA 128—Western Shore of Admiralty Bay, King George Island.

Dates: October 1, 2003 to April 1, 2005.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 03–22428 Filed 9–2–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of remote field camps during a skiing/climbing expedition in the Antarctic interior. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 3, 2003. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene Kennedy at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for the operation of an expedition to Antarctica. Ice Axe Productions, Inc., with a team of 5 experienced climbers and photographers will travel by air from Novolarevskaya Station to the Patriot Hills, then ski to Holtanna in the Orvin Fjella Mountain Range, then proceed to the Wohlthat Mountains. The team's camping facilities will be basic and mobile. The team will use white gas for cooking. All wastes will be collected and transported back to Novolrevskaya for disposition.

Application for the permit is made by: Doug Stoup, President, Ice Axe Productions, Inc., 3650, NW., 5th Avenue, Boca Raton, FL 33431.

Location: Patriot Hills, the Orvin Fjella Mountain Range, and the Wohlthat Mountains, Antarctica.

Dates: October 1, 2003, to March 31, 2008.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 03–22429 Filed 9–2–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On June 27, 2003, the National Science Foundation published a notice in the **Federal Register** of a permit application received. A permit was issued on August 26, 2003, to Erick Chiang, Permit No. 2004–006.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 03–22430 Filed 9–2–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* General Licensee Registration.

2. *Current OMB approval number:* 3150–0198.

3. *How often the collection is required:* Annually.

4. *Who is required or asked to report:* General Licensees of the NRC who possess devices subject to registration under 10 CFR 31.5.

5. *The number of annual respondents:* 3,000.

6. *The number of hours needed annually to complete the requirement or request:* 1,000 hours annually (3,000 respondents x 20 minutes per form).

7. *Abstract:* NRC Form 664 would be used by NRC general licensees to make reports regarding certain generally licensed devices subject to registration. The registration program is intended to allow NRC to better track general licensees, so that they can be contacted or inspected as necessary, and to make sure that generally licensed devices can be identified even if lost or damaged, and to further ensure that general licensees are aware of and understand the requirements for the possession of devices containing byproduct material. Greater awareness helps to ensure that general licensees will comply with the requirements for proper handling and disposal of generally licensed devices and would reduce the potential for incidents that could result in unnecessary radiation exposure to the public and contamination of property.

Submit, by November 3, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC Worldwide Web site *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–5 F52, Washington, DC 20555–0001, by telephone at (301)415–7233, or by Internet electronic mail at *infocollects@nrc.gov*.

Dated at Rockville, Maryland, this 26th day of August, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–22398 Filed 9–2–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–33819]

Environmental Assessment and Finding of No Significant Impact Related to Issuance of a License Amendment of U.S. Nuclear Regulatory Commission Byproduct Material License No. 55–14065–03; Unitime Industries, Inc.

I. Summary

The U.S. Nuclear Regulatory Commission (NRC) is considering terminating Byproduct Material License No. 55–14065–03 to authorize the release of the licensee's facilities in Christiansted, St. Croix for unrestricted use and has prepared an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) in support of this action.

The NRC has reviewed the results of the final survey of the Unitime facility in Christiansted, St. Croix. Unitime Industries was authorized by the NRC from March 23, 1995, until the present to use manufactured watch dials and hands containing luminous paint activated with tritium for the manufacture and repair of timepieces. In November 2001, Unitime Industries ceased operations with licensed materials at the Christiansted, St. Croix site, and requested that the NRC terminate the license. Unitime Industries has conducted surveys of the facility and determined that the facility meets the license termination criteria in Subpart E of 10 CFR Part 20. The NRC staff has evaluated Unitime's request and the results of the surveys, performed a confirmatory survey, and has developed an EA in accordance with the requirements of 10 CFR Part 51. Based on the staff evaluation, the conclusion of the EA is a FONSI on human health and the environment for the proposed licensing action.

II. Environmental Assessment

Introduction

Unitime Industries has requested release, for unrestricted use, of their building located at Parcel 1C, Estate Diamond, Plots 8 and 9, in Christiansted, St. Croix, U. S. Virgin Islands, as authorized for use by NRC License No. 55–14065–03. License No. 55–14065–03 was issued on March 23, 1995, and amended periodically since that time. NRC-licensed activities performed at the Christiansted, St. Croix site were limited to the service and repair of returned timepieces the incorporation of timepiece self-luminous parts into timepieces. These activities were typically performed on bench tops. No outdoor areas were affected by the use of licensed materials. Licensed activities ceased completely in November 2001, and the licensee requested release of the facilities for unrestricted use. Based on the licensee's historical knowledge of the site and the condition of the facilities, the licensee determined that only routine decontamination activities, in accordance with licensee radiation safety procedures, were required. The licensee surveyed the facility and provided documentation that the facility meets the license termination criteria specified in Subpart E of 10 CFR Part 20, "Radiological Criteria for License Termination."

The Proposed Action

The proposed action is to terminate NRC Radioactive Materials License Number 55–14065–03 and release the licensee's facilities in Christiansted, St. Croix, for unrestricted use. By letters dated November 30, 2001, February 11, 2002, and July 18, 2003, Unitime Industries provided survey results which demonstrate that the Christiansted, St. Croix facility is in compliance with the radiological criteria for license termination in Subpart E of 10 CFR Part 20, "Radiological Criteria for License Termination." No further actions will be required on the part of the licensee to remediate the facility.

Purpose and Need for the Proposed Action

The purpose of the proposed action is to release the building located at Parcel 1C, Estate Diamond, Plots 8 and 9, in Christiansted, St. Croix, U.S. Virgin Islands, for unrestricted use and to terminate the Unitime Industries materials license. The need for the proposed action is to comply with NRC regulations and the Timeliness Rule. The licensee does not plan to perform any activities with licensed materials at this location. Maintaining the area under a license would reduce options for future use of the property and cause Unitime Industries to continue leasing a building for which it has no more use. NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on a proposed license amendment for release of facilities for unrestricted use that ensures protection of the public health and safety and environment.

Alternative to the Proposed Action

The only alternative to the proposed action of terminating the license and releasing the Christiansted, St. Croix facility will result in violation of NRC's Timeliness Rule (10 CFR 30.36), which requires licensees to decommission their facilities when licensed activities cease. The licensee does not plan to perform any activities with licensed materials at these locations. Maintaining the areas under a license would also reduce options for future use of the property.

The Affected Environment and Environmental Impacts

The Unitime building is a one story block building. Work with radioactive materials was done on work benches located within several rooms in the building. Watch parts and finished watches were stored in a safe. The building is located within an industrial park.

The NRC staff has reviewed the surveys performed by Unitime Industries to demonstrate compliance with the 10 CFR 20.1402 license termination criteria and has performed a confirmatory survey. Based on its review and the results of the confirmatory survey, the staff has

determined that the affected environment and environmental impacts associated with the decommissioning of the Unitime facility are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities" (NUREG–1496). The staff also finds that the proposed release for unrestricted use of the Unitime Industries facility is in compliance with 10 CFR 20.1402, "Radiological Criteria for Unrestricted Use." The NRC has found no other activities in the area that could result in cumulative impacts.

Agencies and Persons Contacted and Sources Used

This EA was prepared entirely by the NRC staff. The U. S. Fish and Wildlife Service was contacted and responded by letter dated October 16, 2002, with no opposition to the proposed action. The U.S. Virgin Island's Department of Planning and Natural Resources was also contacted and responded by letter dated October 18, 2002, with no objection.

Conclusion

Based on its review, the NRC staff has concluded that the proposed action complies with 10 CFR Part 20. NRC has prepared this EA in support of the proposed license termination to release the Unitime facility located at Parcel 1C, Estate Diamond, Plots 8 and 9, in Christiansted, St. Croix, U.S. Virgin Islands, for unrestricted use. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are not expected to be significant and has determined that preparation of an environmental impact statement for the proposed action is not required.

List of Preparers

Orysia Masnyk Bailey, Materials Licensing/Inspection Branch 1, Division of Nuclear Materials Safety, Health Physicist.

List of References

1. NRC License No. 55–14065–03 inspection and licensing records.

2. Unitime Industries, Inc. "Termination of License for Activities and Storage" Letter from E. Rebmann and B. Buksch to NRC dated November 30, 2001. (ML022060401)

3. Unitime Industries, Inc. "Request for Additional Documents" Letter from E. Rebmann to NRC dated February 11, 2002. (ML020450333)

4. License amendment request and supporting documentation dated July 18, 2003. (ML032030481)

5. NRC Inspection Report No. 55–14065–03/2003–001, dated March 11, 2003. (ML030720115)

6. NRC Inspection Report No. 55–14065–03/2003–001, Supplemental Information dated April 8, 2003. (ML031060560)

7. Title 10 Code of Federal Regulations Part 20, Subpart E, "Radiological Criteria for License Termination."

8. **Federal Register** Notice, Volume 65, No. 114, page 37186, dated Tuesday, June 13, 2000, "Use of Screening Values to Demonstrate Compliance With The Federal Rule on Radiological Criteria for License Termination."

9. NRC. NUREG–1757 "Consolidated NMSS Decommissioning Guidance," Final Report dated September 2002.

10. NRC. NUREG 1496 "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities," Final Report dated July 1997.

11. Virgin Islands State Historic Preservation Office. "Request for Comments Regarding Cultural and Historical Resources at Unitime Industries, Inc. Parcel 1C, Estate Diamond, Plots 8 and (, Christiansted, St. Croix, U.S.V.I." Letter from D. E. Plaskett, Esq. To NRC dated October 18, 2002. (ML023080328)

12. U.S. Fish and Wildlife Service. "Request for comments regarding endangered wildlife, plant and marine resources at a site in U.S. Virgin Islands" Letter from C. A. Diaz to NRC dated October 16, 2002. (ML022950399)

III. Finding of No Significant Impact

Based upon the EA, the staff concludes that the proposed action will not have a significant impact on the quality of the human environment. Accordingly, the staff has determined that preparation of an environmental impact statement is not warranted.

IV. Further Information

The references listed above are available for public inspection and may also be copied for a fee at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. These documents are also available for public review through ADAMS, the NRC's electronic reading room, at: *http://www.nrc.gov/reading-rm/adams.html.* Any questions with respect to this action should be referred to Orysia Masnyk Bailey, Materials Licensing/Inspection Branch 1, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region II, Suite 23T85, 61 Forsyth Street, SW., Atlanta, Georgia, 30303. Telephone 404–562–4739.

Dated at Atlanta, Georgia, the 15th day of August, 2003.

For the Nuclear Regulatory Commission.

Douglas M. Collins,

Director, Division of Nuclear Materials Safety, Region II.

[FR Doc. 03–22396 Filed 9–2–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Peer Review Committee for Source Term Modeling; Notice of Meeting

The Peer Review Committee For Source Term Modeling will hold a closed meeting on September 25–26, 2003 at 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be closed to public attendance to protect information classified as national security information pursuant to 5 U.S.C. 552b(c)(1).

The agenda for the subject meeting shall be as follows: *Thursday September 25 and Friday, September 26, 2003–8:30 a.m. until the conclusion of business.*

The Committee will review Sandia National Laboratories (SNL) activities and aid SNL in development of guidance documents for estimating source terms resulting from sabotage attacks on spent fuel transportation and storage containers. The guidance document will assist the NRC in evaluations of the impact of specific terrorist activities targeted at a range of spent fuel storage casks and radioactive material (RAM) transport packages. The committee's work is expected to result in a committee report on the SNL work to the NRC by September 30, 2003.

Further information contact: Andrew L. Bates, (telephone 301–415–1963) or Dr. Charles G. Interrante (telephone 301–415–3967) between 7:30 a.m. and 4:15 p.m. (ET).

Dated: August 27, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–22399 Filed 9–2–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

Date: Weeks of September 1, 8, 15, 22, 29, October 6, 2003.

Place: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

Status: Public and closed.

Week of September 1, 2003

There are no meetings scheduled for the Week of September 1, 2003.

Week of September 8, 2003—Tentative

Wednesday, September 10, 2003

1 p.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) Contact: John Zabko, 301–415–2308)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

3 p.m. Discussion of Security Issues (Closed—Ex. 1)

Thursday, September 11, 2003

1:30 p.m. Discussion of Security Issues (Closed—Ex. 1)

Week of September 15, 2003—Tentative

There are no meetings scheduled for the Week of September 15, 2003.

Week of September 22, 2003—Tentative

Wednesday, September 24, 2003

9 a.m. Briefing on Emergency Preparedness Program Status (Public Meeting) (Contact: Eric Weiss 301–415–3624)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of September 29, 2003—Tentative

Thursday, October 2, 2003

9:30 a.m. Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of October 6, 2003—Tentative

Tuesday, October 7, 2003

1:30 p.m. Discussion of Management Issues (Closed—Ex.2)

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recordings)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

SUPPLEMENTARY INFORMATION:

By a vote of 3–0 on August 27, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Security Issues (Closed—Ex. 1)" be held August 27, and on less than one week's notice to the public.

By a vote of 3–0 on August 27, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of (1) Final Rule: 10 CFR Parts 30, 40, and 70: Financial Assurance for Materials Licensees; (2) Final Rulemaking—Risk-Informed 10 CFR 50.44, "Combustible Gas Control in Containment"; (3) Final Rule on Electronic Maintenance and Submission of Information; and (4) Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 & 2, Browns Ferry Nuclear Plant, Units 1, 2 & 3), Docket Nos. 50–390–CIVP; 50–0327–CIVP; 50–328–CIVP; 50–259–CIVP; 50–260–CIVP; 50–296–CIVP; LBP–03–10 (June 26, 2003)" be held on August 28, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, pleaase contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: August 28, 2003.

R. Michelle Schroll,

Information Management Specialist, Office of the Secretary.

[FR Doc. 03–22507 Filed 8–29–03; 11:14 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–698]

License No. SNM–770, Westinghouse Electric Company LLC, Waltz Mill Service Center, Madison, PA; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards (NMSS), has issued a Directors' Decision with regard to a petition dated October 30, 2002, filed by Viacom, Inc., hereinafter referred to as the "petitioner." The petition concerns the decommissioning of the former Westinghouse Test Reactor (WTR) at the Waltz Mill Service Center, near Madison, PA. In a letter dated December 20, 2002, Westinghouse Electric Company LLC (Westinghouse), the holder of the SNM–770 License at the Waltz Mill Service Center, responded to the Viacom 2.206 petition. Westinghouse submitted supplemental information on the petition on April 14, 2003. Viacom submitted comments on the Westinghouse supplemental information on April 22, 2003. Westinghouse submitted a second supplemental response to the Viacom petition on April 28, 2003.

The petition requested NRC issue an Order to Westinghouse, which would require them to: (1) Provide certain radiological survey data to NRC which NRC has requested, and (2) accept under SNM–770 certain residual byproduct materials now held under Viacom license TR–2 and located at the WTR facility at the Waltz Mill Service Center. As the basis for the request, Viacom states that Westinghouse's refusals to provide the survey data and to accept the residual byproduct materials now held under license TR–2 violates enforceable commitments made to the NRC.

As an alternative, the petitioner states that Westinghouse's refusals constitute a violation of 10 CFR 50.5, Deliberate misconduct, which causes Viacom to be in violation of a license condition, the approved Decommissioning Plan (DP) for the WTR. The petitioner claims that granting the petition is necessary for compliance with both the DP and other commitments under SNM–770 and is needed to abate the violation of 10 CFR 50.5 to promote public health and safety by providing for safe completion of decommissioning of the WTR under the DP.

Lastly, the petitioner requests that NRC interpret certain requirements in the DP for the WTR and decide whether they have been met. In a separate letter dated October 29, 2002, Viacom, Inc. applied to the NRC to issue two orders, requesting that the NRC: (1) Terminate the TR–2 license, and (2) declare that all of Viacom's obligations under the DP have been satisfactorily completed, except for the submission of the survey data and transfer of the TR–2 residual materials to the SNM–770 license. The petitioner requests that the interpretation of the DP be resolved as part of the NRC's consideration of the October 29, 2002 application.

The petitioner and the licensee met with the NMSS petition review board on February 20, 2003, to discuss the petition. The meeting gave the petitioner and the licensee an opportunity to provide additional information and to clarify issues raised in the petition. The results of that

discussion were considered in the determination regarding the petition.

The NRC sent a copy of the proposed Director's Decision to the petitioner and the licensee for comments on June 18, 2003. The petitioner and the licensee responded with comments on July 11, 2003. The comments and the NRC staff's response to them are included in the Director's Decision.

The NMSS Office Director has determined that the request for NRC to issue an Order to Westinghouse to provide certain radiological survey data to NRC which NRC has requested, is moot and will no longer be addressed, and that the request for NRC to issue an Order to Westinghouse to accept under SNM–770 certain residual byproduct materials now held under Viacom license TR–2 and located at the WTR facility is denied. The NMSS Office Director also has denied the request for NRC to issue an Order to Westinghouse to abate a violation of 10 CFR 50.5, and has granted the request for NRC to interpret the Decommissioning Plan for the WTR as part of the response to Viacom's separate request dated October 29, 2002. The reasons for the decisions are explained in the Director's Decision pursuant to 10 CFR 2.206 [DD–03–02], the complete text of which is available in ADAMS for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS public access component on the NRC's Web site, *http://www.nrc.gov,* under the "Public Involvement" icon.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision within that time.

Dated at Rockville, Maryland, this 26th day of August 2003.

For the Nuclear Regulatory Commission.

Margaret V. Federline,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–22397 Filed 9–2–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Intervoice, Inc. To Withdraw Its Common Stock, No Par Value, and Preferred Stock Purchase Rights From Listing and Registration on the Chicago Stock Exchange, Inc. File No. 1–15045

August 27, 2003.

Intervoice, Inc., a Texas corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, no par value and Preferred Stock Purchase Rights, ("Security"), from listing and registration on the Chicago Stock Exchange, Inc. ("CHX" or "Exchange").

The Board of Directors ("Board") of the Issuer approved a resolution on June 24, 2003 to withdraw its Security from listing on the Exchange. In making its decision to delist its Security from the CHX the Issuer notes that the Security has not traded on the CHX for a long period of time because no person has made a market in the Security. In addition, the Security is actively traded on the Nasdaq National Market System ("NMS") and the Company fully intends to maintain the listing and registration on the NMS.

The Issuer stated in its application that it has complied with the rules of the CHX that govern the removal of securities from listing and registration on the Exchange. The Issuer's application relates solely to the withdrawal of the Security from listing and registration on the CHX and from registration under Section 12(b) of the Act[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before September 18, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the CHX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–22369 Filed 9–2–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78l(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 781(b).

[4] 15 U.S.C. 781(g).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48412; File No. SR–NASD–2003–112]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Locked Markets in the Nasdaq InterMarket

August 26, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 18, 2003 the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed a proposed rule change with the Securities and Exchange Commission ("Commission"). On August 5, 2003, the NASD filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change is described in Items I, II, and III below, which Nasdaq has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change to amend NASD Rule 5263, which addresses locked and crossed markets in exchange-listed securities, to conform Nasdaq's rule more closely with the locked markets rule contained in the ITS Plan. The text of the proposed rule change is below. Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

NASD Rule 5263. Locked or Crossed Markets

(a) No Change.

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Kathy England, Assistant Director, Division of Market Regulation, Commission dated August 4, 2003.

(b) No Change.

(c)(1) [(A)] Unless excused by operation of paragraphs [(c)(1)(B)] *(c)(2)* or (d) below an ITS/CAES Market Maker that makes a bid or offer and in so doing creates a locked or crossed market with an ITS Participant Exchange *or another ITS/CAES Market Maker* and that receives a complaint through ITS/CAES *or CAES* from the party whose bid (offer) was locked or crossed (the "aggrieved party"), the ITS/CAES Market Maker responsible for the locking offer (bid) shall, as specified in the complaint, either promptly "ship" (*i.e.*, satisfy through ITS/CAES *or CAES* the locked bid (offer) up to the size of his locking offer (bid)) or "unlock" (*i.e.*, adjust his locking offer (bid) so as not to cause a locked market). If the complaint specifies "unlock," it may nevertheless ship instead.

([B]*2*) If there is an error in a locking bid or offer that relieves the locking ITS/CAES Market Maker from its obligations under paragraph (c)(2) of Rule 11Ac1–1 and if the ITS/CAES Market Maker receives a "ship" complaint through ITS/CAES *or CAES* from the aggrieved party, the locking ITS/CAES Market Maker shall promptly cause the quotation to be corrected and, except as provided in paragraph (d) below, it shall notify the aggrieved party through ITS/CAES *or CAES* of the error within two minutes of receipt of the complaint. If the locking ITS/CAES Market Maker fails to so notify the aggrieved party, he shall promptly ship.

[(2) An ITS/CAES Market Maker that makes a bid or offer and in so doing creates a locked or crossed market with another ITS/CAES Market Maker shall promptly send to such other ITS/CAES Market Maker an order seeking either the bid or offer which was locked or crossed, unless excused by operation of paragraph (d) below. Such order shall be for either the number of shares he has bid for (offered) or the number of shares offered (bid for) by the ITS/CAES Market Maker, whichever is less.]

(d) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Nasdaq InterMarket is a quotation, communication, and execution system that allows NASD members to trade stocks listed on the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex").[4] The InterMarket competes with regional exchanges like the Chicago Stock Exchange ("CHX") and the Cincinnati Stock Exchange ("CSE") for retail order flow in stocks listed on the NYSE and the Amex. InterMarket comprises CAES, a system that facilitates the execution of trades in listed securities between NASD members that participate in InterMarket, and ITS, a system that permits trades between NASD members and specialists on the floors of national securities exchanges that trade listed securities.

The national market system plan governing the Intermarket Trading System ("ITS Plan") requires national securities exchanges and the NASD to adopt a model rule governing locked and crossed markets in ITS-eligible securities. The current wording of the NASD rule differs slightly from that required by the ITS Plan, in that it treats locks and crosses that occur completely within the Nasdaq InterMarket differently than it treats locks and crosses that occur between InterMarket participants and ITS participant exchanges. Nasdaq believes that this difference increases the regulatory and compliance burdens of NASD members that participate in CAES and in ITS, as well as increasing the regulatory burdens on the NASD itself, without any offsetting benefits to the InterMarket or its members.

NASD Rule 5263 currently requires ITS/CAES Market Makers that create locked or crossed markets with another ITS Participant to comply with the precisely defined procedure expressed in the ITS Plan, which requires that a locking participant respond only after a locked market complaint has been properly registered. In contrast, the rule requires that ITS/CAES Market Makers that lock other ITS/CAES Market Makers within CAES promptly send the locked or crossed Market Maker an order seeking the number of shares of the locked/crossed bid or offer without waiting for the locked or crossed Market Maker to complain. Nasdaq believes that the more stringent requirement within the InterMarket can cause CAES Market Makers to prematurely send an order to trade without having the input or an understanding of the locked party's intentions to trade. Nasdaq also believes that it forces ITS/CAES Market Makers to be familiar with and engage in two different procedures in response to the same behavior, creating unnecessary confusion and cost.

To eliminate this disparity vis-à-vis other markets, Nasdaq proposes to simply mirror the language of the ITS Plan and to remove the more restrictive language with respect to locks or crosses that occur between ITS/CAES Market Makers. Nasdaq believes that although locking and crossing behavior can provide valuable price discovery information to market participants, regulatory incentives help minimize the extent to which such locks and crosses interfere with the smooth operation of the InterMarket and with ITS/CAES Market Makers' internal systems.

According to Nasdaq, applying the same locked and crossed rule to both ITS and CAES will also improve Nasdaq's ability to effectively enforce Section 8(d) of the ITS Plan. In a June 13, 2003 letter from Lori Richards, Director of the Office of Compliance Inspections and Examinations to Robert Glauber, Chairman and Chief Executive Officer of the NASD, Ms. Richards recommended that the NASD improve its regulatory program for detecting and disciplining InterMarket participants that violate the lock/cross provisions of the ITS Plan and NASD Rule 5263. Nasdaq is working diligently to respond to that recommendation. This proposal is one of several steps the NASD and Nasdaq will take in response to Ms. Richards' recommendation.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[5] in general and with Section 15A(b)(6) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster competition and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and

[4] Nasdaq's InterMarket formerly was referred to as Nasdaq's Third Market. *See* Securities Exchange Act Release No. 42907 (June 7, 2000); 65 FR 37445 (June 14, 2000) (SR–NASD–00–32).

[5] 15 U.S.C. 78*o*–3.

[6] 15 U.S.C. 78*o*–3(6).

open market and a national market system, and, in general, to protect investors and, in general, the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–2003–112 and should be submitted by September 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–22410 Filed 9–2–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P012]

State of Florida; Amendment #1

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective August 21, 2003, the above numbered declaration is hereby amended to include Pasco County in the State of Florida as a disaster area due to damages caused by severe storms and flooding occurring on June 13, 2003 and continuing.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is September 29, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: August 27, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–22423 Filed 9–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9W74]

State of Montana

Flathead, Glacier, Lake, Lewis & Clark, Lincoln, Sanders and Teton Counties and the contiguous Counties of Broadwater, Cascade, Chouteau, Jefferson, Meagher, Mineral, Missoula, Pondera, Powell and Toole Counties in the State of Montana; and Bonner, Boundary and Shoshone Counties in the State of Idaho constitute an economic injury disaster loan area as a result of forest fires that began on July 23, 2003 and continue to burn. The forest fires caused the closures of the entrances to Glacier National Park and have caused several businesses to suffer substantial economic losses. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on May 26, 2004 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 3 Office, 14925 Kingsport Road, FT. Worth, TX 76155–2243.

The interest rate for eligible small businesses and small agricultural cooperatives is 2.953 percent.

The number assigned for economic injury for this disaster is 9W7400 for the State of Montana and 9W7500 for the State of Idaho.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: August 26, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–22424 Filed 9–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P014]

Commonwealth of Pennsylvania

As a result of the President's major disaster declaration for Public Assistance on August 23, 2003 the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Crawford, Forest, Mercer, McKean, Venango and Warren Counties in the Commonwealth of Pennsylvania constitute a disaster area due to damages caused by severe storms, tornadoes, and flooding occurring on July 21, 2003 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 22, 2003 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Non-profit organizations without credit available elsewhere	2.953
Non-profit organizations with credit available elsewhere	5.500

The number assigned to this disaster for physical damage is P01411.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

[7] 17 CFR 200.30–3(a)(12).

Dated: August 27, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–22422 Filed 9–2–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4465]

Bureau of Political-Military Affairs; Statutory Debarment Under the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has imposed statutory debarment pursuant to section 127.7(c) of the International Traffic in Arms Regulations ("ITAR") (22 CFR 120 to 130) on persons convicted of violating or conspiring to violate section 38 of the Arms Export Control Act ("AECA") (22 U.S.C. 2778).

EFFECTIVE DATE: Date of conviction as specified for each person.

FOR FURTHER INFORMATION CONTACT: David Trimble, Director, Office of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State (202) 633-2700.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA, 22 U.S.C. 2778, prohibits licenses and other approvals for the export of defense articles or defense services to be issued to a person, or any party to the export, who has been convicted of violating certain U.S. criminal statutes, including the AECA.

In implementing this section of the AECA, the Assistant Secretary of State for Political-Military Affairs is authorized by section 127.7 of the ITAR to prohibit any person who has been convicted of violating or conspiring to violate the AECA from participating directly or indirectly in the export of defense articles, including technical data or in the furnishing of defense services for which a license or approval is required. This prohibition is referred to as "statutory debarment."

Statutory debarment is based solely upon conviction in a criminal proceeding, conducted by a court of the United States, and as such the administrative debarment proceedings outlined in part 128 of the ITAR are not applicable.

The period for debarment will be determined by the Assistant Secretary of State for Political-Military Affairs based upon the underlying nature of the violations, but will normally be three years from the date of conviction. Please note however, that unless licensing privileges are reinstated, the person/entity will remain debarred. At the end of the debarment period, licensing privileges may be reinstated only at the request of the debarred person following the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by section 38(g)(4) of the AECA and in accordance with section 127.11(b) of the ITAR.

Department of State policy permits debarred persons to apply to the Director of the Office of Defense Trade Controls Compliance for an exception from the period of debarment, in accordance with section 38(g)(4) of the AECA and section 127.11(b) of the ITAR. Any decision to grant an exception can be made only after the statutory requirements under section 38(g)(4) of the AECA have been satisfied. If the exception is granted, the debarment will be suspended.

Debarred persons are generally ineligible to participate in activity regulated under the ITAR (*see e.g.*, sections 120.1(c) and (d), 126.7, 127.1(c), and 127.11(a)). The Department of State will not consider applications for licenses or requests for approvals that involve any person or any party to the export who has been convicted of violating or conspiring to violate the AECA during the period of statutory debarment. Persons who have been statutorily debarred may appeal to the Under Secretary for Arms Control and International Security for reconsideration of the ineligibility determination. A request for reconsideration must be submitted in writing within 30 days after a person has been informed of the adverse decision, in accordance with 22 CFR 127.7(d).

Pursuant to section 38 of the AECA and section 127.7 of the ITAR, the following persons have been statutorily debarred by the Assistant Secretary of State for Political-Military Affairs for a period of three years following their AECA conviction:

(1) Saeed Homayouni, June 11, 2001 (entry date of June 14, 2001), U.S. District Court, Southern District of California (San Diego), Docket # 00–CR–3843–ALL.

(2) Quality Aviation & Power Support, Inc., August 21, 2001 (entry date of August 27, 2001), U.S. District Court for the Central District of California (Western Division), Docket # 2:00–CR–787.

(3) Earlene L. Christensen aka Earlene Larson Christenson aka Earlene Larson, August 21, 2002 (entry date August 27, 2002), Central District of California, (Western Division), Docket # 2:00–CR–787.

(4) Richard Kelly Smyth, December 28, 2001 (entry date of January 8, 2002), U.S. District Court, Central District of California (Western Division), Docket # 85–CR–483–ALL.

(5) Diaa Mohsen, November 16, 2001 (entry date November 20, 2001), U.S. District Court, Southern District of Florida (West Palm Beach), Docket # 01–CR–8087–ALL.

(6) Jonathan Reynolds, September 28, 2000 (entry date October 2, 2000), U.S. District Court, District of Massachusetts (Boston), Docket # 00–CR–10267–ALL.

(7) Fadi Boutros, aka Fadi E. Sitto, aka Fadi Jirjis, aka Fred Boutros, February 11, 1999 (entry date February 17, 1999), U.S. District Court, District of Connecticut (New Haven), Docket # 3:99–CR–19.

(8) Paul Siroky, October 5, 2000 (entry date October 6, 2000), U.S. District Court, Central District of California (Western Division), Docket # 2:00–CR–884.

(9) Steven Picatti, October 19, 1998 (entry date November 18, 1998), U.S. District Court, Central District of California (Western Division), Docket # 2:98–CR–860.

(10) Peter Appelbaum, August 18, 1999 (entry date August 24, 1999), U.S. District Court, Southern District of Florida (Miami), Docket # 99–CR–530–ALL.

(11) Bing Sun, August 1, 2000 (entry date August 2, 2000), U.S. District Court, Eastern District of Virginia (Norfolk), Docket # 2:00–CR–28.

(12) Patte Sun, August 1, 2000 (entry date August 2, 2000), U.S. District Court, Eastern District of Virginia (Norfolk), Docket # 2:00–CR–28.

(13) All Ports Inc., August 1, 2000 (entry date August 2, 2000), U.S. District Court, Eastern District of Virginia (Norfolk), Docket # 2:00–CR–28.

(14) Beta Trading Company, August 28, 1998 (entry date September 1, 1998), U.S. District Court, District of South Carolina (Charleston), Docket # 98–CR–332–ALL.

(15) Genaro Lopez-Gonsales, October 5, 1999 (entry date October 19, 1999), U.S. District Court, Southern District of Texas (McAllen), Docket #99–CR–434–ALL.

(16) Octabio Merida Gonzalez, July 1, 1998 (entry date July 8, 1998), U.S. District Court, Southern District of

Texas (Brownsville), Docket # 98–CR–255–ALL.

(17) Collin Xu, aka Collin Shu, aka Zhihong Xu, November 9, 2000 (entry date November 15, 2000), U.S. District Court, District of Massachusetts (Boston), Docket #99–CR–10075–ALL.

(18) Yi Yao, aka Yao Yi, February 2, 2000 (entry date February 8, 2000), U.S. District Court of Massachusetts (Boston), Docket # 99–CR–10075–ALL.

(19) Mariano Recinos-Rivera, June 5, 2000 (entry date June 20, 2000), U.S. District Court, Southern District of Texas (McAllen), Docket #00–CR–218–ALL.

(20) Gunther Kohlke, February 27, 2002 (entry date March 1, 2002), U.S. District Court, District of New York (Brooklyn), Docket #01–CR–738–ALL.

(21) Eugene Yon-Tsai Hsu, April 30, 2002 (entry date May 5, 2002), U.S. District Court, District of Maryland (Baltimore), Docket #01–CR–485–ALL.

(22) David Tzuwei Yang, April 30, 2002 (entry date May 5, 2002), U.S. District Court, District of Maryland (Baltimore), Docket #01–CR–485–ALL.

(23) Dennis Ritiche Jones, March 23, 1999 (entry date March 26, 1999), U.S. District Court, District of Arizona, Docket # CR–99–346–01.

(24) Carlos Fernando Chirinos, September 13, 2002 (entry date September 17, 2002), U.S. District Court, District of Arizona, Docket # 02–20605–CR.

(25) Daniel Jose Uribazo, August 29, 2002 (entry date August 30, 2002), U.S. District Court, District of Arizona, Docket # 02–20605–CR.

(26) Maximo de los Santos, November 18, 1999 (entry date November 19, 1999), U.S. District Court, District of Hawaii, Docket # 1:99CR00426–001.

(27) Jesse Radona Ponce, November 18, 1999 (entry date November 19, 1999), U.S. District Court, District of Hawaii, Docket # 1:99CR00426–001.

(28) Jesus Pascual Domingo, April 6, 2000 (entry date April 6, 2000), U.S. District Court, District of Hawaii, Docket # 1:99CR00426–001.

(29) Paul Guzman, November 22, 1999 (entry date November 24, 1999), U.S. District Court, District of Hawaii, Docket # 1:99CR00426–001.

As noted above, at the end of the three-year period, the above-named persons/entities will remain debarred unless licensing privileges are reinstated.

This notice is provided in order to make the public aware that the persons listed above are prohibited from participating directly or indirectly in any brokering activities and in any export from or temporary import into the United States of defense articles or defense services, including technical data, in all situations covered by the ITAR. Specific case information may be obtained from the Office of the Clerk of Court for each respective US District Court, citing the court docket number where provided.

Exceptions may be made to this denial policy on a case-by-case basis at the discretion of the Directorate of Defense Trade Controls pursuant to 22 CFR 126.3. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: whether an exception is warranted by overriding U.S. foreign policy or national security interest; whether an exception would further law enforcement concerns which are consistent with the foreign policy or national security interests of the United States; or whether other compelling circumstances exist which are consistent with the foreign policy or national security interests of the United States, and which do not conflict with law enforcement concerns.

This notice involves a foreign affairs function of the United States encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act. Because the exercise of this foreign affair function is discretionary, it is excluded from review under the Administrative Procedure Act.

Dated: August 19, 2003.

Rose M. Likins,

Principal Deputy Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 03–22418 Filed 9–2–03; 8:45 am]

BILLING CODE 4710–25–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice Regarding the 2001, 2002, and Ongoing Country Practice Reviews

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) received petitions in 2001 and 2002 to review certain practices in certain beneficiary developing countries to determine whether such countries are in compliance with the GSP eligibility criteria. This notice announces the 2001 and 2002 country practice petitions that are accepted for review, and sets forth the schedule for comment and public hearing on these petitions and on other ongoing country practices reviews, for requesting participation in the hearing, and for submitting pre- and post-hearing briefs.

ADDRESSES: The e-mail address for submissions is *FR0052@USTR.GOV*. If unable to submit petitions by e-mail, contact the GSP Subcommittee of the Trade Policy Staff Committee (TPSC).

FOR FURTHER INFORMATION CONTACT: Contact the GSP Subcommittee, Office of the United States Trade Representative, 1724 F Street, NW., Room F–220, Washington, DC 20508. The telephone number is (202) 395–6971 and the facsimile number is (202) 395–9481.

SUPPLEMENTARY INFORMATION: The GSP provides for the duty-free importation of designated articles from designated beneficiary developing countries. The GSP is authorized by title V of the Trade Act of 1974 ("the 1974 Act"), as amended (19 U.S.C. 2461, *et seq.*), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

In a **Federal Register** notice dated April 13, 2001, USTR initiated the 2001 GSP Annual Review and announced a deadline of June 13, 2001, for the filing of petitions (66 FR 19278). In a **Federal Register** notice dated November 1, 2002, USTR initiated the 2002 GSP Annual Review and announced a deadline of December 2, 2002, for the filing of petitions (67 FR 66699). Several of the petitions received requested the review of certain practices in certain beneficiary developing countries to determine whether such countries are in compliance with the eligibility criteria set forth in sections 502(b) and 502(c) of the 1974 Act.

The GSP program expired on October 1, 2001, and was not reauthorized until August 6, 2002. Consequently, the interagency TPSC made no announcement of the acceptance of country practice petitions for the 2001 GSP Annual Review, and merged the 2001 petitions into the 2002 GSP Annual Review.

The TPSC has decided to accept certain petitions for review, as indicated in Annex I to this notice. Annex I sets out the case number and status of, and subject country and practice addressed in each petition, and updates the status of other, previously initiated, ongoing country practice reviews. If the TPSC decides to accept any other 2001 or 2002 country practice petition for review, it will make an announcement in the **Federal Register** at a later date.

Acceptance of a petition for review does not indicate any opinion with respect to disposition on the merits. Acceptance indicates only that the TPSC has found the petition eligible for review, and that such review will take place. The GSP regulations provide the schedule of dates for conducting a review unless otherwise specified in a **Federal Register** notice. The revised schedule for public comment and hearings is contained in Annex II.

USTR will announce in the **Federal Register** any modifications to the list of beneficiary developing countries or eligible articles for purposes of the GSP program resulting from this Review, as well as the date on which the modifications will take effect.

Opportunities for Public Comment and Requirements for Submissions

The GSP Subcommittee invites comments on any petition included in this Review. Submissions should comply with the GSP regulations (15 CFR Part 2007), including section 2007.0, except as modified below. All submissions should be identified by the relevant case number and country name as shown in Annex I.

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic e-mail submissions in response to this notice. Hand-delivered submissions will not be accepted. Submissions should be single copy transmissions in English, and the total submission should not exceed 50 single-spaced pages. E-mail submissions should use the subject line "GSP Country Practices Review," followed by the case number and country name found in Annex I and, as appropriate, "Written Comments," "Notice of Intent to Testify," "Pre-hearing brief," or "Post-hearing brief." (For example, an e-mail subject line might read, "GSP Country Practices Review, 001–CP–02, Bangladesh, "Pre-hearing brief.") Documents must be submitted as either WordPerfect (.WPD), MSWord (.DOC) , or text (.TXT) files. Documents should not be submitted as electronic image files or contain imbedded images (for example, ".JPG", "PDF", ".BMP", or ".GIF"), as these type files are generally excessively large and may impede electronic transmission and redistribution. E-mail submissions containing such files may not be accepted. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel suitable for printing on 8½ x 11 inch paper. To the extent possible, any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

If the submission contains business confidential information, a non-confidential version of the submission must also be submitted that indicates where confidential information was redacted by inserting asterisks where material was deleted. In addition, the confidential submission must be clearly marked "BUSINESS CONFIDENTIAL" at the top and bottom of every page, and the non-confidential submission must be clearly marked either "PUBLIC VERSION" or "NON-CONFIDENTIAL" at the top and bottom of every page.

The file name of any document containing business confidential information attached to an e-mail transmission should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the party (government, company, union, association, etc.) making the submission. E-mail submissions should not include separate cover letters or messages in the message area of the e-mail; information that might appear in any cover letter should be included directly in the attached file containing the submission itself. The e-mail address for submissions is *FR0052@USTR.GOV*. Documents not submitted in accordance with these instructions might not be considered in this review.

Submissions will be open to public inspection shortly after the due date by appointment with the staff of the USTR public reading room, 1724 F Street, NW., Washington, DC, except for submitted information granted "business confidential" status pursuant to 15 CFR 2003.6 and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7. Appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, by calling (202) 395–6186.

Notice of Public Hearings

The GSP Subcommittee will hold a hearing on October 7, 2003, beginning at 10 a.m. at the Office of the U.S. Trade Representative, 1724 F Street, NW., Washington, DC. The hearing will be open to the public and a transcript will be made available for public inspection or can be purchased from the reporting company. No electronic media coverage will be allowed.

Any interested party wishing to make an oral presentation at the hearing must submit the name, address, telephone number, facsimile number, and e-mail address (if available) of the witness(es) representing the party to the Chairman of the GSP Subcommittee by 5 p.m., September 26, 2003. Requests to present oral testimony in connection with the public hearing must be accompanied by a written brief or statement, in English, which must also be received by 5 p.m., September 26, 2003. Oral presentations should be approximately five-minutes long and summarize or supplement information contained in the brief or statement. Post-hearing briefs or statements must be submitted, in English, by 5 p.m., October 31, 2003. Any party not wishing to appear at the public hearing may submit a post-hearing written brief or statement, in English, by 5 p.m., October 31, 2003. Written briefs, statements, and oral testimony should conform with section 2007.5 of the GSP regulations.

Steven Falken,

Executive Director for GSP, Chairman, GSP Subcommittee.

BILLING CODE 3901–01–P

Annex I

GENERALIZED SYSTEM OF PREFERENCES (GSP) STATUS OF COUNTRY PRACTICE PETITIONS AND ONGOING REVIEWS

CASE NUMBERS	PETITIONER	COUNTRY	ACTION	STATUS
001-CP-02	AFL-CIO	BANGLADESH	WR	Ongoing review continued
002-CP-02	AFL-CIO	COSTA RICA	WR	Rejected for review
003-CP-02	AFL-CIO	EL SALVADOR	WR	Rejected for review
004-CP-02	International Labor Rights Fund (ILRF)	EL SALVADOR	WR	Rejected for review
005-CP-02	AFL-CIO	GUATEMALA	WR	Accepted for review
006-CP-02	ILRF	GUATEMALA	WR	Accepted for review
007-CP-02	International Labor Rights Fund (ILRF); Human Rights Watch	PERU	WR	Rejected for review
008-CP-02	AFL-CIO	SRI LANKA	WR	Rejected for review
009-CP-02	AFL-CIO	SWAZILAND	WR	Accepted for review
010-CP-02	International Intellectual Property Alliance (IIPA)	ARMENIA	IPR	Ongoing review terminated
011-CP-02	IIPA	BRAZIL	IPR	Ongoing review continued
012-CP-02	IIPA	DOMINICAN REPUBLIC	IPR	Ongoing review continued
013-CP-02	Pharmaceutical Research & Manufacturers of America (PhRMA)	DOMINICAN REPUBLIC	IPR	Accepted for review as part of ongoing IPR review
014-CP-02	PhRMA	HUNGARY	IPR	Rejected for review
015-CP-02	IIPA	KAZAKHSTAN	IPR	Ongoing review continued
016-CP-02	IIPA	LEBANON	IPR	Accepted for review
017-CP-02	IIPA	PAKISTAN	IPR	Initiation of review remains under consideration
018-CP-02	PhRMA	POLAND	IPR	Rejected for review
019-CP-02	IIPA	RUSSIA	IPR	Ongoing review continued

CASE NUMBERS	PETITIONER	COUNTRY	ACTION	STATUS
020-CP-02	Assoc. of American Publishers (AAP); AFMA; Interactive Digital Software Assoc. (IDSA); Motion Picture Assoc. of America (MPAA); Nat. Music Publishers' Assoc. (NMPA); Recording Industry Assoc. of America (RIAA)	THAILAND	IPR	Petition withdrawn
021-CP-02	IIPA	URUGUAY	IPR	Rejected for review
022-CP-02	IIPA	UZBEKISTAN	IPR	Ongoing review continued
023-CP-02	Amer. Natural Soda Ash Corp. (ANSAC)	INDIA	MA	Ongoing review terminated
024-CP-02	American Textile Manufacturers Institute (ATMI)	PAKISTAN	MA	Ongoing review terminated
025-CP-02	Distilled Spirits Council of the United States	BULGARIA	RPT	Accepted for review
026-CP-02	Distilled Spirits Council of the United States	ROMANIA	RPT	Petition withdrawn
027-CP-02	To-Ro Enterprises, Inc.	BANGLADESH	CN	Rejected for review
024-CP-00	IIPA	TURKEY	CP	Ongoing Review Terminated 2001

WR=Worker Rights IPR-Intellectual Property Rights MA=Market Access
RPT=Reverse Preferential Treatment CN=Contract Nullification

Annex II

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

GSP – 2002 COUNTRY PRACTICES REVIEW

PUBLIC COMMENT AND HEARING SCHEDULE
Address for Electronic Submissions: FR0052@USTR.GOV

September 26, 2003	Due Date for Requests to Appear at Public Hearings and Submission of Pre-hearing Briefs.
	Due Date for Providing the Name, Address, Telephone, Fax, Email Address and Organization of Witnesses.
October 7, 2003	TPSC GSP Subcommittee Public Hearings to Be Held at 10:00 A.M. at the Office of the U.S. Trade Representative, 1724 F Street, N.W., Washington, D.C.
October 31, 2003	Due Date for Submission of Post-hearing and Rebuttal Briefs.
June 30, 2004	Annual Review Decisions Scheduled to Be Announced on or about this Date.
For Further Information Contact:	GSP Information Center Office of the U.S. Trade Representative 1724 F Street, N.W. Washington, D.C. 20508 Telephone (202) 395-6971; Facsimile (202) 395-9481
For Public Documents Related to this Review:	USTR Public Reading Room, 1724 F Street N.W., Washington, D.C. Appointments May Be Made from 9:30 A.M. to Noon and 1 P.M. to 4 P.M., Monday Through Friday by Calling (202) 395-6186.

Notification of Any Changes Will Be Given in the *Federal Register*.

[FR Doc. 03–22426 Filed 9–2–03; 8:45 am]
BILLING CODE 3901–01–C

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2001–9800]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: This notice announces FMCSA's decision to issue exemptions to certain insulin-using diabetic drivers of commercial motor vehicles (CMVs) from the diabetes mellitus prohibitions contained in the Federal Motor Carrier Safety Regulations (FMCSRs). The FMCSA will grant exemptions only to those applicants who meet the specific conditions and comply with all the requirements of the exemption. The FMCSA will issue exemptions for not more than a period of two years. Upon expiration, those holding exemptions may apply to FMCSA for a renewal under procedures in effect at that time. The FMCSA is leaving the docket open so that interested persons can provide comments on any changes to the specific conditions needed to qualify for the exemption program.

DATES: This notice is effective on September 3, 2003. FMCSA will begin accepting applications for exemptions on September 22, 2003.

ADDRESSES: Qualified insulin-treated diabetes mellitus drivers may now request a diabetes exemption from the regulations of 49 CFR 391.41(b)(3) by sending an exemption request to: Diabetes Exemption Program (MC–PSP), Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–4001, FMCSA, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

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.

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 the Department of Transportation's (DOT) complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Background

The agency established the current standard for diabetes in 1970 because several risk studies indicated that diabetic drivers had a higher rate of accident involvement than the general population. The diabetes requirement provides that: A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control (49 CFR 391.41(b)(3)).

Since 1970, the agency has considered the diabetes requirement and undertaken studies to determine if its diabetes standard for commercial drivers in interstate commerce should be amended. It is FMCSA's view that its physical qualification standards should be based on sound medical, scientific and technological grounds, and that individual determinations should be made to the maximum extent possible consistent with FMCSA's responsibility to ensure safety on the nation's highways. The FMCSA published a notice of intent to issue exemptions to insulin-using diabetic drivers in the **Federal Register** on July 31, 2001 (66 FR 39548). This notice of intent discussed the regulatory history and research activity addressing the issue of diabetes and CMV operation.

Feasibility Study To Qualify Insulin-Treated Diabetics to Operate CMVs

Section 4018 of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107) directed the Secretary of Transportation (the Secretary) to determine if it is feasible to develop a safe and practicable program for allowing individuals with insulin-treated diabetes mellitus (ITDM) to operate CMVs in interstate commerce. In making the determination, the Secretary was directed to evaluate research and other relevant information on the effects of ITDM on driving performance. TEA–21 stated that, to accomplish this, the Secretary shall consult the states with regard to their programs for CMV operation by ITDM drivers, evaluate the DOT policies in other modes of transportation, analyze pertinent risk data, consult with interested groups knowledgeable about diabetes and related issues, and assess the possible legal consequences of permitting ITDM individuals to operate CMVs in interstate commerce. TEA–21 also directed the Secretary to report the findings to Congress and, if a program is feasible, describe the elements of a protocol to permit individuals with ITDM to operate CMVs. The FMCSA submitted the report to Congress on August 23, 2000. It is entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin Treated Diabetes Mellitus to Operate Commercial Motor Vehicles in Interstate Commerce as Directed by the Transportation Equity Act for the 21st Century," July 2000 (TEA–21 Report to Congress). It concludes that a safe and practicable protocol to allow some ITDM individuals to operate CMVs is feasible. For a detailed discussion of the report findings and conclusions, see July 31, 2001 (66 FR 39548). A copy of the report is on FMCSA's Web site at *www.fmcsa.dot.gov/rulesregs/medreports.htm*.

Authority—Exemptions

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a period up to two years if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the two-year period, or after the current exemption expires.

FMCSA must publish a notice in the **Federal Register** for each exemption requested, explaining that the request has been filed, and providing the public an opportunity to inspect the safety analysis and any other relevant information known to the agency, and comment on the request. Prior to granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person or class of persons who will receive the exemption, the provisions from which the person will be exempt, the effective period, and all terms and conditions of the exemption. The terms and conditions established by FMCSA must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

In addition, the agency is required to monitor the implementation of each exemption to ensure compliance with its terms and conditions. If FMCSA denies a request for an exemption, the agency must periodically publish a notice in the **Federal Register** identifying the person(s) whom the agency denied the exemption to and the reasons for the denial.

Generally, the duration of exemptions is limited to two years from the date of approval, but may be renewed. FMCSA is required to immediately revoke an exemption if:

(1) The person fails to comply with the terms and conditions of the exemption;

(2) The exemption has resulted in a lower level of safety than was maintained before the exemption was granted; or

(3) Continuation of the exemption would not be consistent with the goals and objectives of the regulations issued under the authority of 49 U.S.C. 31315 and 31136(e).

Process for Applying for an Exemption

The procedures for applying for an exemption may be found at 49 CFR 381.300 through 381.330. The person applying for an exemption is required to send a written request to the FMCSA Administrator. The written request must include basic information such as the identity of the person who would be covered by the exemption, the name of the motor carrier or other entity that would be responsible for the use or operation of CMVs during the exemption period, and the principal place of business of the motor carrier or other entity. Under section 381.310, the application must include a written statement that:

(1) Describes the event or CMV operation for which the exemption would be used;

(2) Identifies the regulation from which the applicant is requesting relief;

(3) Estimates the total number of drivers and CMVs that would be operating under the terms and conditions of the exemption; and

(4) Explains how the recipient of the exemption would ensure that they achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation.

FMCSA Procedures for the Review of Exemption Applications

Section 381.315 requires FMCSA to review an application for an exemption and prepare, for the Administrator's signature, a **Federal Register** notice requesting public comment. After a review of the comments received, FMCSA staff will make a recommendation to the Administrator. FMCSA will publish a notice of the Administrator's final decision in the **Federal Register**. FMCSA will issue a final decision within 180 days of the date it receives an individual's completed application. However, if the applicant should omit important details or other information necessary for the agency to conduct a comprehensive evaluation, FMCSA will issue a final decision within 180 days of the date that it receives sufficient information (49 CFR 381.315 and 381.320). FMCSA recognizes that this potential six-month waiting period may seem burdensome. However, the agency must carefully evaluate each and every application for regulatory relief from the diabetes standard, to assess the potential safety performance of each applicant. In addition, the agency must prepare and submit the candidate's application for public notice and comment in the **Federal Register** and then evaluate comments received before making a final decision. FMCSA's overriding concern is to ensure the safety of interstate CMV operations. The agency will notify all applicants in writing once it makes a final decision.

Application Information

In considering exemptions, the FMCSA must ensure that the issuance of diabetes exemptions will not be contrary to the public interest and that the exemption achieves an acceptable level of safety. The FMCSA will only grant exemptions, therefore, to ITDM individuals who meet certain conditions. These conditions are set forth below and the FMCSA based the conditions on the research literature, relevant DOT and State exemption programs, and substantial medical input from a panel of endocrinologists. FMCSA will require applicants for an exemption from the ITDM prohibition to submit their applications in a letter (there will be no application form), include all supporting documentation, and use the following format:

Vital Statistics

Name (First Name, Middle Initial, Last Name).
Address (House Number and Street Name, City, State, and ZIP Code).
Telephone Number (Area Code and Number).
Sex (Male or Female).
Date of Birth (Month, Day, Year).
Age.
Social Security Number.
State Driver's License Number (List all licenses held to operate a commercial motor vehicle during the 3-year period immediately preceding the date of application).
Driver's License Expiration Date.
Driver's License Classification Code (If not a commercial driver's license (CDL) classification code, specify what vehicles may be operated under such code).
Driver's License Date of Issuance (Month, Day, Year).

Experience

Number of years driving straight trucks.
Approximate number of miles *per year* driving straight trucks.
Number of years driving tractor-trailer combinations.
Approximate number of miles *per year* driving tractor-trailer combinations.
Number of years driving buses.
Approximate number of miles *per year* driving buses.

Present Employment

Employer's Name (If Applicable).
Employer's Address.
Employer's Telephone Number.
Type of Vehicle Operated and GVWR (Straight Truck, Tractor-Trailer Combination, Bus).
Commodities Transported (*e.g.*, General Freight, Liquids in Bulk (in cargo tanks), Steel, Dry-Bulk, Large Heavy Machinery, Refrigerated Products).
Estimated number of miles driven *per week*.
Estimated number of daylight driving hours *per week*.
Estimated number of nighttime driving hours *per week*.
States in which you will drive if issued an exemption.

In addition, the applications must include supporting documentation showing that the applicant:

(1) Possesses a valid intrastate CDL or a license (non-CDL) to operate a CMV;

(2) Has operated a CMV, with a diabetic condition controlled by the use of insulin, for the three-year period immediately preceding application;

(3) Has a driving record for that three-year period that:

Contains no suspensions or revocations of the applicant's driver's license for the *operation* of *any* motor vehicle (including their personal vehicle),

Contains no involvement in an accident for which the applicant received a citation for a moving traffic violation while operating a CMV,

Contains no involvement in an accident for which the applicant contributed to the cause of the accident, and

Contains no convictions for a disqualifying offense or more than one serious traffic violation, as defined in 49 CFR 383.5, while operating a CMV;

(4) Has no other disqualifying conditions including diabetes-related complications;

(5) Has had no recurrent (two or more) hypoglycemic reactions resulting in a loss of consciousness or seizure within the past five years. A period of one year of demonstrated stability is required following the first episode of hypoglycemia;

(6) Has had no recurrent hypoglycemic reactions requiring the assistance of another person within the past five years. A period of one year of demonstrated stability is required following the first episode of hypoglycemia;

(7) Has had no recurrent hypoglycemic reactions resulting in impaired cognitive function that occurred without warning symptoms within the past five years. A period of one year of demonstrated stability is required following the first episode of hypoglycemia,

(8) Has been examined by a board-certified or board-eligible endocrinologist (who is knowledgeable about diabetes) who has conducted a complete medical examination. The complete medical examination must consist of a comprehensive evaluation of the applicant's medical history and current status with a report including the following information:

(A) The date insulin use began,

(B) Diabetes diagnosis and disease history,

(C) Hospitalization records,

(D) Consultation notes for diagnostic examinations,

(E) Special studies pertaining to the diabetes,

(F) Follow-up reports,

(G) Reports of any hypoglycemic insulin reactions within the last five years,

(H) Two measures of glycosylated hemoglobin, the first 90 days before the last and current measure,

(I) Insulin dosages and types, diet utilized for control and any significant factors such as smoking, alcohol use, and other medications or drugs taken, and

(J) Examinations to detect any peripheral neuropathy or circulatory insufficiency of the extremities;

(9) Submits a signed statement from an examining endocrinologist indicating the following medical determinations:

The endocrinologist is familiar with the applicant's medical history for the past five years, either through actual treatment over that time or through consultation with a physician who has treated the applicant during that time,

The applicant has been using insulin to control his/her diabetes from the date of the application back to the date the three years of driving experience began,

The applicant has been educated in diabetes and its management, thoroughly informed of and understands the procedures which must be followed to monitor and manage his/her diabetes and what procedures should be followed if complications arise, and

The applicant has the ability and has demonstrated willingness to properly monitor and manage his/her diabetes; and

(10) Submits a separate signed statement from an ophthalmologist or optometrist that the applicant has been examined and that the applicant does not have diabetic retinopathy and meets the vision standard at 49 CFR 391.41(b)(10), or has been issued a valid medical exemption. If the applicant has any evidence of diabetic retinopathy, he or she must be examined by an ophthalmologist and submit a separate signed statement from the ophthalmologist that he or she does not have unstable proliferative diabetic retinopathy (*i.e.*, unstable advancing disease of blood vessels in the retina).

Requirements for ITDM Individuals Who Have Been Issued an Exemption To Operate CMVs

There are special conditions attached to the issuance of any exemption for ITDM. The FMCSA will impose the following requirements:

(1) Individuals with ITDM shall maintain appropriate medical supplies for glucose management while preparing for the operation of a CMV and during its operation. The supplies shall include the following:

(A) An acceptable glucose monitor with memory,

(B) Supplies needed to obtain adequate blood samples and to measure blood glucose,

(C) Insulin to be used as necessary, and

(D) An amount of rapidly absorbable glucose to be used as necessary;

(2) Individuals with ITDM shall maintain a daily record of actual driving time to correlate with the daily glucose measurements; and

(3) Prior to and while driving, the individual with ITDM shall adhere to the following protocol for monitoring and maintaining appropriate blood glucose levels:

Check glucose before starting to drive and take corrective action if necessary. If glucose is less than 100 milligrams per deciliter (mg/dl), take glucose or food and recheck in 30 minutes. Do not drive if glucose is less than 100 mg/dl. Repeat the process until glucose is greater than 100 mg/dl;

While driving check glucose every two to four hours and take appropriate action to maintain it in the range of 100 to 400 mg/dl;

Have food available at all times when driving. If glucose is less than 100 mg/dl, stop driving and eat. Recheck in 30 minutes and repeat procedure until glucose is greater than 100 mg/dl; and

If glucose is greater than 400 mg/dl, stop driving until glucose returns to the 100 to 400 mg/dl range. If more than two hours after last insulin injection and eating, take additional insulin. Recheck blood glucose in 30 minutes. Do not resume driving until glucose is less than 400 mg/dl.

Monitoring for ITDM Individuals Who Have Been Issued an Exemption To Operate CMVs

In addition to the requirements for controlling ITDM, FMCSA will monitor exemption recipients during the period that the exemption is valid. FMCSA will conduct monitoring by requiring the exemption recipients to submit the following information to the Diabetes Exemption Program, MC–PSP, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001:

(1) Provide written confirmation from the endocrinologist on a quarterly basis:

(A) The make and model of the glucose monitoring device with memory;

(B) The individual's blood glucose measurements and glycosylated hemoglobin are generally in an adequate range based on:

a. All daily glucose measurements taken with the glucose monitoring device and correlated with the daily records of driving time; and

b. A current measurement of glycosylated hemoglobin.

(2) Submit on an annual basis, a comprehensive medical evaluation by an endocrinologist. The evaluation will include a general physical examination and a report of glycosylated hemoglobin concentration. The evaluation will also involve an assessment of the individual's willingness and ability to monitor and manage the diabetic condition;

(3) Provide on an annual basis confirmation by an ophthalmologist or optometrist that there is no diabetic retinopathy and the individual meets the current vision standards at 49 CFR 391.41(b)(10). If there is any evidence of diabetic retinopathy, provide annual documentation by an ophthalmologist that the individual does not have unstable proliferative diabetic retinopathy;

(4) Submit annual documentation by an endocrinologist of ongoing education in management of diabetes and hypoglycemia awareness;

(5) Report all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; and

(6) Report any involvement in an accident or any other adverse event whether or not they are related to an episode of hypoglycemia.

Medical Examination-Certificate of Physical Examination for ITDM Individuals Who Have Been Issued an Exemption To Operate CMVs

Because diabetes is a chronic disease requiring constant control and monitoring, FMCSA will impose conditions on ITDM individuals, who have been issued an exemption, similar to the provisions that apply to drivers who participated in the agency's diabetes waiver program before March 31, 1996 under 49 CFR 391.64. The required conditions include the following:

(1) Each individual must have a physical examination every year:

(a) The physical examination must first be conducted by an endocrinologist indicating the driver is:

1. Free of insulin reactions. "Free of insulin reactions" in this context means that the individual has had:

(A) No recurrent (two or more) hypoglycemic reactions resulting in a loss of consciousness or seizure within the past five years. A period of one year of demonstrated stability is required following the first episode of hypoglycemia,

(B) No recurrent hypoglycemic reactions requiring the assistance of another person within the past five years. A period of one year of demonstrated stability is required following the first episode of hypoglycemia, and

(C) No recurrent hypoglycemic reactions resulting in impaired cognitive function that occurred without warning symptoms within the past five years. A period of one year of demonstrated stability is required following the first episode of hypoglycemia,

2. Able to and has demonstrated willingness to properly monitor and manage his/her diabetes, and

3. Will not likely suffer any diminution in driving ability due to his/her diabetic condition; and

(b) Secondly, the physical examination must be conducted by a medical examiner who attests that the individual is physically qualified under 49 CFR 391.41, or holds a valid exemption.

(2) Each individual must agree to and must comply with the following conditions:

(a) Carry a source of rapidly absorbable glucose at all times while driving;

(b) Self-monitor blood glucose levels prior to driving and every two to four hours while driving using a portable glucose monitoring device equipped with a computerized memory;

(c) Submit blood glucose records to both the endocrinologist and medical examiner at the annual examinations or when otherwise directed by an authorized agent of FMCSA; and

(d) Provide a copy of the endocrinologist's report to the medical examiner at the time of the annual medical examination; and

(3) Each individual must provide a copy of the optometrist's or ophthalmologist's report indicating that there is no diabetic retinopathy and the individual meets the current vision standards at 49 CFR 391.41(b)(10). If there is any evidence of diabetic retinopathy, the individual must provide to the medical examiner at the time of the annual medical examination a copy of the ophthalmologist's report indicating that the individual does not have unstable proliferative diabetic retinopathy; and

(4) Each individual must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or must keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving for presentation to a duly authorized Federal, State, or local enforcement official.

Basis for Determination

Under 49 U.S.C. 31315 and 31136 (e), the FMCSA may grant an exemption for up to a two-year period if it finds that the action would likely achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved absent such exemption. This requirement sets the criteria for safety in developing new programs. In this context, relative to diabetes, Section 4018 of TEA–21 directed the Secretary to determine if it is feasible to develop a safe and practicable program for allowing individuals with ITDM to operate CMVs in interstate commerce. In making that determination, the primary focus was on whether such a program could achieve a level of safety that is equal to or greater than the level that exists without the program. To do this, multiple sources of information were sought.

The sources of information sought to reach a determination ranged from background research and risk assessment to consultation with experts and an examination of how other similar programs were conducted. Specifically, this involved: (1) Literature reviews to identify earlier risk studies and how ITDM is treated and managed, (2) investigation of the policies and programs of other DOT modal administrations, (3) an examination of how such States treated drivers with ITDM and their experience in allowing such drivers to operate CMVs, and (4) examining the results of recent risk studies. Further, to obtain expert input concerning the treatment of ITDM, the agency assembled a panel of physicians whose main focus was the treatment of diabetes. Overall, the conclusions reached in this determination were, therefore, based on a broad range of relevant information.

The approach was guided by the best principles of risk assessment in conjunction with program development. The feasibility focused primarily on the potential safety of such a program, and the procedures that can ensure safety, while providing a benefit to the public. The results of the determination led to a conclusion that a safe and practicable program was feasible. The conclusions further showed that a viable program protocol for allowing certain individuals with ITDM to operate CMVs would require three components.

The first component is screening applicants to identify qualified drivers. This process examines the applicant's experience and safety in operating a CMV. As stated above, the screening criteria require three years of safe CMV operation with ITDM. The criteria are based on the evidence available from the above referenced waiver program, previous program reviews by researchers in the field, and the safety prediction literature. FMCSA believes that a safe driving history is a required basis for screening, because the primary focus of the determination is to develop a program with the necessary safety level. The screening component requires an acceptable history of hypoglycemia along with the results of examinations by required medical specialists. An important aspect of screening also involves education in the management of the condition and awareness of hypoglycemia.

The second component provides guidelines for managing ITDM for the qualified applicants. This includes direction in the supplies to be used and the protocol for monitoring and maintaining appropriate blood glucose levels. This is based on the experience of other successful programs and detailed input from the above referenced medical panel.

The last component specifies the process to be used for monitoring qualified ITDM operators of CMVs. This addresses the required medical examinations and the schedule for their submission. It also specifies how glucose measures should be taken and reviewed and the methods for reporting episodes of severe hypoglycemia and accidents. The monitoring component increases the degree of rigor to meet the needed level of safety. In the program, qualified drivers will be required to reapply and be screened every two years to renew their exemptions. This means that the drivers in the program will need to verify their safe driving behavior, health status, and education in a manner that involves ongoing monitoring. In addition, to monitor health status, the drivers will be required to be examined by an endocrinologist and obtain medical certification on an annual basis.

The FMCSA believes this is a comprehensive program. It thoroughly addresses the wide range of concerns about this type of program. The program's structure reflects the range of input from numerous sources. It also reflects how the most feasible and effective aspects of each input were combined to develop a program that provides great benefit with a primary focus on safety.

Discussion of Comments

There were 396 comments to the notice of intent to issue exemptions published in the **Federal Register** on July 31, 2001 (66 FR 39548), with 373 commenters generally in favor of the proposal and 23 in opposition. Among the comments submitted, some were sent multiple times by the same individuals or organizations. Those in support of the proposed program largely directed their comments to the removal of a comprehensive prohibition on the operation of CMVs by insulin-using diabetics, which would be replaced by an individual assessment of their ability to drive the CMVs. Those in support often did not agree with all aspects of

the proposed program, citing complexities of the application process, the extent of the medical examination, and the length of time until FMCSA grants an exemption. Among the comments in support, while citing problems with other elements of the program, 191 wrote specific comments about the requirement for three years of driving experience with the condition.

Nine organizations and individuals submitted 23 comments in opposition to the proposal. They argued that available evidence does not support implementation of an exemption program that must meet the safety requirements for new programs. They assert that the medical examination process cannot conclusively identify safe drivers with ITDM, that interstate driving is too arduous for such individuals, and the risk assessment results are not sufficient to justify a program that will be as safe or safer than the existing absence of a program.

The comments on the proposed program are further discussed below. Numerous commenters have substantive concerns about the same issues. The FMCSA presents its response after the comments are described.

Comments In Support

The American Diabetes Association (ADA) generally supports the FMCSA proposal to end the blanket ban prohibiting insulin-treated diabetics from operating CMVs. It believes that this proposal is long overdue and it would institute a process for the individual assessment of applicants. The ADA said that it does not believe all individuals with insulin-treated diabetes should qualify for a CDL. It strongly supports replacing the blanket ban with a medically sound protocol that maximizes safety and employment opportunities for individuals with diabetes. Consistent with that support, the ADA states that it supports most aspects of the proposed program. Specifically, the ADA agrees with three aspects of the proposed protocol; the careful medical screening, the stringent guidelines for drivers to use when driving, and the aggressive monitoring for safety. It supports the rigorous approach to assuring the highest levels of safety and believes that most aspects of the proposal are excellent.

The ADA, however, disagrees with the exemption requirement that insulin-treated drivers should have three years of safe driving experience with the condition. It states that nothing in the TEA–21 Report to Congress supports this requirement, and that the proposed requirement disregards currently available medical treatment and supplies for people with diabetes. The ADA claims that the agency's own medical panel recommended a one or two month period for a person to adjust to insulin before applying for a CDL, and urges the adoption of that standard. It goes on to state that the three-year screening criteria should be replaced with a one-month adjustment period for those with non-ITDM that are moving to the use of insulin, and a two month adjustment period for those newly diagnosed with the ITDM condition. Individual circumstances could extend this latter period. Moreover, the ADA believes that there should be no requirement for the CDL applicant to have any experience driving a CMV.

The ADA also believes that DOT should change the regulations in relation to diabetes. It believes that the proposed exemption program has a number of difficulties that a regulatory change would not. The ADA believes the exemption program could be terminated at any time in the same manner the FHWA did when it ended the diabetes waiver program. It also believes that an exemption program may not be able to protect qualified ITDM drivers from employer discrimination, citing a supreme court decision, *Albertson's Inc.* v. *Kirkingberg,* 527 U.S. 555 (1999). The ADA states that an exemption program could result in more discrimination and litigation. As a result, the ADA argues that the general regulatory standard in 49 CFR 391.41(b)(3) should not continue when the DOT has determined that individual assessment is feasible.

The U.S. Equal Employment Opportunity Commission (EEOC) states that the proposed exemption program is intended to increase employment opportunities for individuals with disabilities while monitoring for safety. In this sense, the EEOC claims that the process is consistent with the Americans with Disabilities Act. However, the EEOC is concerned about the requirement for three years of driving experience with the condition. It is concerned that this screening process may exclude a large number of drivers from interstate commerce, which may limit diabetic drivers to a small number of lower paying jobs. It was also concerned that some drivers may live in states that do not allow diabetic drivers to operate CMVs in intrastate commerce. The EEOC urges the FMCSA to monitor the three-year experience requirement if it is used and reassess it if it becomes too exclusionary.

The Congressional Diabetic Caucus (Caucus) generally supports the program, saying that it is pleased that the TEA–21 Report to Congress "concludes that a safe and practicable protocol to allow some individuals with insulin-treated diabetes mellitus to operate commercial motor vehicles is feasible." However, it has concerns about the three-year requirement for driving experience. It claims that the proposed three-year requirement ignores advances in medical treatment. The Caucus points to the input given by a DOT medical advisory panel which recommended a one to two month adjustment period before driving for those individuals newly treated with insulin.

The Caucus also believes that DOT should not implement the proposed policy through another exemption or waiver program. It believes the vast majority of States and the Federal Government have successfully experimented with allowing a limited number of insulin-treated drivers to operate CMVs. With the Federal government's analysis of the issue, another exemption (waiver) program would be inadequate to provide benefits for all involved. Based on this, it urged DOT to permanently change the regulations concerning insulin-treated diabetes and the operation of CMVs.

The Civil Rights Division of the U.S. Department of Justice (DOJ) generally supports the proposed exemption program as a positive step toward permitting an individual assessment of persons with ITDM to operate CMVs in interstate commerce. The DOJ, however, has concerns regarding the three-year driving requirement and urged the FMCSA to continue to obtain and analyze data on the safety records of CMV operators with ITDM from all available sources. This should permit the FMCSA to consider if it is appropriate to modify the three-year requirement. The DOJ believes that among those States that allow drivers with ITDM to operate CMVs, some monitor the drivers for a variety of reasons. As a result, those states should be able to provide the FMCSA with several years of data to examine the risk associated with relaxing the three-year requirement.

The Amalgamated Transit Union (ATU), which represents over 175,000 members maintaining and operating bus, light rail, ferry, over-the-road bus, school bus, and paratransit vehicles in the U.S. and Canada, strongly supports the proposed program because advances in the treatment of diabetes make it possible for some ITDM individuals to operate a CMV. However, the ATU strongly opposes the requirement for three years of safe CMV operation with the condition. This aspect of the proposal, the ATU argues, would place

a huge obstacle in the path of qualified individuals with ITDM. This requirement discriminates against drivers in non-waiver States. In light of the medical advances in the treatment of ITDM, the ATU states there is no justification for the three-year requirement. Instead, the ATU claims that the FMCSA should adopt the recommendation of the medical panel in the TEA–21 Report to Congress, wherein a one or two-month period for adjustment to insulin would be required for seeking or maintaining a CDL.

The International Brotherhood of Teamsters (IBT) applauds the FMCSA's efforts to eliminate the blanket ban on insulin-using diabetic drivers. However, the IBT agrees with the other organizations relative to the three-year driving requirement. In their opposition to the requirement, the IBT cites the absence of waivers in some States that would exclude many drivers. The IBT also claims that it is not easy for drivers to obtain the required experience even in States with waiver programs because there are significantly fewer jobs in intrastate operation. They also point to the unfairness of experienced interstate drivers losing their CDL when newly diagnosed with ITDM.

The IBT is also concerned about the requirement that a CDL applicant have a safe driving record. It states that the requirement bears no relation to the applicant's medical condition and that this goes too far even in trying to ensure safety. It is most concerned about the requirement that a driving record could prevent the applicant from obtaining an exemption based on the applicant's accident involvement for which the driver "contributed to the cause." The IBT believes this standard is too broad and subjective.

The IBT also believes that rulemaking rather than an exemption program would better serve the process of granting CDLs to insulin-using diabetics. It sees little benefit in the exemption process of publishing an application in the **Federal Register** and requesting comments on the applicants' diabetic conditions. The IBT states that it understands that rulemaking can be a lengthy process and encourages the FMCSA to proceed with the exemption program while continuing to work on the more permanent solution through a change in the regulations.

The Owner-Operator Independent Drivers Association, Inc. (OOIDA) generally supports and welcomes the changes proposed by the FMCSA in the exemption program. Based on reports from its membership, OOIDA believes that a number of drivers with ITDM can safely operate CMVs in interstate commerce. OOIDA believes that FMCSA's proposed program has a number of steps that will ensure that no increased safety risks will be present. However, OOIDA is concerned about the three-year driving requirement, and believes that it runs counter to the proposal to require an activity currently prohibited in interstate commerce. It believes that the requirement limits access to the CDL program because there are few intrastate driving opportunities. OOIDA is further concerned about experienced drivers who would be using insulin, but choose not to do so because they will lose their CDLs. While the proposed exemption program may help lessen this problem, the three-year requirement places them in a difficult economic and health position.

The National Private Truck Council (NPTC) agrees with the FMCSA that a blanket prohibition on the operation of CMVs by individuals with ITDM is unwarranted and understands the agency's concerns relative to the safe performance of drivers with this condition. The NPTC, however, believes that the protocol is so burdensome that it will discourage participation in the program. The most onerous provision in the program, according to the NPTC, is the requirement for three years of CMV driving experience with the diabetic condition. They believe that the requirement is unnecessary from a safety standpoint, and presents an excessive burden on applicants to the program.

The American Trucking Associations, Inc. (ATA) supports FMCSA's proposed exemption program. ATA recognizes the advances made in the treatment of ITDM, the advances in the treatment of diabetes related heart disease, and the success of the agency's earlier diabetes waiver program. ATA's support is given if the proposed exemption program contains specific components related to screening, safe driving experience, medical history and examinations, guidelines, and monitoring.

The American Optometric Association (AOA), while supporting the proposal, takes exception with the omission of optometrists from the examination requirements in the application process. The AOA states that this omission is inconsistent with all existing Federal guidelines on the matter in addition to those put forth by the AOA, the National Committee on Quality Assurance, and the recommendations of the agency's medical panel member Edward S. Horton, M.D. Moreover, the AOA argues that the omission of optometrists implies that they are not able to monitor proliferative diabetic retinopathy. The AOA states that this is not true because studies indicate that optometrists can detect non-proliferative and proliferative retinopathy, as well as general ophthalmologists. The AOA clinical guidelines for the optometric care of diabetic patients is identical to the procedure used by ophthalmologists to detect proliferative diabetic retinopathy. Finally, the AOA argues that it would be inconsistent for the agency to include optometrists in the annual medical examination for diabetics in 49 CFR 391.64, and then exclude them in the proposed exemption process.

The Oregon Department of Transportation and the Illinois State Police both endorse the proposed exemption program. Oregon has extensive experience in issuing intrastate waivers to insulin-using diabetic CMV drivers based on stringent medical requirements. Oregon maintains crash data for intrastate commercial operations and had found no accidents related to complications from diabetes. Likewise, the State of Illinois currently allows diabetic drivers under its grandfather provisions and has no data to indicate ITDM drivers are a greater safety risk than other drivers. The Illinois State Police takes no exception to the proposed exemption program if there is strict oversight and careful scrutiny of each applicant.

The State of Delaware also supports the proposed exemption program since it has had a similar program in effect for 15 years. Delaware states that it has no indication that the program has reduced highway safety. However, the State believes that the agency proposal is overly complex. It points specifically to the publication of individual exemptions in the **Federal Register** for comment, the decision period of up to six months, the annual physician report, and the quarterly specialist review. It suggests a reduction in these requirements.

FMCSA's Response

The comments about the requirement for three years of driving experience with the ITDM condition are understandable. It does place a constraint on some ITDM drivers who want to operate a CMV in interstate commerce. However, under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the diabetes standard only if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. FMCSA believes that thorough screening of exemption applicants, and periodic monitoring of their safety performance, are the most

practical and effective ways to ensure the diabetes exemption program satisfies the statutory requirement achieving a level of safety equivalent to, or greater than, the level of safety obtained by complying with the safety regulation. FMCSA believes that the three-year requirement is crucial to this screening and monitoring protocol until data supports a different threshold. The three-year requirement provides sufficient time to expose anomalies in driving records that enhance predictability of future driving performance. It also allows the driver to develop a routine for managing his or her diabetic condition and establish a driving record demonstrating those adaptive skills.

FMCSA based the three-year driving experience requirement on the best available scientific evidence. The previous work the agency performed under its diabetes waiver program in the mid-1990s supports the three-year requirement. Drivers in that program, who had three years of experience while using insulin, had accident rates lower than the national rate. The driving performance of those who met the three-year requirement and other program requirements was analyzed relative to 1993 through 1996 large truck national accident rates found in the National Highway Traffic Safety Administration's General Estimates System. The accident rate of the waiver group with over 9 million miles of driving exposure was 1.960 accidents per million miles versus a national accident rate of 2.272 for the same period.

On August 24, 1994, the agency convened a meeting to conduct a review of the vision waiver program. The diabetes waiver program used the same three-year requirement as the vision program. Agency officials and a variety of researchers in highway safety and vision attended the meeting. (See the Final Descriptive Report "Qualification of Drivers—Vision, Diabetes, Hearing and Epilepsy;" FHWA; DTFH61–92–Z–00158, May 30, 1997). The group discussed both the formation of the waiver program and the design of the associated study. Relative to the design of the waiver program and the enrollment of drivers, it was decided that the program was well conceived within the context of congressional mandate expressed in the Motor Carrier Safety Act of 1984. The group determined that the conditions developed for screening and enrolling drivers into the waiver program were appropriate. To qualify for a vision waiver, a driver had to have an extremely safe driving record for three full years before applying to the program. The group agreed based on the safety literature that the best predictor of future driving performance is past performance. As a result, the group concluded that the enrolled drivers would be as safe in the waiver program as they were before the program.

Because the FMCSA is required to develop programs that are as safe as or safer than the prevailing norm, the agency believes this is compelling evidence to require the three-year driving experience requirement in its diabetes exemption program. However, the agency will revisit the issue in the future. FMCSA will examine how reducing the three-year experience requirement can be accomplished while satisfying the statutory requirement under 49 U.S.C. 31315 and 31136(e).

FMCSA believes that its medical advisory panel recommendation that persons could be qualified to drive a CMV, after a one-or two-month period of adjustment to insulin use, does not take into account the complex demands of operating a large vehicle in interstate commerce. Diabetes is a chronic disease requiring constant control and monitoring. CMV drivers, however, are frequently required to work long hours and travel significant distances, often requiring overnight stays away from home. Because of economic pressures to arrive at a delivery site on schedule, drivers may often have difficulty maintaining a regular diet, exercise, and the blood sugar monitoring patterns necessary to manage their diabetes properly. Failure to manage diabetes properly significantly increases the likelihood of an adverse event, such as loss of consciousness while driving due to hypoglycemia (low levels of glucose in the blood). Advances in the medical treatment of diabetes do not equal compliance. There is a strong behavioral component in managing diabetes.

With respect to comments urging FMCSA to change the regulations on ITDM and CMV operation, FMCSA does not believe there is evidence to support such a change. In the TEA–21 Report to Congress conducted for this program, the FMCSA could find no precedence for regulatory change for a condition like ITDM. ITDM is a chronic health problem.

Diabetes is a condition that is potentially quite labile, even if an individual demonstrates good control of blood glucose levels at a point in time. The expert medical panel convened for the TEA–21 Report to Congress agreed that diabetics have special medical problems. For this reason, they concurred that diabetics should be examined by endocrinologists who are experienced with the condition. In relation to monitoring the ITDM driver's management of the condition, the panel suggested, among other things, that quarterly reporting of glucose monitoring data would be a good method of determining whether the driver is following the monitoring guidelines. The panel also agreed that these drivers should receive ongoing education in hypoglycemia awareness, and that this education should be monitored on an annual basis. For this reason, FMCSA believes the evidence supports the requirement that a responsible, qualified driver should undergo periodic examinations. The need for periodic examinations is underscored by the possible occurrence of diabetic complications such as retinal disease and peripheral neuropathy.

FMCSA believes that the periodic examinations, and the monitoring of the examinations, both assure the health of the individual and the safety of the public at large. Consequently, FMCSA has determined that the prefered context in which to guarantee such screening and monitoring is in an exemption program.

IBT was concerned about the driver record requirement that prevents the applicant from obtaining an exemption because of involvement in an accident for which the driver "contributed to the cause." IBT believes this type of assessment is too subjective. However, FMCSA's analysis of the driving record of each individual driver is not subjective. The analysis of the accident report seeks to determine whether the reporting police officer has issued a citation indicating that the driver is at fault or has contributed to the cause of the accident. The analysis also examines the accident report to determine whether there is evidence of driving behavior that could indicate a hypoglycemic event, such as crossing the median, swerving, or driving off the road. In cases where a diabetic driver receives medical attention, reports on glucose levels can be obtained.

The AOA took exception to the exclusion of optometrists from the proposed exemption process. The protocols that were in the proposed program have been revised, today's final disposition notice allows applicants to obtain and submit a signed statement from an ophthalmologist or optometrist, indicating that they have been examined, the applicant does not have diabetic retinopathy, and meets the vision standard at 49 CFR 391.41(b)(10). However, if the driver has any evidence of diabetic retinopathy, FMCSA requires an examination by an ophthalmologist to offer additional expert opinion regarding stability and risk of

progression of the condition. This change covers the screening process in both the initial application and the annual examination.

Comments In Opposition

The Insurance Institute for Highway Safety (IIHS) opposes FMCSA's proposal to issue exemptions to certain insulin-using drivers of CMVs. In voicing its opposition, IIHS resubmitted the various comments it had submitted to the agency between 1991 through 1996 concerning the implementation and disposition of the diabetes waiver program. In those comments, IIHS raised concerns that: (1) Diabetes Mellitus is a risk factor for motor vehicle crash involvement, (2) severe hypoglycemia and hypoglycemia unawareness are a common consequence of insulin therapy and of tight control of blood glucose levels in particular, (3) no studies support the protocols in a program that would issue exemptions, (4) compliance by drivers and employers to program requirements is unlikely, (5) studies designed to investigate the safety of issuing waivers or exemptions would produce no scientifically valid conclusions, and (6) the research design used to investigate safety in an earlier waiver program was inadequate. The issues raised in these previous comments have been addressed at length in 58 FR 40690 (July 29, 1993) (FHWA Docket No. MC–87–17) and 61 FR 13337 (March 26,1996) (FHWA Docket No. MC–96–2). FMCSA will not address these points again here, but refer interested parties to the earlier discussions. The IIHS has, however, raised a new issue and this is discussed in the following paragraph.

The IIHS stated that the agency has ignored the concern that the working conditions of interstate truck drivers are not compatible with the medical needs of people with insulin-treated diabetes. IIHS states that long and irregular work hours, night responsibilities, variations in the amount of exercise, and variations in the amount of food consumed are integral aspects of long-haul trucking. These factors, IIHS argues, make it difficult to calibrate insulin doses to maintain blood glucose at healthy levels.

FMSCA is aware that operating a CMV in interstate commerce is an arduous occupation. The agency designed the screening criteria in the exemption program to identify those insulin-using diabetics, who will have a high degree of responsibility in managing the condition while driving in interstate commerce. The agency bases this assertion on the experience obtained in the above referenced diabetes waiver program. The evidence generated by that program, which had the same screening criteria as that proposed for the exemption program, demonstrated that responsible insulin-using diabetics can safely operate a CMV in interstate commerce. The evidence obtained in that program represents over 9 million miles of CMV operation by individuals who were successfully screened by the criteria. In addition, FMCSA will require that an applicant for the diabetes exemption program be educated in diabetes and its management, and have demonstrated a willingness to properly monitor and manage his or her diabetes. Finally, not all operations in interstate commerce are long-haul.

The Advocates for Highway Safety (AHAS) stated strong opposition to the FMCSA proposal to issue exemptions to selected insulin-using diabetic CMV operators. In stating its opposition, AHAS claims that the proposed exemption program lacks a sufficient scientific foundation. In particular, AHAS argues that FMCSA's assertion that the ITDM exemption is scientifically sound and based on good medical information is conclusionary and not an accurate representation of the factual record. AHAS states that FMCSA is reaching a conclusion that selectively highlights the most salient pieces of evidence in the TEA–21 Report to Congress, to support the implementation of an ITDM exemption program. In making this claim, AHAS points to FMCSA's reference to two studies in the TEA–21 Report to Congress ("The Diabetes Control and Complications Trial" (1995) and the "United Kingdom Prospective Diabetes Study" (1998)), as the most extensive investigation of insulin therapy to date.

In the presentation of these studies, AHAS argues that FMCSA claims the studies show positive results for reduction in blood glucose levels and microvascular complications, and that the agency also reports results that show significantly higher rates of hypoglycemia due to the use of insulin. AHAS states that the agency's notice of intent did not explain how these results support the agency's determination that an exemption program for ITDM will have a safety level that is equal to or better than the prevailing level.

FMCSA is acutely aware of the threat presented by tight control of blood glucose levels and hypoglycemia. It was not the agency's intent to use the results of those studies to support the determination of safety. Rather, the intent was to identify a potential threat that had to be accounted for in the protocols of the proposed exemption program. To this end, the expert medical panel addressed this issue in the FMCSA's TEA–21 Report to Congress. The panel, while clearly recognizing hypoglycemia as a threat, also thought awareness was a bigger problem. It noted that there was a correlation between hypoglycemia awareness and recurrent, severe hypoglycemic episodes, as shown in the Diabetes Control and Complications Trial data. The panel stated that individuals who are prone to severe hypoglycemia should not drive. The panel agreed that severe hypoglycemia in the past year or several episodes in the past five years can predict the future. The panel also agreed that training in the awareness of hypoglycemia is necessary for drivers of CMVs. Because of this, awareness education is a requirement in the protocols of the exemption program announced today.

AHAS points to a 1999 study (Clarke, W. *et al.* "Hypoglycemia and the Decision to Drive a Motor Vehicle by Persons with Diabetes." JAMA, August 1999, Vol. 282, No. 8, 750–754) to raise questions about an exemption program. According to AHAS, the study found that even when individuals accurately estimated low blood sugars levels, a significant proportion still decided to drive. However, the researchers in this study also said that these findings did not mean ITDM individuals should be prohibited from driving. They said it was reasonable for individuals to measure their blood sugar levels before driving and take steps to raise potentially low levels. The researchers said that drivers with ITDM should always carry rapid-acting glucose when they drive. Moreover, these researchers claim that individuals with ITDM could benefit from awareness training. In fact, in a subsequent study by these same researchers, the results showed that awareness training improved the detection of hypoglycemia and improved judgment for knowing when to raise low blood glucose, or to lower elevated blood glucose, and for knowing when not to drive while hypoglycemia is a threat (Cox, D. J. *et al.* "Blood Glucose Awareness Training; Long-Term Benefits, Diabetic Care, 2001, 24:637–642). Because of the concerns about hypoglycemia, FMCSA has incorporated all of the suggested interventions in the protocols of today's exemption program. The California Department of Motor Vehicles also described the same article as AHAS raising the same concerns. There is an additional response to their comments later in this discussion.

AHAS also took exception to FMCSA's interpretation of four recent risk studies presented in the TEA–21 Report to Congress and the July 2001 notice of intent. It first addressed two Canadian studies:

1. Dionne, G. *et al.* "Medical Conditions, Risk Exposure, and Truck Drivers' Accidents: An Analysis with Count Data Regression Models," Accident and Prevention, 27(3): 295–305 (1995); and

2. Dionne G. *et al.* "Analysis of the Economic Impact of Medical and Optometric Driving Standards on Costs Incurred By Trucking Firms and on the Social Costs of Traffic Accidents" in Dionne, G. and Laberge-Nadeau, C. (Eds.) Automobile Insurance: Road Safety, New Drivers, Risk Insurance Fraud and Regulation, Kluwer Academic Publishers, Boston (1999).

AHAS states that these studies do not offer any evidence in support of an exemption program.

The first of these studies (1995) examined truck drivers in two licensure classes. One class was for the operation of large combination trucks, while the other included truck drivers holding all other classes of license that were mostly holders of permits for straight trucks. The risk analysis in each class considered diabetic drivers versus all other drivers. The diabetic drivers of large combination trucks had an accident rate that was not significant, while the diabetic drivers of small trucks had a significantly higher accident rate. The analysis did not consider the use of insulin by the diabetic drivers. Relative to this, AHAS alleges that FMCSA's notice of intent does not state to the public that although the researchers were actually at a loss to explain the results, they believed that the results could be due to the use of insulin since the diabetic drivers of large trucks had fewer individuals treated in this manner than those with other classes of license.

For the second study, AHAS states that the results FMCSA relies on were not the focus of the study nor its primary consideration, and that the primary focus of the study was estimation of cost per accident. FMCSA reported a secondary finding, according to AHAS, in that the data showed that drivers with diabetes did not have significantly more severe accidents than those in the comparison groups. Severity was measured as the total number of individuals injured or killed in an accident. AHAS points out that the work in the second study was based on the data used in the first and was a continuation of that study. It also states that the use of insulin was not considered in the second study.

FMCSA believes the AHAS claim that the studies do not contribute to the finding that ITDM drivers have an acceptable level of risk is unfounded. Aside from the finding that diabetic drivers of small truck CMVs had a significantly higher accident rate, none of the other findings refute the position that diabetics could operate CMVs in interstate commerce with a level of safety that is the same or better than the prevailing standard. While insulin was not taken into consideration in the analyses, the studies do nonetheless offer evidence in support of the exemption program by virtue of not contradicting the conceptual design. Contradiction and refutation are acceptable approaches in science to revise a stated theory. None of the work contradicts the determination that diabetic drivers have an acceptable level of risk. In performing risk assessments through observational studies, it is necessary to examine all of the evidence to determine the direction the preponderance of evidence supports.

After the FMCSA issued the notice of intent, there has been an additional contribution to the collection of evidence on this issue. Some of the same Canadian researchers who conducted the previous studies used the same insurance database to conduct a third study (Laberge-Nadeau, C. *et al.* "Impact of Diabetes on Crash Risks of Truck-Permit Holders and Commercial Drivers." Diabetes Care, Vol. 23(5): 612–617, 2000). These data were augmented with health status data from a public health insurer where insulin use was identified, along with the existence of complications due to diabetes. Portions of the database were analyzed with the new information in a new research design where diabetic driver permit holders were group-matched by age to a random sample of healthy permit-holders. Risk was analyzed relative to type of permit holder (large combination trucks and straight trucks), use of insulin, and diabetic complications. Relative to both classes of trucks, insulin-using diabetics showed no significant risk regardless of complication status. The only group of diabetics to show significant risk was the permit holders for straight trucks who did not use insulin and were without complications. To explain the results concerning insulin use and complications, the researchers stated that employers hiring drivers for large combination trucks use higher medical standards presumably for insulin-using diabetics and other drivers. This is what the protocols in the FMCSA diabetes exemption program are designed to do.

Many of the points argued by AHAS in relation to their criticism of the research design in the waiver program and their rejection of the legal basis for the exemption program, have been previously presented and have been addressed at length in 58 FR 40690 (July 29, 1993) (FHWA Docket No. MC–87–17), 61 FR 13337 (March 26, 1996) (FHWA Docket No. MC–96–2), 63 FR 67601 (December 8, 1998) (DMS Docket No. FMCSA–1998–4145) and 64 FR 51568 (September 23, 1999) (DMS Docket No. FMCSA–1999–5578). FMCSA will not address the points again here. Interested parties are referred to the earlier discussions.

In its comments to this notice, AHAS also raises some new issues. In particular, it has some concerns relative to the most recent risk study conducted by the agency ("A Study of the Risk Associated with the Operation of Commercial Motor Vehicles by Drivers with Insulin-Treated Diabetes Mellitus," FHWA, 1999). AHAS states that the comparisons made in the study could be suspect because the comparison group was composed of interstate drivers, while the diabetes group contained mostly intrastate drivers. While it is true that the diabetes group did primarily contain intrastate drivers, the comparison group of CDL holders also had intrastate drivers, albeit in smaller proportion. This disparity in representation by the two groups did contribute to the range of CMV operation (intrastate versus interstate) being identified as a confounding factor in the study. As a result, FMCSA used the factor to adjust the initial results. Observational study research literature supports this type of adjustment. Had this factor and others been ignored in the analyses, the unadjusted results would have been biased and detracted from the internal validity of the study.

This aspect of FMCSA's response also addresses another AHAS concern involving the nature of the unadjusted study results. AHAS correctly pointed out that the initial (unadjusted) results show that the diabetes group had a higher crash rate than the comparison group. However, since this study was observational in nature, as are almost all practical risk investigations, it is necessary to assess the factors that could introduce bias into the results and invalidate the findings. FMCSA did this and found several factors, including intrastate versus interstate operation and marital status. The other source of potential bias that FMCSA found was over-dispersion in the distribution of accidents (a larger than expected

variation in the number of accidents). Both of these sources of bias tend to produce false positive (significant) results if not subjected to adjustment. FMCSA analyzed the two sources of potential bias with adjustment procedures, both separately and jointly, and found the results were consistent across all analyses showing no significant difference in risk between the two groups. While the AHAS seemed to characterize this multifaceted approach to analysis as a contrived strategy, it is the approach which is required in an observational study (see U.S. General Accounting Office, "Cross Design Synthesis; A New Strategy for Medical Effectiveness Research," March 1992 GAO/PEMD–92–18). It is the consistent results across the varied adjustment procedures that gives the FMCSA confidence that bias was present in the initial (unadjusted) results and was eliminated in the ensuing analysis.

AHAS also claims that the Federal Aviation Administration (FAA) exemption program for ITDM individuals is an inappropriate model for FMCSA's program for the operation of CMVs. It stated that the FAA program issues exemptions only for third-class airman medical certificates and not for commercial pilots. The AHAS is correct in their assessment of the FAA program; however, the FMCSA had no intention of using the FAA's program as a model for the FMCSA program with respect to type of target population. FMCSA used the FAA program as evidence that it could develop a process of medical examination and screening to issue exemptions to individuals with ITDM. To this end, FMCSA used the FAA process as part of the template for development of the proposed medical examination and screening protocol. That is why the protocol is analogous to that of the FAA.

In its opposition, the California Department of Motor Vehicles (California) states that the proposed FMCSA program will unnecessarily increase the risk to the public and the drivers receiving the exemptions. While California regulatory guidelines allow some experienced ITDM individuals to operate intrastate, it believes that the FMCSA exemption program could greatly expand the number of these drivers who operate interstate and thereby increase risk. California limits the number of exemptions because of the risk of hypoglycemia. It states blood sugar is affected by almost everything including exercise and stress. This in combination with arduous work conditions associated with interstate operation makes it difficult for drivers with ITDM to control their blood sugar.

California does not believe that the proposed FMCSA screening procedures adequately address the issue of hypoglycemia. The requirement for a complete medical examination, by a board-certified or eligible endocrinologist with a statement of familiarity with the applicant's five-year medical history, will not preclude an ITDM driver from experiencing a hypoglycemia episode.

FMCSA believes it has addressed this type of circumstance in the exemption program's screening protocol. Specifically, the criteria state that the applicant must have had no recurrent (two or more) hypoglycemia reactions resulting in a loss of consciousness or seizure within the past five years. A period of one year of demonstrated stability is required following the first episode of hypoglycemia. Moreover, the criteria require that the applicant does not have recurrent hypoglycemia reactions requiring the assistance of another person and does not have reactions resulting in impaired cognitive function that occurred without warning symptoms within the past five years. In addition, as a test of these responses under arduous working conditions, the screening criteria also require three years of CMV operation with ITDM. The same screening criteria were used in the agency's previous diabetes waiver program, and in the three years of that program, there were no reported cases of impairment due to episodes of hypoglycemia. Moreover, screening is stricter now. In place of a single screening episode under the previous program, the driver must reapply for an exemption every two years, or sooner if the exemption was issued for a shorter period. Screening is performed at each reapplication. In addition, screening is performed annually by an endocrinologist, as well as the medical examiner performing the annual examination and certification required under 49 CFR 391.43.

In another issue of concern for California, it points out that the protocol proposed in the FMCSA program requires the exempted drivers to check their blood sugar levels every two to four hours. Because of this and other measures needed to control blood sugar, California believes that employers would not let the drivers take the time necessary to perform all of these activities. FMCSA, based on its previous experience, is not aware of any evidence to suggest that employers would not allow drivers to take the time needed to check their blood sugar levels.

California points to a 1999 study as another basis for its opposition (Clark, W. L. *et al.* "Hypoglycemia and the Decision to Drive a Motor Vehicle by Persons with Diabetes." JAMA, August 1999, Vol. 282, No. 8, 750–754). An objective of the study was to examine an ITDM individual's decision to drive during the individual's daily routine, based on perception of blood sugar levels compared to actual levels. The researchers found that significant numbers of subjects did not correctly estimate how low their blood sugar was, and therefore decided to drive. The findings also showed that even when individuals accurately estimated low blood sugar levels, a significant portion still decided to drive. California, however, does not indicate the researchers stated that ITDM individuals should not be permitted to drive. California did say the data suggested that individuals with ITDM need to be cautious before driving a motor vehicle. The researchers said that the suggestion that individuals measure their blood sugar levels, and raise potentially low levels before driving, did not seem unreasonable. They said that drivers with diabetes should always carry rapid-acting glucose with them when they drive. Moreover, the researchers claim that individuals with ITDM could benefit from awareness training to help detect blood sugar levels. They stated that this type of training has been shown to improve the detection abilities of even those with reduced awareness of hypoglycemia, and that the improvement has been sustained for at least a year.

The protocol being adopted in this final disposition is very consistent with the conclusions of these researchers. In the screening component the applicant must present a signed statement prepared by the examining endocrinologist indicating that the applicant has been educated in diabetes and its management, thoroughly informed of and understands the procedures which must be followed to monitor and manage his/her diabetes, and what procedures should be followed if complications arise. In addition, the protocol requires, in the guideline component, that the qualified applicant have a supply of rapidly absorbable glucose to be used as necessary. The protocol also requires, in the monitoring component, that the qualified driver provide annual documentation by a specialist of ongoing education in diabetes management and hypoglycemia awareness. While Clark W. L., *et al.* was valuable in identifying the potential

problems with hypoglycemia awareness, it also suggested methods for intervention. The suggestions of the researchers concerning how they believe the problem should be addressed are clearly contained in the protocols of the exemption program.

Conclusion

After analyzing the comments to the notice of intent, the FMCSA is convinced that the proposed program is responsive to the need and requirements of the various interested individuals and organizations. The comments raised a number of valid issues of concern. The agency believes that it has successfully addressed those concerns in the development of this program. The public's concerns must be addressed because they mainly focus on safety issues. This is the reason there is a three-year driving experience requirement in a part of the exemption program, in addition to medical screening, guidance, and monitoring. The three-year requirement of the program provides certainty to public safety, and also protects ITDM drivers. The ability to operate CMVs safely for three years clearly helps to indicate that applicants can perform the arduous work required in this type of job category. While we believe this requirement to be essential, all of the proposed components are required for a safe and practicable program.

Nonetheless, FMCSA recognizes that the three-year requirement will restrict the number of drivers eligible for an exemption. The agency has no desire to make the program more stringent than necessary and will therefore leave this docket open indefinitely in order to provide a means for the submission of additional views and data on the need for three years of driving experience. FMCSA is particularly interested in obtaining statistical data on the accident rates of ITDM drivers before and after they begin a course of insulin treatment. This analysis depends on knowing, among other things: (1) The number of miles driven and accidents experienced by the driver before beginning insulin treatment, thus providing a baseline accident rate; (2) the length of time an ITDM driver has taken insulin before resuming a driving career; (3) the date the ITDM driver resumed driving and the interval to the first (and any subsequent) accident; and (4) the number of miles driven by an ITDM driver, preferably on a monthly and annual basis. Although FMCSA will not ignore any relevant information that may be submitted, the statutory standard for an exemption requires the agency to focus its attention on the question whether ITDM drivers with less experience driving CMVs can achieve accident rates comparable to those of ITDM drivers who have at least three years of experience driving CMVs prior to applying for an exemption. This is an issue that can be resolved only by more and better data. FMCSA is also interested in learning which segments of the motor carrier industry have work conditions most (or least) conducive to the self-monitoring routines that ITDM drivers must maintain in order to control their blood sugar level.

For the reasons above, the FMCSA has determined that the most desirable structure to support these components is an exemption program. Therefore, in accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA will implement a program that will issue exemptions to qualified ITDM drivers. Each exemption will be valid for up to two years and require renewal at the end of that period. Qualified ITDM drivers may request a diabetes exemption from the 49 CFR 391.41(b)(3) regulation by sending an exemption request on or after September 22, 2003, to the Diabetes Exemption Program at the address in the **ADDRESSES** section above.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. An analysis of this proposal was made by the FMCSA, and it has determined that this Notice of Final Disposition would add an element, *i.e.*, diabetes exemption program, to a currently-approved information collection (OMB Approval No. 2126–0006), titled Medical Qualifications Requirements.

The FMCSA estimates that approximately 700 applications for exemption could be filed annually, and that it would take an average of 90 minutes to complete an application. The addition of the diabetes exemption program to this existing information collection would increase the annual burden by 1,050 hours (700 × 90 minutes / 60 minutes).

Interested parties are invited to send comments regarding any aspect of this information collection requirement, including, but not limited to: (1) Whether the collection of information is necessary for the performance of the functions of the FMCSA, including whether the information has practical utility, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the collected information, and (4) ways to minimize the collection burden without reducing the quality of the information collected.

You may submit comments on this *information collection burden* directly to OMB. The OMB must receive your comments by November 3, 2003. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Authority: 49 U.S.C. 322, 31136 and 31315; and 49 CFR 1.73.

Issued on: August 27, 2003.

Annette M. Sandberg,

Administrator.

[FR Doc. 03–22409 Filed 9–2–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement for the Bi-County Transitway Project

AGENCY: Federal Transit Administration (FTA), U.S. Department of Transportation.

ACTION: Notice of Intent To Prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and the Maryland Transit Administration (MTA) intend to prepare an Environmental Impact Statement (EIS) in accordance to the National Environmental Policy Act (NEPA) of 1969, as amended, on the proposed Bi-County Transitway Project in Montgomery and Prince George's Counties, Maryland, which are in the metropolitan area of Washington, DC. The corridor extends 14 miles from the western branch of the Metrorail Red Line in Bethesda to the New Carrollton Metrorail Station. The Bi-County Transitway will provide high-capacity transit along the corridor. As a result of rapid growth in travel and development, the Bethesda to New Carrollton study area is facing numerous transportation challenges. The growing service sector job base has increased the vitally important need for efficient transit. The transit investment will compliment and support ongoing revitalization efforts currently underway in the study area.

This project includes the alignment previously known as the Georgetown Branch Transitway/Trail (Bethesda to Silver Spring). A notice of intent to prepare an EIS for the Georgetown Branch Transitway and Trail was

published in the **Federal Register** on September 21, 1994. Subsequently, the Georgetown Branch became known as the "Western" segment of the Purple Line. The current Bi-County Transitway Project now also includes what was known as the Purple Line "East", which extended from Silver Spring to New Carrollton. The Bi-County Transitway study area is now defined as all of the earlier Purple Line project area between Bethesda and New Carrollton.

The EIS will address the need to improve transit access, reduce travel times and improve connectivity in response to regional growth, traffic congestion, and land use plans for the area. The EIS will examine potential impacts and benefits to the social, cultural, economic, built and natural environment. The EIS will develop and evaluate alternatives that are cost efficient and beneficial. Improvements that enhance connections to existing transit systems, increase access to transit and to economic development areas, and minimize adverse impacts will be identified. The EIS will evaluate the No-Build Alternative, Transportation Systems Management (TSM) Alternative, Build Alternatives for Bus-Rapid Transit (BRT) and Light Rail Transit (LRT), and any additional alternatives generated by the scoping process. In addition to mode, the Build Alternative will consider alignments, grade options, station locations, and facilities such as maintenance and storage yard, inspection and Operation Control Center (OCC), traction power substations and tiebreaker stations.

Scoping Meetings: Public scoping for the Bi-County Transitway EIS will be held on: September 16 at the Holiday Inn-Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910; September 17 at the Bethesda-Chevy Chase High School, 4301 East West Highway, Bethesda, Maryland 20615; and September 24 at College Park City Hall, 4500 Knox Road, College Park, Maryland 20740. All scoping meetings will be from 4 p.m. to 8 p.m., and will be carried out in an open house format.

Details on meetings dates, project updates, times and locations will be announced on the project Web site *www.Bi-CountyTransitway.com* and in a project newsletter. Comments and input may be provided at the scoping meetings. Information will be available in English and in Spanish and will be published in the following newspapers: *The Washington Post, The Gazette, The Washington City Paper, The Washington Hispanic, The Washington Times, The Takoma Voice,* and *The Washington Afro-American Newspaper.*

ADDRESSES: Written comments on the project scope should be sent by October 31, 2003 to Michael D. Madden, Project Manager, Bi-County Transitway, Maryland Transit Administration, Office of Planning, 9th Floor, 6 St. Paul Street, Baltimore, Maryland 21202. For more information about this project or special assistance needs for the scoping meetings, please contact Michael D. Madden at (410) 767–3694.

FOR FURTHER INFORMATION CONTACT: Gail McFadden-Roberts, AICP, Community Planner, Federal Transit Administration, Region III, Office of Planning and Program Development, 1760 Market Street, Philadelphia, Pennsylvania 19103–4124, (215) 656–7100 (voice).

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and MTA invite all interested individuals and organizations, and Federal, State, regional, and local agencies to provide comments on the scope of the project. The goals of the Bi-County Transitway are to: Provide improved suburb to suburb transit alternatives and enhanced access to key civic, educational and employment activity centers; improve system connectivity and increase transit usage by providing an essential link to the Metrorail radial lines, as well as to other rail or bus services in Montgomery and Prince George's County; optimize public investment by providing, at a reasonable cost, efficient, safe, and reliable transit service, while minimizing environmental impacts; improve regional mobility by increasing the speed, reliability, and access to transit services in Montgomery and Prince George's Counties; support economic development and revitalization through improved connections to central business districts and activity centers; and support regional clean air quality goals with a cost effective transit alternative. Comments should focus on the alternatives for analysis and environmental issues, rather than on a preference for a particular alternative.

Public meetings and hearings, newsletters, project Web site and other outreach methods and forums will be used to inform the public of the progress of the project and to solicit input from the community on the proposed project as it develops. Outreach activities will include meetings with local officials, community leaders, local stakeholders, and the general public throughout the area. Public attendance at meetings will be sought through mailings, notices, advertisements, press releases and other efforts.

Additional agency coordination will be carried out through the Project Team, which will meet throughout the study process to address key issues. Members of the Project Team will include representatives of Montgomery County, Prince George's County, Washington Metropolitan Area Transit Authority, Maryland-National Capital Park and Planning Commission, and the State Highway Administration.

II. Description of Corridor and Transportation Needs

The project is located in Montgomery and Prince George's Counties, north of Washington, DC. The project area includes established communities characterized by medium-density residential uses, with pockets of high-density development (Bethesda, Silver Spring, Langley Park/Takoma Park, College Park, and New Carrollton), and the University of Maryland. The earliest development in the area corresponded with the construction of electric railways that radiated from the District of Columbia and facilitated movement into outlying areas. The primary roadways centered on downtown Washington, DC, and mainly traversed the corridor north to south. These arterials include Wisconsin Avenue (MD 355), Connecticut Avenue (MD 185), Georgia Avenue (MD 97), New Hampshire Avenue (MD 650), and Baltimore Avenue (US 1). The area has limited infrastructure for east-west travel, with two primary routes consisting of East-West Highway (MD 410) and University Boulevard (MD 193).

This portion of the Metropolitan Washington Region experienced rapid suburban development following World War II, and now contains mature neighborhoods accompanied by the development of supportive commercial activity centers along the primary roadways with the majority of housing stock constructed prior to 1960. Many of the commercial activity centers have access, parking, and pedestrian circulation deficiencies. The service employment sector is very strong throughout the corridor. In addition, professional and office employment are located in clusters near Metro stations in Bethesda, Silver Spring and, to a lesser extent, College Park and New Carrollton.

Numerous communities along the corridor contain populations that rely on transit to reach employment and activity centers. New transit services in the corridor have been limited to bus service, which is subject to roadway

congestion. To date, there has been no investment in fixed guideway systems or in new highways to facilitate commuting and links between the development centers along radial transportation routes that cross the corridor. The current east-west connections include bus transit and to a lesser degree, roadways. Commuters must use a north and south means to travel east-west. The area has limited infrastructure for east-west travel, with two primary routes consisting of East-West Highway (MD 410) and University Boulevard (MD 193), neither of which provides a direct connection between Silver Spring and New Carrollton. These routes are heavily congested during peak periods and increasingly unable to accommodate the traffic demands. The focus of the EIS will be to identify a preferred transit alternative that will reduce travel time, provide an alternative to traveling on congested roadways, and improve transit access to central business districts within the area while examining the socioeconomic, cultural and natural environmental considerations on a local and regional basis.

III. Alternatives

The alternatives proposed for evaluation include:

- A no-build alternative, which includes the current network plus all ongoing, programmed, and committed projects listed in the latest Transportation Improvement Program;
- A TSM alternative, which would include improving existing transit services such as additional bus service and routes, and which also serves as a baseline for evaluation against which all other alternatives may be compared for federal funding purposes (referred to as the FTA Future Baseline);
- Bus Rapid Transit alternatives; and
- Light rail alternatives.

Each build alternative will explore the construction of new transportation infrastructure, such as tracks, stations, and maintenance yards. Underground, surface and/or aerial design options may be developed for each of the build alternative alignments. Multi-modal alternatives will also be explored.

IV. Probable Effects

The FTA and MTA will evaluate all potential changes to the social, cultural, economic, built and natural environment, including land acquisition and displacements; land use, zoning, economic development; parklands; community disruption; aesthetics; historical and archaeological resources; traffic and parking; air quality; noise and vibration; water quality; wetlands; environmentally sensitive areas; endangered species; energy requirements and potential for conservation; hazardous waste; environmental justice; safety and security; and secondary and cumulative impacts. Key areas of environmental concern include areas of potential new construction (*e.g.*, structures, new transit stations, new track, *etc.*). Impacts will be evaluated for both the short-term construction period and for the long-term period of operation associated with each alternative. Measures to avoid, minimize and mitigate any significant adverse impacts will be identified.

V. Federal Transit Administration (FTA) Procedures

Previously, a Notice of Intent (NOI) was published in the **Federal Register** on September 21, 1994, which announced the preparation of an Environmental Impact Statement for the Georgetown Branch Transitway/Trail in Montgomery County, Maryland. The subsequent Draft Environment Impact Statement (DEIS) was completed in May 1996, and evaluated transportation improvements between the central business districts (CBDs) in Bethesda and Silver Spring, Maryland. The DEIS evaluated both a busway and light rail transit alternative in conjunction with a parallel hiker/biker trail. A Final Environmental Impact Statement was never produced for this study.

This NOI for the Bi-County Transitway Project extends the previous projects limits beyond Silver Spring to New Carrollton. An EIS will be prepared in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (as amended), as implemented by the Council of Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), Federal Transit Administration (FTA) regulations (23 CFR part 771), and the FTA Statewide Planning/Metropolitan Planning regulations (23 CFR part 450). These studies will comply with the requirements of the National Historical Preservation Act of 1966, as amended, section 4(f) of the 1966 U.S. Department of Transportation Act, the 1990 Clean Air Act Amendments, Executive Order 12898 on Environmental Justice, and other applicable rules, regulations, and guidance documents.

In addition, MTA intends to seek Section 5309 New Starts funding for the project. As provided in the FTA New Starts regulation (49 CFR part 611), New Starts funding requires the submission of certain specific information to FTA to support a request to initiate preliminary engineering, which is normally done in conjunction with the NEPA process.

Upon completion, the Draft EIS will be available for public and agency review and comment. Public hearings will be held. Based on the findings of the Draft EIS and the public and agency comments received, a preferred alternative will be selected that will be further detailed in the Final EIS.

Issued on: August 27, 2003.

Herman C. Shipman,

Acting Regional Administrator, Region III, Federal Transit Administration.

[FR Doc. 03–22371 Filed 9–2–03; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16031]

Notice of Receipt of Petition for Decision That Nonconforming 2001 and 2002 Mitsubishi Evolution VII, Left Hand Drive Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2001 and 2002 Mitsubishi Evolution VII, left hand drive (LHD) passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2001 and 2002 Mitsubishi Evolution VII LHD passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are capable of being readily altered to conform to the standards, and (2) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards.

DATES: The closing date for comments on the petition is October 3, 2003.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. Docket hours are from 9 a.m. to 5 p.m. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association,

business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Under 49 U.S.C. 30141(a)(1)(B), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards may also be granted admission into the United States, even if there is no substantially similar motor vehicle of the same model year originally manufactured for importation into and sale in United States, if the safety features of the vehicle comply with or are capable of being altered to comply with those standards based on destructive test information or other evidence that NHTSA decides is adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California ("G&K") (Registered Importer 90–007) has petitioned NHTSA to decide whether 2001 and 2002 Mitsubishi Evolution VII LHD passenger cars are eligible for importation into the United States. G&K believes that these vehicles are capable of being modified to meet all applicable Federal motor vehicle safety standards (FMVSS).

In its petition, G&K stated that nonconforming 2001 and 2002 Mitsubishi Evolution VII LHD passenger cars are substantially similar to both the U.S. version 2003 Mitsubishi Evolution VIII and the U.S. version 2001 and 2002 Mitsubishi Lancer 4 door sedan passenger cars. Because it is of a different model year, the 2003 Mitsubishi Evolution VIII cannot be regarded as substantially similar to the 2001 and 2002 Mitsubishi Evolution VII for import eligibility purposes. Moreover, while there may be similarities between the 2003 Mitsubishi Evolution VIII and the 2001 and 2002 Mitsubishi Lancer 4 door sedan vehicles that Mitsubishi has manufactured for importation into and sale in the United States NHTSA has decided that the latter vehicle cannot be categorized as "substantially similar" to the nonconforming 2001 and 2002 Mitsubishi Evolution VII LHD versions for the purpose of establishing import eligibility under section 30141(a)(1)(A). Therefore, we will construe G&K's petition as a petition pursuant to 49 U.S.C. 30141(a)(1)(B), seeking to establish import eligibility for the 2001–2002 Mitsubishi Evolution VII on the basis that it has safety features that comply with, or are capable of being modified to comply with, the FMVSS based on destructive test information or such other evidence that NHTSA decided is adequate.

G&K submitted information with its petition intended to demonstrate that non-U.S. certified 2001 and 2002 Mitsubishi Evolution VII LHD passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards and are capable of being readily altered to conform to all other standards to which they were not originally manufactured to conform.

Specifically, the petitioner claims that non-U.S. certified 2001 and 2002 Mitsubishi Evolution VII LHD passenger cars have safety features that comply with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, Standard No. 114 *Theft Protection*, 116 *Brake Fluid*, 118 *Power Window Systems*, 124 *Accelerator Control Systems*, 135 *Passenger Car Brake Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for Driver from Steering Control Systems*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 208 *Occupant Crash Protection*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of the word "Brake" for the international ECE warning symbol as the marking for the brake failure indicator lamp; (b) inspection of all vehicles and installation, on vehicles that are not already so equipped, of a U.S. model speedometer reading in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model front and rear side marker lights and reflector assemblies.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* inscription of the required warning statement on the face of the passenger side rearview mirror.

Standard No. 225 *Child Restraint Anchorage Systems:* installation of U.S.-model child restraint anchorage systems.

Standard No. 301 *Fuel System Integrity:* The petitioner stated that modification of fuel system is necessary to meet EPA emission requirements and that after these modifications the vehicle will still comply with this standard.

Standard No. 401 *Interior Trunk Release:* installation of U.S. model interior trunk release handle.

Petitioner states that the front and rear bumper on non-U.S. certified 2001 and 2002 Mitsubishi Evolution VII LHD passenger cars must be reinforced to meet the requirements of the Bumper Standard found in 49 CFR part 581.

The petitioner also states that inspection of all vehicles for compliance with the parts marking requirements of the Theft Prevention Standard in 49 CFR part 541 is necessary, and that required markings will be added to any covered parts that are not already so marked.

In addition, the petitioner states that a vehicle identification number (VIN) plate must be affixed to the vehicle so that it is readable from outside the

driver's windshield pillar to meet the requirements of 49 CFR part 565.

Lastly, the petitioner states that a certification label will be affixed to the driver's side doorjamb to meet the requirements of the vehicle certification regulations in 49 CFR part 567.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. Docket hours are from 9 a.m. to 5 p.m. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 27, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–22372 Filed 9–2–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Alteration of Privacy Act Systems of Records Notice

AGENCY: Internal Revenue Service, Treasury.

ACTION: The Department of the Treasury, Internal Revenue Service, gives notice of proposed alterations to 11 systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, as amended, the Department of the Treasury, Internal Revenue Service, proposes to add a routine use to 11 of its systems of records, add another routine use to three of the same systems of records, and to make minor alterations to all 11 systems.

DATES: Comments must be received no later than October 3, 2003. The alteration to the systems of records will be effective October 14, 2003 unless the IRS receives comments, which would result in a contrary determination.

ADDRESSES: Comments should be sent to the Office of Governmental Liaison & Disclosure, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Comments will be made available for public inspection and copying in the Internal Revenue Service Freedom of Information Reading Room, 1111 Constitution Avenue, NW., Room 1621, Washington, DC, telephone number 202–622–5164 (not a toll-free call).

FOR FURTHER INFORMATION CONTACT: Earl Prater, Office of Professional Responsibility, 1111 Constitution Avenue, NW., Washington, DC 20224, 202–694–1853 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The 11 systems of records listed below are subject to the Privacy Act of 1974, 5 U.S.C. 552a, as amended:

Treasury/IRS 37.001—Abandoned Enrollment Applications

Treasury/IRS 37.002—Files Containing Derogatory Information about Individuals Whose Applications for Enrollment to Practice Before the IRS Have Been Denied and Applicant Appeal Files

Treasury/IRS 37.003—Closed Files Containing Derogatory Information about Individuals' Practice before the Internal Revenue Service and Files of Attorneys and Certified Public Accountants Formerly Enrolled to Practice

Treasury/IRS 37.004—Derogatory Information (No Action)

Treasury/IRS 37.005—Present Suspensions and Disbarments Resulting from Administrative Proceeding

Treasury/IRS 37.06—General Correspondence File

Treasury/IRS 37.007—Inventory

Treasury/IRS 37.008—Register of Docketed Cases and Applicant Appeals

Treasury/IRS 37.009—Enrolled Agents and Resigned Enrolled Agents (Action pursuant to 31 CFR 10.55(b))

Treasury/IRS 37.010—Roster of Former Enrollees

Treasury/IRS 37.011—Present Suspensions from Practice before the Internal Revenue Service.

In accordance with the Act's requirements, the Department of the Treasury, Internal Revenue Service, proposes:

- To add a routine use to disclose to contractors to each of these 11 systems;
- To add a second routine use to Treasury/IRS 37.005, 37.009, and 37.011,which conforms with 31 CFR part 10, section 10.90, to disclose information regarding persons enrolled to practice, the roster of all persons censured, suspended, or disbarred from practice before the Internal Revenue Service, and the roster of disqualified appraisers; and
- To make minor alterations to all 11 systems.

The systems were established to give notice of records collected by the Office of Professional Responsibility ("OPR"), formerly Office of Director of Practice, to accomplish its mission under the regulations governing practice before the IRS, 31 CFR part 10 (published in pamphlet form as Treasury Department Circular No. 230): Enrolling individuals to practice and instituting disciplinary proceedings against IRS practitioners who violate those regulations. The systems were last published in their entirety in the **Federal Register**: December 10, 2001 (Volume 66, Number 237), pages 63826 through 63835.

Major alterations: The IRS has determined that certain work associated with the enrollment function should be contracted out. This work includes: Writing and administering the Special Enrollment Examination ("SEE"); processing applications to take the SEE; grading the SEE; informing examinees of SEE results; processing applications for enrollment and for renewal of enrollment; and operating and maintaining the computerized enrolled agent database. Functions that are inherently governmental will not be contracted out. IRS proposes to add a routine use to allow disclosure to contractors to the extent necessary for the contractors to perform their contractual duties.

A second new routine use is being added to Treasury/IRS 37.005, 37.009, and 37.011 to disclose information regarding persons enrolled to practice, the roster of all persons censured, suspended, or disbarred from practice before the Internal Revenue Service, and the roster of disqualified appraisers. Under 31 CFR part 10, section 10.90, the OPR will make available for public inspection the roster of all persons enrolled to practice, the roster of all persons censured, suspended, or disbarred from practice before the Internal Revenue Service, and the roster of all disqualified appraisers. The new routine use for Treasury/IRS 37.005, 37.009, and 37.011 is consistent with 31 CFR part 10.

Minor alterations: On January 8, 2003, the IRS announced the creation of the OPR as part of its ongoing modernization effort. The new office replaced the Office of Director of Practice. The IRS proposes to update organizational names and addresses and

to provide a current reference to safeguard standards.

The altered systems of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated November 30, 2000.

For the reasons set forth above, the proposed changes are as follows:

Treasury/IRS 37.001

SYSTEM NAME:

Abandoned Enrollment Applications.

SYSTEM LOCATION:

Description of change: "Office of Director of Practice, C:AP:P, 901 D Street, SW" is removed and is replaced with "Office of Professional Responsibility, 1099 14th Street, NW".

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

* * * * *

Description of change: The period at the end of routine use 6 is replaced with a semicolon, ";" and the following routine use is added at the end thereof:

"(7) Disclose information to a contractor when necessary to perform a government contract."

* * * * *

SAFEGUARDS:

Description of change: After the sentence, add "Security controls will be no less than those provided in IRM 25.10.1, Information Technology Security Policy and Guidance."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Description of change: "Office of Director of Practice, C:AP:P" is removed and is replaced with "Office of Professional Responsibility".

* * * * *

RECORDS ACCESS PROCEDURES:

Description of change: "Office of the Director of Practice, C:AP:P," is removed and is replaced with "Office of Professional Responsibility".

* * * * *

Treasury/IRS 37.002

SYSTEM NAME:

Files Containing Derogatory Information about Individuals Whose Applications for Enrollment to Practice Before the IRS Have Been Denied and Applicant Appeal Files.

SYSTEM LOCATION:

Description of change: "Office of Director of Practice, 901 D Street, SW" is removed and is replaced with "Office of Professional Responsibility, 1099 14th Street, NW".

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Description of change: The period at the end of routine use 6 is replaced with a semicolon, ";" and the following routine use is added at the end thereof:

"(7) Disclose information to a contractor when necessary to perform a government contract."

* * * * *

SAFEGUARDS:

Description of change: After the sentence, add "Security controls will be no less than those provided in IRM 25.10.1, Information Technology Security Policy and Guidance."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Description of change: "Office of Director of Practice, C:AP:P" is removed and is replaced with "Office of Professional Responsibility".

* * * * *

RECORDS ACCESS PROCEDURES:

Description of change: "Office of Director of Practice, C:AP:P," is removed and is replaced with "Office of Professional Responsibility".

* * * * *

Treasury/IRS 37.003

SYSTEM NAME:

Closed Files Containing Derogatory Information about Individuals' Practice before the Internal Revenue Service and Files of Attorneys and Certified Public Accountants Formerly Enrolled to Practice.

SYSTEM LOCATION:

Description of change: "Office of Director of Practice, 901 D Street, SW" is removed and is replaced with "Office of Professional Responsibility, 1099 14th Street, NW".

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Description of change: The period at the end of routine use 6 is replaced with a semicolon, ";" and the following routine use is added at the end thereof:

"(7) Disclose information to a contractor when necessary to perform a government contract."

* * * * *

SAFEGUARDS:

Description of change: After the sentence, add "Security controls will be no less than those provided in IRM 25.10.1, Information Technology Security Policy and Guidance."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Description of change: "Office of Director of Practice, C:AP:P" is removed and is replaced with "Office of Professional Responsibility".

* * * * *

RECORDS ACCESS PROCEDURES:

Description of change: "Office of Director of Practice, C:AP:P," is removed and is replaced with "Office of Professional Responsibility".

* * * * *

Treasury/IRS 37.004

SYSTEM NAME:

Derogatory Information (No Action).

SYSTEM LOCATION:

Description of change: "Office of Director of Practice, 901 D Street, SW" is removed and is replaced with "Office of Professional Responsibility, 1099 14th Street, NW".

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Description of change: The period at the end of routine use 6 is replaced with a semicolon, ";" and the following routine use is added at the end thereof:

"(7) Disclose information to a contractor when necessary to perform a government contract."

* * * * *

SAFEGUARDS:

Description of change: After the sentence, add "Security controls will be no less than those provided in IRM 25.10.1, Information Technology Security Policy and Guidance."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Description of change: "Office of Director of Practice, C:AP:P" is removed and is replaced with "Office of Professional Responsibility".

* * * * *

RECORDS ACCESS PROCEDURES:

Description of change: "Office of Director of Practice, C:AP:P," is

removed and is replaced with "Office of Professional Responsibility".
* * * * *

Treasury/IRS 37.005

SYSTEM NAME:

Present Suspensions and Disbarments Resulting from Administrative Proceeding.

SYSTEM LOCATION:

Description of change: "Office of Director of Practice, 901 D Street, SW" is removed and is replaced with "Office of Professional Responsibility, 1099 14th Street, NW".
* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Description of changes: The period at the end of routine use 7 is replaced with a semicolon, ";" and the following routine uses are added at the end thereof:

"(8) Disclose information to a contractor when necessary to perform a government contract;

(9) Disclose information (including addresses) sufficient to identify all persons enrolled to practice, the roster of all persons censured, suspended, or disbarred from practice before the Internal Revenue Service, and the roster of all disqualified appraisers."
* * * * *

SAFEGUARDS:

Description of change: After the sentence, add "Security controls will be no less than those provided in IRM 25.10.1, Information Technology Security Policy and Guidance."
* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Description of change: "Office of Director of Practice, C:AP:P" is removed and is replaced with "Office of Professional Responsibility".
* * * * *

RECORDS ACCESS PROCEDURES:

Pescription of change: "Office of Director of Practice, C:AP:P," is removed and is replaced with "Office of Professional Responsibility".
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Treasury/IRS 37.06

SYSTEM NAME:

General Correspondence File.

SYSTEM LOCATION:

Description of change: "Office of Director of Practice, 901 D Street, SW" is removed and is replaced with "Office of Professional Responsibility, 1099 14th Street, NW".
* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Description of change: The period at the end of routine use 6 is replaced with a semicolon, ";" and the following routine use is added at the end thereof:

"(7) Disclose information to a contractor when necessary to perform a government contract."
* * * * *

SAFEGUARDS:

Description of change: After the sentence, add "Security controls will be no less than those provided in IRM 25.10.1, Information Technology Security Policy and Guidance."
* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Description of change: "Office of Director of Practice, C:AP:P" is removed and is replaced with "Office of Professional Responsibility".
* * * * *

RECORDS ACCESS PROCEDURES:

Description of change: "Office of Director of Practice, C:AP:P," is removed and is replaced with "Office of Professional Responsibility".
* * * * *

Treasury/IRS 37.007

SYSTEM NAME:

Inventory.

SYSTEM LOCATION:

Description of change: "Office of Director of Practice, 901 D Street, SW" is removed and is replaced with "Office of Professional Responsibility, 1099 14th Street, NW".
* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Description of change: The period at the end of routine use 6 is replaced with a semicolon, ";" and the following routine use is added at the end thereof:

"(7) Disclose information to a contractor when necessary to perform a government contract."
* * * * *

SAFEGUARDS:

Description of change: After the sentence, add "Security controls will be no less than those provided in IRM 25.10.1, Information Technology Security Policy and Guidance."
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SYSTEM MANAGER(S) AND ADDRESS:

Description of change: "Office of Director of Practice, C:AP:P" is removed and is replaced with "Office of Professional Responsibility".
* * * * *

RECORDS ACCESS PROCEDURES:

Description of change: "Office of Director of Practice, C:AP:P," is removed and is replaced with "Office of Professional Responsibility".
* * * * *

Treasury/IRS 37.008

SYSTEM NAME:

Register of Docketed Cases and Applicant Appeals.

SYSTEM LOCATION:

Description of change: "Office of Director of Practice, 901 D Street, SW" is removed and is replaced with "Office of Professional Responsibility, 1099 14th Street, NW".
* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Description of change: The period at the end of routine use 6 is replaced with a semicolon, ";" and the following routine use is added at the end thereof:

"(7) Disclose information to a contractor when necessary to perform a government contract."
* * * * *

SAFEGUARDS:

Description of change: After the sentence, add "Security controls will be no less than those provided in IRM 25.10.1, Information Technology Security Policy and Guidance."
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SYSTEM MANAGER(S) AND ADDRESS:

Description of change: "Office of Director of Practice, C:AP:P" is removed and is replaced with "Office of Professional Responsibility".
* * * * *

RECORDS ACCESS PROCEDURES:

Description of change: "Office of Director of Practice, C:AP:P," is removed and is replaced with "Office of Professional Responsibility".
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Treasury/IRS 37.009

SYSTEM NAME:

Enrolled Agents and Resigned Enrolled Agents (Action pursuant to 31 CFR 10.55(b)).

SYSTEM LOCATION:

Description of change: Prior to "Detroit Computing Center," insert "Internal Revenue Service, Office of Professional Responsibility, 1099 14th Street, NW, and the".

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Description of changes: The period at the end of routine use 6 is replaced with a semicolon, ";" and the following routine uses are added at the end thereof:

"(7) Disclose information to a contractor when necessary to perform a government contract;

(8) Disclose information (including addresses) sufficient to identify all persons enrolled to practice, the roster of all persons censured, suspended, or disbarred from practice before the Internal Revenue Service, and the roster of all disqualified appraisers."

* * * * *

SAFEGUARDS:

Description of change: After the sentence, add "Security controls will be no less than those provided in IRM 25.10.1, Information Technology Security Policy and Guidance."

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SYSTEM MANAGER(S) AND ADDRESS:

Description of change: "Office of Director of Practice, C:AP:P" is removed and is replaced with "Office of Professional Responsibility".

* * * * *

RECORDS ACCESS PROCEDURES:

Description of change: "Office of Director of Practice, C:AP:P," is removed and is replaced with "Office of Professional Responsibility".

* * * * *

Treasury/IRS 37.010

SYSTEM NAME:

Roster of Former Enrollees.

SYSTEM LOCATION:

Description of change: "Office of Director of Practice, 901 D Street, SW" is removed and is replaced with "Office of Professional Responsibility, 1099 14th Street, NW".

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Description of change: The period at the end of routine use 6 is replaced with a semicolon, ";" and the following routine use is added at the end thereof:

"(7) Disclose information to a contractor when necessary to perform a government contract."

* * * * *

SAFEGUARDS:

Description of change: After the sentence, add "Security controls will be no less than those provided in IRM 25.10.1, Information Technology Security Policy and Guidance."

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SYSTEM MANAGER(S) AND ADDRESS:

Description of change: "Office of Director of Practice, C:AP:P" is removed and is replaced with "Office of Professional Responsibility".

* * * * *

RECORDS ACCESS PROCEDURES:

Description of change: "Office of Director of Practice, C:AP:P," is removed and is replaced with "Office of Professional Responsibility".

* * * * *

Treasury/IRS 37.011

SYSTEM NAME:

Present Suspensions from Practice before the Internal Revenue Service.

SYSTEM LOCATION:

Description of change: "Office of Director of Practice, 901 D Street, SW" is removed and is replaced with "Office of Professional Responsibility, 1099 14th Street, NW".

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Description of changes: The period at the end of routine use 6 is replaced with a semicolon, ";" and the following routine uses are added at the end thereof:

"(7) Disclose information to a contractor when necessary to perform a government contract;

(8) Disclose information sufficient to identify (including addresses) of all persons enrolled to practice, the roster of all persons censured, suspended, or disbarred from practice before the Internal Revenue Service, and the roster of all disqualified appraisers."

* * * * *

SAFEGUARDS:

Description of change: After the sentence, add "Security controls will be no less than those provided in IRM 25.10.1, Information Technology Security Policy and Guidance."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Description of change: "Office of Director of Practice, C:AP:P" is removed and is replaced with "Office of Professional Responsibility".

* * * * *

RECORDS ACCESS PROCEDURES:

Description of change: "Office of Director of Practice, C:AP:P," is removed and is replaced with "Office of Professional Responsibility".

* * * * *

Dated: August 25, 2003.

W. Earl Wright, Jr.,

Acting Chief Management and Administrative Programs Officer.

[FR Doc. 03–22408 Filed 9–2–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0554]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 3, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0554."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0554" in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles:

a. Homeless Providers Grant and Per Diem Program, Capital Grant Application, VA Form 10–0361–CG.

b. Homeless Providers Grant and Per Diem Program, Life Safety Code Application, VA Form 10–0361–LSC.

c. Homeless Providers Grant and Per Diem Program, Per Diem Only Application, VA Form 10–0361–PDO.

d. Homeless Providers Grant and Per Diem Program, Special Needs Application, VA Form 10–0361–SN.

e. Compliance Reports for Per Diem and Special Needs Grants. No form needed. May be reported to VA in standard business narrative.

f. Homeless Providers Grant and Per Diem Program, Technical Assistance Application, VA Form 10–0361–TA.

g. Compliance Reports for Technical Assistance Grants. No form needed. May be reported to VA in standard business narrative.

OMB Control Number: 2900–0554.

Type of Review: Extension of a currently approved collection.

Abstract: The information collected on VA Form 10–0361 series, Homeless Providers Grant and Per Diem Program, will be used to determine applicants eligibility to receive a grant/or per diem payments which provide supportive housing/services to assist homeless veterans transition to independent living. The collected information will be used to apply the specific criteria to rate and rank each application; and to obtain information necessary to ensure that Federal funds are awarded to applicants who are financially stable and who will conduct program for which a grant and/or per diem award was made. If this data were not collected, VA would not be able to implement the provisions of Public Law 107–95.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on May 30, 2003, at pages 32582–32583.

Estimated Annual Burden: 14,340 hours.

a. Homeless Providers Grant and Per Diem Program, Capital Grant Application, VA Form 10–0361–CG—3,500 hours.

b. Homeless Providers Grant and Per Diem Program, Life Safety Code Application, VA Form 10–0361–LSC—2,000 hours.

c. Homeless Providers Grant and Per Diem Program, Per Diem Only Application, VA Form 10–0361–PDO—3,000 hours.

d. Homeless Providers Grant and Per Diem Program, Special Needs Application, VA Form 10–0361–SN—4,000 hours.

e. Compliance Reports for Per Diem and Special Needs Grants—1,500 hours.

f. Homeless Providers Grant and Per Diem Program, Technical Assistance Application, VA Form 10–0361–TA—250 hours.

g. Compliance Reports for Technical Assistance Grants—90 hours.

Estimated Average Burden Per Respondent:

a. Homeless Providers Grant and Per Diem Program, Capital Grant Application, VA Form 10–0361–CG—35 hours.

b. Homeless Providers Grant and Per Diem Program, Life Safety Code Application, VA Form 10–0361–LSC—10 hours.

c. Homeless Providers Grant and Per Diem Program, Per Diem Only Application, VA Form 10–0361–PDO—20 hours.

d. Homeless Providers Grant and Per Diem Program, Special Needs Application, VA Form 10–0361–SN—20 hours.

e. Compliance Reports for Per Diem and Special Needs Grants—5 hours.

f. Homeless Providers Grant and Per Diem Program, Technical Assistance Application, VA Form 10–0361–TA—10 hours.

g. Compliance Reports for Technical Assistance Grants—2.25 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,015.

a. Homeless Providers Grant and Per Diem Program, Capital Grant Application, VA Form 10–0361–CG—100.

b. Homeless Providers Grant and Per Diem Program, Life Safety Code Application, VA Form 10–0361–LSC—200.

c. Homeless Providers Grant and Per Diem Program, Per Diem Only Application, VA Form 10–0361–PDO—150.

d. Homeless Providers Grant and Per Diem Program, Special Needs Application, VA Form 10–0361–SN—200.

e. Compliance Reports for Per Diem and Special Needs Grants—300.

f. Homeless Providers Grant and Per Diem Program, Technical Assistance Application, VA Form 10–0361–TA—25.

g. Compliance Reports for Technical Assistance Grants—40.

Dated: August 15, 2003.

By direction of the Secretary:

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–22404 Filed 9–2–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0427]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 3, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0427."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0427" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title and Form Number: Former POW Medical History, VA Form 10–0048.

OMB Control Number: 2900–0427.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–0048 will be used to collect data in response to Public Law 97–37 that liberalizes eligibility requirements and extends the existing benefits. The form is completed by veterans and submitted to a VA physician during a medical examination. Without this information VA physician would be unable to assess

the health care, disability compensation or rehabilitation needs of Former Prisoners of War.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 3, 2003, at page 33230.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 1,575 hours.

Estimated Average Burden Per Respondent: 90 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,050.

Dated: August 15, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–22405 Filed 9–2–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0034]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 3, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0034."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0034" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Trainee Request for Leave—Chapter 31, Title 38, U.S.C., VA Form 28–1905h.

OMB Control Number: 2900–0034.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28–1905h is used to request leave and to provide the necessary information to determine whether to approve a trainee request for leave from Vocational Rehabilitation and Employment Program. A trainer or authorized school official must verify on the form the effect the absence will have on the veteran's progress in the program. Upon approval, the veteran can receive subsistence allowance and other program services during the leave period as if he or she were attending training. Disapproval of the request may result in loss of subsistence allowance for the leave period. Failure to collect the information would create the potential for substantial abuse through receipt of benefits for unauthorized absences.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 3, 2003, at page 33226.

Affected Public: Individuals or households.

Estimated Annual Burden: 7,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

Dated: August 21, 2003.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. 03–22406 Filed 9–2–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0113]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Adniinistration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 3, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0113."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0564" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Application for Fee Personnel Designation, VA Form 26–6681.

OMB Control Number: 2900–0113.

Type of Review: Extension of a currently approved collection.

Abstract: The form solicits information on the fee personnel applicant's background and experience in the real estate valuation field. VA regional offices and centers use the information contained on the form to evaluate applicants' experience for the purpose of designating qualified individuals to serve on the fee roster for their stations.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period

soliciting comments on this collection of information was published on March 6, 2003, at page 10781.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,067 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 6,200.

Dated: August 21, 2003.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Information Management Service.

[FR Doc. 03–22407 Filed 9–2–03; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 67, No. 170
Wednesday, September 3, 2003

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 THE TREASURY

Internal Revenue Service

26 CFR Part 602

[TD 9087]

RIN 1545–BA07

Exclusions From Gross Income of Foreign Corporations

Correction

In rule document 03–21354 beginning on page 51394 in the issue of Tuesday, August 26, 2003, make the following correction:

§ 602.101 [Corrected]

On page 51417, in § 602.101(b), in the table, in the second line, "11.883–2" should read, "1.883–2".

[FR Doc. C3–21354 Filed 9–2–03; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Wednesday,
September 3, 2003

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 301
Section 1446 Regulations; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–108524–00]

RIN 1545–AY28

Section 1446 Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding the obligation of a partnership to pay a withholding tax on effectively connected taxable income allocable under section 704 to a foreign partner. The regulations will affect partnerships engaged in a trade or business in the United States that have one or more foreign partners.

DATES: Written or electronic comments and requests to speak, with outlines of topics to be discussed at the public hearing scheduled for December 4, 2003, must be received by November 13, 2003.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–108524–00), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–108524–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *http://www.irs.gov/regs*. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David J. Sotos, at (202) 622–3860, or to be placed on the attendance list for the hearing, LaNita Van Dyke at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collections of information should be received by November 3, 2003. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

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

The collections of information in this proposed regulation are in §§ 1.871–10, 1.1446–1, 1.1446–3, and 1.1446–4. This information is required to determine whether a partnership is required to pay a withholding tax with respect to a foreign partner and provide information concerning the tax paid on such partner's behalf, and to determine the foreign person required to report the effectively connected taxable income earned by such partnership and entitled to claim credit for the withholding tax paid by the partnership. This information will be used in issuing refunds to foreign persons claiming credit for withholding tax paid on their behalf, as well as for audit and examination purposes. The reporting requirements in §§ 1.871–10 and 1.1446–3 are mandatory. The reporting requirement in § 1.1446–1 and 1.1446–4 are voluntary. The likely respondents include individuals, business or other for-profit institutions, and small businesses or organizations.

Estimated total annual reporting burden: 7,805 hours.

Estimated average annual burden hours per respondent: 0.5 hours.

Estimated number of respondents: 15,775.

Estimated annual frequency of responses: on occasion and quarterly.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to 26 CFR part 1 under section 1446 of the Internal Revenue Code (Code). Section 1446 was added to the Code by section 1246(a) of the Tax Reform Act of 1986 (Public Law 99–514, 100 Stat. 2085, 2582 (1986 Act)), to impose withholding at a rate of 20 percent on distributions to a foreign partner by a partnership that was engaged in a U.S. trade or business. Section 1012(s)(1)(A) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647, 102 Stat. 3342, 3526 (1988 Act)) revised section 1446 to require that a withholding tax (1446 tax) be imposed on effectively connected taxable income (ECTI) allocable to a partner that is a foreign person (foreign partner) at the highest tax rate applicable to such person. Finally, section 7811(i)(6) of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239, 103 Stat. 2106, 2410 (1989 Act)), made certain technical amendments to section 1446.

Treasury and the IRS issued Rev. Proc. 88–21 (1988–1 C.B. 777) to provide guidance on the operation of the withholding tax imposed under section 1446 as enacted by the 1986 Act. After the 1988 Act, which revised the withholding approach to apply to a partner's allocable share of ECTI instead of to distributions, Treasury and the IRS published Rev. Proc. 89–31 (1989–1 C.B. 895), which made Rev. Proc. 88–21 obsolete. Rev. Proc. 89–31 was modified by Rev. Proc. 92–66 (1992–2 C.B. 428). Rev. Proc. 89–31, as modified by Rev. Proc. 92–66, provides current guidance to partnerships for calculating, paying over, and reporting the 1446 tax.

Explanation of Provisions

A. In General

Prior to the enactment of section 1446, a partnership generally was not required to withhold on income that was effectively connected with the conduct of a trade or business within the United States (a U.S. trade or business) and allocated or distributed to its foreign partners. Congress enacted section 1446 because it was concerned that passive foreign investors could

escape U.S. tax on their partnership income. See S. Rep. No. 99–313, 99th Cong., 2d Sess. 414 (1986). As originally enacted, section 1446 generally required both domestic and foreign partnerships with any income, gain, or loss that was effectively connected with the conduct of a U.S. trade or business to withhold a tax equal to 20 percent of any amount distributed to a foreign partner. Through a series of modifications and refinements discussed below, this withholding tax regime evolved from its original structure of withholding on distributions to foreign partners to its present form of, generally, withholding on an installment basis on partnership ECTI (whether distributed or not distributed), apart from special provisions for publicly traded partnerships.

In response to the enactment of section 1446, Treasury and the IRS issued Rev. Proc. 88–21 to provide guidance for partnerships to comply with section 1446. After Rev. Proc. 88–21 was issued, the 1988 Act amended section 1446 retroactively and provided that no withholding was required under section 1446 for partnership taxable years beginning before January 1, 1988.

Section 1446, as revised by the 1988 Act, shifted from imposing a withholding tax on partnership distributions to imposing a withholding tax on the amount of ECTI allocable to the partnership's foreign partners. More specifically, section 1446(a) requires partnerships that have ECTI in any taxable year, any portion of which is allocable under section 704 to a foreign partner, to pay the 1446 tax at such time and in such manner as prescribed in regulations. The amount of withholding tax payable by a partnership under section 1446 is equal to the applicable percentage of the partnership's ECTI allocable under section 704 to foreign partners. The applicable percentage for ECTI allocable to a foreign corporation is the highest rate of tax specified in section 11(b), and the applicable percentage for ECTI allocable to a non-corporate foreign partner is the highest rate of tax specified in section 1. Further, section 1446(d), as amended by the 1988 Act, provides that a foreign partner is entitled to a credit under section 33 for such partner's share of the 1446 tax, and, except as provided in regulations, such partner's share of the 1446 tax paid by the partnership is treated as distributed to such partner on the last day of the taxable year for which such tax was paid. The credit under section 33 is applied against the partner's U.S. tax liability for the taxable year in which the partner includes its allocable share of the partnership's effectively connected income.

Treasury and the IRS issued Rev. Proc. 89–31 to provide guidance to partnerships under section 1446, as amended by the 1988 Act. This revenue procedure made Rev. Proc. 88–21 obsolete. In general, Rev. Proc. 89–31 provides guidance concerning the requirement to pay a withholding tax, the determination of whether a partner is a foreign person, the calculation of partnership ECTI, the amount of the withholding tax, and the procedures for reporting and paying over the 1446 tax. The revenue procedure generally follows the regime set forth in section 6655 for estimated tax payments by corporations, and requires a partnership to annualize its ECTI and pay over the 1446 tax in quarterly installments. Further, the revenue procedure provides special rules for publicly traded partnerships and tiered partnership structures. A partnership subject to section 1446 must continue to comply with Rev. Proc. 89–31, as modified by Rev. Proc. 92–66 (discussed below), until the partnership's first taxable year beginning after the date these regulations are issued in final form.

Section 7811(i)(6) of the 1989 Act amended section 1446 in three respects. First, the amendment provides that, except as provided in regulations, a foreign partner's share of the 1446 tax paid by a partnership is treated as distributed to such partner on the earlier of the day on which such tax is paid by the partnership or the last day of the partnership's taxable year for which such tax is paid. Second, the amendment grants Treasury and the IRS regulatory authority to apply the addition to tax under section 6655 to a partnership as if it were a corporation. Third, the amendment clarifies that the applicable percentage for a foreign corporate partner is the highest rate of tax specified in section 11(b)(1). The changes made by the 1989 Act are effective for partnership taxable years beginning after December 31, 1987, as if originally included as part of the 1988 Act amendments.

In 1992, Treasury and the IRS issued Rev. Proc. 92–66, which modified Rev. Proc. 89–31 in three respects. First, Rev. Proc. 92–66 provides that the applicable percentage to be used by publicly traded partnerships in calculating the 1446 tax is the highest rate of tax imposed under section 1, which at that time was 31 percent. Second, the revenue procedure allows a partnership to seek a refund from the IRS in certain circumstances for amounts it has paid under section 1446. Third, the revenue procedure provides that a foreign partnership subject to withholding under section 1445(a) during a taxable year is allowed to credit the amount withheld under section 1445(a), to the extent such amount is allocable to foreign partners, against its liability to pay the 1446 tax for that year.

B. Structure of the Proposed Regulations

In general, the proposed regulations follow the approach in Rev. Proc. 89–31 for computing, paying over and reporting the 1446 tax. The proposed regulations are set forth in six sections. Section 1.1446–1 contains rules regarding a partnership's requirement to pay a withholding tax, and how a partnership should determine the status of its partners (*i.e.*, domestic or foreign, corporate or non-corporate). Section 1.1446–2 contains rules for calculating partnership ECTI allocable to each foreign partner. Section 1.1446–3 contains rules pertaining to a partnership's obligation to pay the 1446 tax on an installment basis, including guidance on calculating the 1446 tax, reporting and paying over the 1446 tax, and penalties for underpayment of the 1446 tax. Section 1.1446–4 contains special rules applicable to publicly traded partnerships. These rules generally implement a withholding regime based upon the distribution of effectively connected income to foreign partners. These regulations also permit publicly traded partnerships to elect to withhold and pay over the 1446 tax based upon the general rules set forth in §§ 1.1446–1 through 1.1446–3 (withholding based upon ECTI allocable under section 704 to foreign partners). Section 1.1446–5 contains rules applicable to tiered partnership structures, including rules for looking through certain upper-tier foreign partnerships to determine the 1446 tax obligation of a lower-tier partnership. Finally, § 1.1446–6 contains the proposed effective date of the regulations.

In addition to the proposed regulatory amendments under section 1446, these regulations also include proposed amendments to §§ 1.871–10, 1.1443–1, 1.1461–1 through 1.1461–3, 1.1462–1, 1.1463–1, 301.6109–1, and 301.6721–1, to coordinate the section 1446 withholding regime with existing regulations.

C. Determining the Status and Classification of Partners—§ 1.1441–1

Section 1446 applies only to partnerships with ECTI allocable under section 704 to one or more foreign partners. Section 1446(e) defines a foreign partner as any partner who is not a United States person. Section

7701(a)(30) defines a United States person to include a citizen or resident of the United States, a domestic partnership, a domestic corporation, any estate other than a foreign estate within the meaning of section 7701(a)(31), and any trust if a court within the United States is able to exercise primary supervision over the administration of the trust and one or more United States persons have the authority to control all substantial decisions of the trust. Section 1446 and the legislative history are silent as to how a partnership is to determine the domestic or foreign status of its partners.

Rev. Proc. 89–31 contains rules for determining whether a partner is a foreign partner for purposes of section 1446. Under the revenue procedure, a partnership may determine a partner's status by relying upon a certification of non-foreign status provided by the partner, or by relying on any other means. See Rev. Proc. 89–31, § 5.02 and § 5.03.

In order to reduce the paperwork burden imposed on taxpayers and avoid conflicting information, the proposed regulations reflect an approach different from the approach taken in Rev. Proc. 89–31 for determining whether a partner is a foreign partner. The proposed regulations generally require a partnership to comply with the paperwork requirements used under section 1441 to determine the status (domestic or foreign) and the tax classification (corporate or non-corporate) of its partners. Under the proposed regulations, a partnership should obtain either a Form W–8BEN, "Certificate of Foreign Status of Beneficial Owner for U.S. Tax Withholding," Form W–8IMY, "Certificate of Foreign Intermediary, Flow Through Entity, or Certain U.S. Branches for United States Tax Withholding," or Form W–9, "Request for Taxpayer Identification Number and Certification," from each of its partners. Additionally, special rules are provided with respect to domestic and foreign trusts all or a portion of which are treated as owned by a grantor or another person under subpart E of subchapter J of the Code. The documentation requirement set forth in the proposed regulations will allow a partnership required to withhold under both section 1441 and section 1446 to receive one form instead of two from each of its partners, and thus will reduce the paperwork and recordkeeping burden imposed upon partners and partnerships. Further, the required documentation will also serve to establish a uniform basis for determining the foreign or non-foreign status of partners and to reduce the instances where a partnership receives inconsistent documentation.

In the absence of a valid Form W–8BEN, Form W–8IMY, or Form W–9 from a partner (or upon the receipt of a form that the partnership has actual knowledge or reason to know is incorrect or unreliable), the proposed regulations contain a presumption that the partner is a foreign person and that the partnership must pay 1446 tax on ECTI allocable to the partner. However, this presumption does not apply, and the partnership shall not be liable for 1446 tax with respect to a partner, to the extent the partnership relies on other means to ascertain the non-foreign status of a partner, and the partnership is correct in its determination that such partner is a U.S. person. This approach is similar to Rev. Proc. 89–31, which permitted partnerships to rely on other means to ascertain the non-foreign status of a partner. See Rev. Proc. 89–31, § 5.03. Under the proposed regulations, when the presumption of foreign status applies, the following rules apply for purposes of determining the applicable rate that will apply in computing the 1446 tax. If the partnership knows that the partner is an individual and not an entity, the partnership shall compute the 1446 tax with respect to such partner using the highest rate in section 1. If the partnership knows that the partner is an entity that is a corporation under § 301.7701–2(b)(8) (included on the per se list of entities under the entity classification regulations), the partnership shall treat the partner as a foreign corporation and compute the 1446 tax with respect to such partner using the highest rate in section 11(b)(1). In all other cases, including where the partnership cannot reliably determine the status of the partner, the proposed regulations presume that the partner is either a corporate or non-corporate partner, based upon whichever classification results in a higher 1446 tax being due. This presumption is necessary to prevent a partner from obtaining a more favorable withholding result than would have been achieved if the partner complied with the documentation requirements. The duration and validity of the forms required for purposes of section 1446 is intended to be consistent with the standards applicable when these forms are submitted in the context of sections 1441, 1442, and 3406. These forms and their instructions will be modified as necessary to facilitate their use under section 1446.

D. Determining a Foreign Partner's Allocable Share of Partnership ECTI—§ 1.1446–2

The proposed regulations contain rules for computing partnership ECTI allocable to foreign partners. Consistent with Rev. Proc. 89–31, the partnership determines its ECTI allocable to a foreign partner using an aggregate approach. The partnership first determines the effectively connected partnership items allocable to each of the partnership's foreign partners. Partnership ECTI allocable to all foreign partners then is computed by combining all of the foreign partners' allocable shares of partnership ECTI.

The proposed regulations also provide guidance concerning capital losses, suspended losses, and loss carryovers and carrybacks when determining a foreign partner's allocable share of partnership ECTI. The proposed regulations permit capital losses allocable to a foreign partner to offset such partner's allocable share of capital gains consistent with section 1211(a). Solely for purposes of section 1446, the proposed regulations do not permit the partnership to consider section 1211(b), which permits an individual to use capital losses in excess of capital gains to the extent of $3,000 per taxable year. Further, the proposed regulations do not permit the partnership to take into account in determining a foreign partner's allocable share of partnership ECTI any losses of a partner that are carried over or back or are suspended.

A number of issues arise under section 1446 where the partnership has cancellation of indebtedness income under section 61(a)(12), including difficulties arising because the exclusion of cancellation of indebtedness income under section 108 is applied at the partner level rather than at the partnership level. See section 108(d)(6). These proposed regulations do not specifically address the treatment of cancellation of indebtedness income of a partnership under section 1446. Comments are requested concerning the appropriate treatment under section 1446 of such income allocable to a foreign partner.

E. Calculating, Paying Over, and Reporting the 1446 Tax—§ 1.1446–3

Section 1446(f)(2) provides that the Secretary shall prescribe such regulations as may be necessary to carry out the purposes of section 1446, including regulations providing (1) that, for purposes of section 6655, the withholding tax imposed under section 1446 be treated as a tax imposed by section 11 and any partnership required

to pay such tax be treated as a corporation, and (2) appropriate adjustments in applying section 6655 with respect to such withholding. Section 6655 generally requires a corporation to make estimated tax payments throughout its taxable year, and determines an addition to tax for any underpayment of the required installments.

Rev. Proc. 89–31 generally requires a partnership, other than a publicly traded partnership, to determine its ECTI allocable to foreign partners, and, ultimately, its 1446 tax obligation, by annualizing its effectively connected items under one of the three options generally available to corporations under section 6655 when paying estimated taxes. As an alternative, Rev. Proc. 89–31 permits a partnership to determine its 1446 tax obligation based upon a safe harbor. Under both the safe harbor and the annualization methods, a partnership must pay the 1446 tax on an installment basis.

The proposed regulations adopt, with some modifications, the estimated tax payment rules set forth in section 6655, including the imposition of an addition to tax for an underpayment of the 1446 tax. Consistent with Rev. Proc. 89–31, the proposed regulations require a partnership to pay its 1446 tax obligation on an installment basis, and pay its 1446 tax either based upon annualizing its income or based upon a safe harbor. The proposed regulations broaden the approaches available in Rev. Proc. 89–31 in certain circumstances. Under the proposed regulations, a partnership that chooses to annualize its income may use certain methods in section 6655 that address the seasonality of income earned by a partnership. See section 6655(e). Further, the proposed regulations modify the safe harbor set forth in Rev. Proc. 89–31 so that a partnership does not need to have filed Form 1065, "U.S. Return of Partnership Income," and Form 8804, "Annual Return for Partnership Withholding Tax (Section 1446)," at the time it makes an installment payment. Instead, it is sufficient if the partnership timely files these forms (taking into account extensions).

F. Special Rule for Tiered Trust or Estate Structures—§ 1.1446–3(d)(2)(iii)

Treasury and the IRS are concerned about the potential abuse of tiered trust structures to claim inappropriate refunds of the 1446 tax, to avoid reporting by a beneficiary of ECTI earned by a partnership, or to avoid section 1446 entirely. Existing provisions contemplate that entitlement to a credit or refund of any section 1446 withholding tax follows the liability for tax. Section 1446(d) provides that each foreign partner of a partnership shall be allowed a credit under section 33 for such partner's share of the 1446 tax paid by the partnership. A foreign partner's share of any 1446 tax paid by the partnership is treated as distributed to the partner by such partnership. Section 1462 provides that income on which any tax is required to be withheld at the source under chapter 3 of the Code, including section 1446, shall be included in the return of the recipient of such income, and any amount of tax so withheld may be credited against the amount of income tax as computed in such return. The regulations under section 1462 explain that an amount withheld on a payment to a fiduciary, partnership, or intermediary is deemed to have been paid by the taxpayer ultimately liable for the tax upon such income. See § 1.1462–1(b). Sections 702(b), 652(b), and 662(b) ensure that the character of income (*e.g.*, income that is effectively connected income) of a partnership allocated to a trust (whether domestic or foreign) is preserved in the hands of a beneficiary (see Rev. Rul. 85–60 (1985–1 C.B. 187)).

The proposed regulations include clarification of the regulations under section 1462 to coordinate with section 1446(d) to provide that a foreign trust's or estate's allocable share of ECTI is deemed to have been paid by the taxpayer ultimately liable for tax upon such income. In the case of a foreign grantor trust, the taxpayer ultimately liable for the tax upon such income is the grantor of such trust.

Further, § 1.1446–3 of the proposed regulations includes two rules and several examples pertaining to tiered trust or estate structures. The rules are intended to match the credit claimed under section 33 with the taxpayer that reports and pays tax on the ECTI upon which the credit is based. The first rule applies where a foreign trust or estate is a partner in a partnership required to pay the 1446 tax and the beneficiary of the foreign trust or estate is either another foreign trust (with a foreign person as a beneficiary of such trust) or a foreign person. In such a circumstance, the proposed regulations provide that the foreign trust or estate is only entitled to claim the portion of the credit under section 33 that corresponds to the portion of the associated effectively connected income on which it bears the tax liability.

The second rule addresses the use of a domestic trust. The second rule applies where a partnership knows or has reason to know that a foreign person that is the ultimate beneficial owner of the effectively connected income holds its interest in the partnership through a domestic trust, and such domestic trust was formed or availed of with a principal purpose of avoiding the 1446 tax. The use of a domestic trust in a tiered trust structure may have a principal purpose of avoiding the 1446 tax even though the tax avoidance purpose is outweighed by other purposes when taken together. Where applicable, this rule allows the IRS to impose the 1446 tax obligation on such partnership as if each domestic trust in the chain is a foreign trust.

G. Publicly Traded Partnerships—§ 1.1446–4

Section 1446(f)(1) provides that the Secretary shall prescribe regulations to apply section 1446 in the case of publicly traded partnerships. In this regard, the legislative history to section 1446 specifically notes that special rules may be necessary in identifying a publicly traded partnership's partners as U.S. or foreign. See H.R. Rep. No. 100–795, 100th Cong., 2d Sess. 291 (1988); S. Rep. No. 100–445, 100th Cong., 2d Sess. 305 (1988).

Rev. Proc. 89–31 provides special rules for publicly traded partnerships. Under Rev. Proc. 89–31, the term *publicly traded partnership* means a regularly traded partnership within the meaning of the regulations under section 1445(e)(1), but not a publicly traded partnership treated as a corporation under the general rules of section 7704(a). Generally, publicly traded partnerships with effectively connected income, gain or loss are required to withhold based upon distributions made to foreign partners. Rev. Proc. 92–66 modified the applicable percentage for withholding on distributions to the highest rate of tax imposed under section 1, and applied that percentage to both corporate and non-corporate partners.

Under Rev. Proc. 89–31, a publicly traded partnership generally determines the tax status of its partners by receiving either a certificate of non-foreign status, a Form W–8, or a Form W–9 from its partners, or by relying on other means. Further, nominees that hold interests in a publicly traded partnership on behalf of one or more foreign partners may be responsible for the 1446 tax liability for foreign partners under certain circumstances. Finally, Rev. Proc. 89–31 permits publicly traded partnerships to elect to apply the general rules that determine the 1446 tax based on a foreign partner's allocable share of partnership ECTI rather than on distributions to foreign partners. Under

Rev. Proc. 89–31, the publicly traded partnership makes this election by complying with the payment and reporting requirements of the general rules and attaching a statement to its annual return of withholding tax indicating that the election is being made.

The proposed regulations modify several of the rules for publicly traded partnerships set forth in Rev. Proc. 89–31. First, the proposed regulations define *publicly traded partnership* solely by reference to the definition in section 7704. Second, the proposed regulations provide that the documentation requirements and presumptions of § 1.1446–1 apply to publicly traded partnerships, thereby requiring such partnerships to obtain a Form W–8BEN, Form W–8IMY, or Form W–9 from each of their partners if they do not rely on other means to determine the status of their partners. Third, the proposed regulations provide that the applicable percentage for withholding on distributions is the rate applicable under section 1446(b).

Comments are requested as to whether the special rules applicable to publicly traded partnerships should be extended to other partnerships. Specifically, Treasury and the IRS are considering whether these special rules should apply to partnerships that make an election under section 775 of the Code or partnerships with a specified minimum number of partners.

H. Tiered Partnership Structures—§ 1.1446–5

Special concerns arise when a foreign partnership (upper-tier partnership) is a partner in a second partnership (lower-tier partnership) that is subject to section 1446. Section 1446(f) provides the Secretary with regulatory authority to prescribe rules necessary to carry out the purposes of the section. The legislative history to section 1446 notes that in the context of tiered partnership structures, "rules may be necessary to prevent the imposition of more tax than will be properly due (for example, rules to prevent the tax from being imposed on more than one partnership and rules to determine the applicable percentages)." H.R. Rep. No. 100–795, 100th Cong., 2d Sess. 291 (1988); S. Rep. No. 100–445, 100th Cong., 2d Sess. 305 (1988).

Rev. Proc. 89–31 employs an entity approach in computing the 1446 tax obligation of a partnership that has a foreign partnership as one of its partners. Under the entity approach, a lower-tier partnership must pay a 1446 tax at the highest rate in section 1 on an upper-tier foreign partnership's allocable share of ECTI, regardless of the composition of the upper-tier partnership. Rev. Proc. 89–31 provides the upper-tier partnership a credit for a portion of the 1446 tax paid by the lower-tier partnership to avoid multiple application of the 1446 tax. This approach may result in a partnership paying a 1446 tax that is greater in amount than would have been required if the partners of the upper-tier partnership had been direct partners of the lower-tier partnership, for example, where some of the partners of the upper-tier partnership are U.S. persons.

The proposed regulations modify the rules in Rev. Proc. 89–31 with respect to certain tiered partnership structures to address this situation. The proposed regulations provide that if a partner in a partnership that is required to pay the 1446 tax is a foreign partnership, it may submit a completed Form W–8IMY to the lower-tier partnership. If the upper-tier foreign partnership completes and submits Form W–8IMY to the lower-tier partnership, and passes along the Form W–8BEN, Form W–8IMY, or Form W–9 it received for some or all of its partners, as well as information describing how effectively connected items are allocated among its partners, the lower-tier partnership shall look through the upper-tier partnership to the partners of the upper-tier partnership (to the extent that it has received the appropriate documentation and allocation information and can reliably associate the allocation of its effectively connected items to the partners of the upper-tier partnership) to determine its 1446 tax obligation. To the extent the lower-tier partnership receives a valid Form W–8IMY from the upper-tier partnership but cannot reliably associate the upper-tier partnership's allocable share of effectively connected partnership items with a withholding certificate for each of the upper-tier partnership's partners, the lower-tier partnership shall withhold at the higher of the applicable percentages in section 1446(b).

Therefore, in appropriate circumstances, the lower-tier partnership may determine its 1446 tax obligation based on the status of its indirect partners. This approach generally is consistent with the paperwork requirements under section 1441 applicable to a nonwithholding foreign partnership and will ensure that the 1446 tax paid by the partnership more closely approximates the actual tax liability of the beneficial owner of the income in the case of a tiered partnership structure. An upper-tier foreign partnership with foreign partners remains obligated to file and report with respect to its 1446 tax obligation. Accordingly, the upper-tier partnership must comply with the general rules of section 1446, including requiring payment in installments, and reporting and passing along the credit under section 33 to its partners, which in these situations will also include the tax paid at the lower-tier partnership level.

Comments are requested on the general approach taken in these proposed regulations for situations involving two or more tiers of partnerships. Further, comments are requested as to the desirability and administrability of an alternative approach that allows a domestic upper-tier partnership with foreign partners to elect to pass information regarding its partners to the lower-tier partnership and have the lower-tier partnership pay the 1446 tax based upon the composition of the partners of the upper-tier partnership.

I. Withholding in Excess of Partner's Actual Tax Liability

Since the enactment of section 1446, Treasury and the IRS have received and considered several comments regarding the potential for section 1446 to require a partnership to pay a withholding tax in an amount that exceeds a foreign partner's actual tax liability for a taxable year. This situation may occur for several reasons, including that: (1) Section 1446 does not take into account a partner's losses from outside the partnership during the year, or a partner's loss carryovers; and (2) section 1446 requires withholding at the maximum statutory rates generally applicable to a foreign partner with effectively connected income. Section 1446 does not contain provisions for reducing or eliminating the general withholding obligation like the provisions contained in section 1445 (which impose a withholding tax in the case of the disposition of an interest in United States real property). See section 1445(c). Rev. Proc. 89–31 provides that section 1446 applies instead of section 1445(e)(1) where the two sections overlap, and, accordingly, partnerships owning U.S. real property are not permitted to reduce withholding on gains from the disposition of such property through the use of the procedures available under section 1445. See also § 8.01 of Rev. Proc. 2000–35 (2000–2 C.B. 211).

Treasury and the IRS considered comments regarding alternative approaches for adjusting the withholding tax obligation under section 1446 to more closely approximate a foreign partner's actual

U.S. tax liability. These proposed regulations contain provisions aimed at mitigating the potential for withholding in excess of the partner's actual tax liability (see *e.g.*, § 1.1446–5). These proposed regulations do not contain other provisions that have been suggested because, among other reasons, of concerns regarding the administrability of such approaches. Comments are requested with respect to approaches that would permit an adjustment to the amount of 1446 tax obligation that are consistent with the statute and legislative history and administrable by partnerships, partners and the IRS. In particular, comments are requested on whether the rules coordinating sections 1445 and 1446 should be modified to address these concerns.

J. Effective Date

These regulations are proposed to apply to partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

Effect on Other Documents

The following publications will be obsolete for partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**:
Rev. Proc. 89–31 (1989–1 C.B. 895)
Rev. Proc. 92–66 (1992–2 C.B. 428)

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 533(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations. With respect to the collections of information contained in § 1.871–10, § 1.1446–1 (pertaining to domestic grantor trusts), and § 1.1446–3 (pertaining to foreign trusts), it is hereby certified that these collections of information will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that only limited small entities are impacted by these collections and the burden associated with such collections is .5 hours. With respect to the collections of information in §§ 1.1446–3 (pertaining to a partnership required to notify its foreign partners of an installment payment of 1446 tax paid on behalf of such partner) and 1.1446–4, it is hereby certified that these sections will not impose a significant economic impact on a substantial number of small entities. This certification is based upon the fact that while approximately 15,000 small entities will be impacted by these sections, the estimated annual burden associated with these sections is only .5 hours per respondent. Moreover, the information collection in § 1.1446–4 is voluntary. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet Site at *http://www.irs.gov/regs*. All comments will be available for public inspection and copying. The Treasury Department and IRS request comments on the clarity of the proposed regulations and how they may be made easier to understand.

A public hearing has been scheduled for December 4, 2003, beginning at 10 a.m. in the IRS Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. All visitors must come to the Constitution Avenue entrance and present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by November 13, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is David J. Sotos, Office of the Associate Chief Counsel (International). However, other personnel from the Treasury Department and IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and Recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

§ 1.1446–3 also issued under 26 U.S.C. 1446(f). * * *
§ 1.1446–4 also issued under 26 U.S.C. 1446(f). * * *

Par. 2. In § 1.871–10, paragraph (d)(3) is amended by adding a sentence at the end of that paragraph, and paragraph (e) is amended by revising the first sentence to read as follows:

§ 1.871–10 Election to treat real property income as effectively connected with U.S. business.

* . * * * *

(d) * * *

(3) *Election by partnership.* * * * If the nonresident alien or foreign corporation makes an election, such person must provide the partnership a Form W–8BEN, "Certificate of Foreign Status of Beneficial Owner for U.S. Withholding," and must indicate that the nonresident alien or foreign corporation has made the election under this section to treat real property income as effectively connected income.

(e) *Effective date.* This section shall apply for taxable years beginning after December 31, 1966, except the last sentence of paragraph (d)(3) shall apply to partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**. * * *

Par. 3. § 1.1443–1 is amended by:

1. Revising the first sentence of paragraph (a) and adding a sentence at the end of the paragraph.

2. Revising paragraph (c)(1).

The revision and additions read as follows:

§ 1.1443–1 Foreign tax-exempt organizations.

(a) *Income includible in computing unrelated business taxable income.* In the case of a foreign organization that is described in section 501(c), amounts paid or effectively connected taxable income allocable to the organization that are includible under section 512 in computing the organization's unrelated business taxable income are subject to withholding under §§ 1.1441–1, 1.1441–4, 1.1441–6, and 1.1446–1 through 1.1446–5, in the same manner as payments or allocations of effectively connected taxable income of the same amounts to any foreign person that is not a tax-exempt organization. * * * See also § 1.1446–3(c)(3).

* * * * *

(c) * * *

(1) *In general.* This section applies to payments made after December 31, 2000, except that the references in paragraph (a) of this section to effectively connected taxable income and withholding under section 1446 shall apply to partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

Par. 4. Sections 1.1446–0 through 1.1446–6 are added to read as follows.

§ 1.1446–0 Table of contents.

This section lists the captions contained in §§ 1.1446–1 through 1.1446–6.

§ 1.1446–1 Withholding tax on foreign partners' share of effectively connected taxable income.

(a) In general.
(b) Steps in determining 1446 tax obligation.
(c) Determining whether a partnership has a foreign partner.
(1) In general.
(2) Forms W–8BEN, W–8IMY, and W–9.
(i) In general.
(ii) Effect of Forms W–8BEN, W–8IMY, W–9, and statement.
(iii) Requirements for certificates to be valid.
(A) When period of validity expires.
(B) Required information for Forms W–8BEN and W–8IMY.
(iv) Partner must provide new withholding certificate when there is a change in circumstances.
(v) Partnership must retain withholding certificates.
(3) Presumption of foreign status in absence of valid Form W–8BEN, Form W–8IMY, Form W–9, or statement.
(4) Consequences when partnership knows or has reason to know that Form W–8BEN, Form W–8IMY, or Form W–9 is incorrect or unreliable and does not withhold.
§ 1.1446–2 Determining a partnership's effectively connected taxable income allocable to foreign partners under section 704.
(a) In general.
(b) Computation.
(1) In general.
(2) Income and gain rules.
(i) Application of the principles of section 864.
(ii) Income treated as effectively connected.
(iii) Exempt income.
(3) Deduction and losses.
(i) Oil and gas interests.
(ii) Charitable contributions.
(iii) Net operating losses and other suspended or carried losses.
(iv) Interest deductions.
(v) Limitation on capital losses.
(vi) Other deductions.
(vii) Limitations on deductions.
(4) Other rules.
(i) Exclusion of items allocated to U.S. partners.
(ii) Partnership credits.
(5) Examples.
§ 1.1446–3 Time and manner of calculating and paying over the 1446 tax.
(a) In general.
(1) Calculating 1446 tax.
(2) Applicable percentage.
(b) Installment payments.
(1) In general.
(2) Calculation.
(i) General application of the principles of section 6655.
(ii) Annualization methods.
(iii) Partner's estimated tax payments.
(iv) Partner whose interest terminates during the partnership's taxable year.
(v) Exceptions and modifications to the application of the principles under section 6655.
(A) Inapplicability of special rules for large corporations.
(B) Inapplicability of special rules regarding early refunds.
(C) Period of underpayment.
(D) Other taxes.
(E) 1446 tax treated as tax under section 11.
(F) Prior year tax safe harbor.
(3) 1446 tax safe harbor.
(i) In general.
(ii) Permission to change to standard annualization method.
(c) Coordination with other withholding rules.
(1) Fixed or determinable, annual or periodical income.
(2) Real property gains.
(i) Domestic partnerships.
(ii) Foreign partnerships.
(3) Coordination with section 1443.
(d) Reporting and crediting the 1446 tax.
(1) Reporting 1446 tax.
(i) Reporting of installment tax payments, installment tax payment due dates, and notification to partners of installment tax payments.
(ii) Payment due dates.
(iii) Annual return and notification to partners.
(iv) Information provided to beneficiaries of foreign trusts and estates.
(v) Attachments required of foreign trusts and estates.
(vi) Attachments required of beneficiaries of foreign trusts and estates.
(vii) Information provided to beneficiaries of foreign trusts and estates that are partners in certain publicly traded partnerships.
(2) Crediting 1446 tax against a partner's U.S. tax liability.
(i) In general.
(ii) Substantiation for purposes of claiming the credit under section 33.
(iii) Tiered structures including trusts or estates.
(A) Foreign estates and trusts.
(B) Use of domestic trusts to circumvent section 1446.
(iv) Refunds to withholding agent.
(v) 1446 tax treated as cash distribution to partners.
(vi) Examples.
(e) Liability of partnership for failure to withhold.
(1) In general.
(2) Proof that tax liability has been satisfied.
(3) Liability for interest and penalties.
(f) Effect of withholding on partner.
§ 1.1446–4 Publicly traded partnerships.
(a) In general.
(b) Definitions.
(1) Publicly traded partnership.
(2) Applicable percentage.
(3) Nominee.
(4) Qualified notice.
(c) Time and manner of payment.
(d) Rules for designation of nominees to withhold tax under section 1446.
(e) Determining foreign status of partners.
(1) In general.
(2) Presumptions regarding payee's status in absence of documentation.
(f) Distributions subject to withholding.
(1) In general.
(2) In-kind distributions.
(3) Ordering rule relating to distributions.
(4) Coordination with section 1445.
(g) Election to withhold based upon ECTI allocable to foreign partners instead of withholding on distributions.
§ 1.1446–5 Tiered partnership structures.
(a) In general.
(b) Reporting requirements.
(1) In general.
(2) Publicly traded partnerships.
(c) Look through rules for foreign upper-tier partnerships.
(d) Examples.
§ 1.1446–6 Effective date.

§ 1.1446–1 Withholding tax on foreign partners' share of effectively connected taxable income.

(a) *In general.* If a domestic or foreign partnership has effectively connected taxable income as computed under § 1.1446–2 (ECTI), for any partnership tax year, and any portion of such taxable income is allocable under section 704 to a foreign partner, then the partnership must pay a withholding tax under section 1446 (1446 tax) at the time and in the manner set forth in this section and §§ 1.1446–2 through 1.1446–5.

(b) *Steps in determining 1446 tax obligation.* In general, a partnership determines its 1446 tax as follows. The partnership determines whether it has any foreign partners in accordance with

paragraph (c) of this section. If the partnership does not have any foreign partners (including any person presumed to be foreign under paragraph (c) of this section and any domestic trust treated as foreign under § 1.1446–3(d)) during its taxable year, it generally will not have a 1446 tax obligation. If the partnership has one or more foreign partners, it then determines under § 1.1446–2 whether it has ECTI any portion of which is allocable to one or more of the foreign partners. If the partnership has ECTI allocable to one or more of its foreign partners, the partnership computes its 1446 tax, pays over 1446 tax, and reports the amount paid in accordance with the rules in § 1.1446–3. For special rules applicable to publicly traded partnerships, see § 1.1446–4. For special rules applicable to tiered partnership structures, see § 1.1446–5.

(c) *Determining whether a partnership has a foreign partner*—(1) *In general.* Except as otherwise provided in § 1.1446–3, only a partnership that has at least one foreign partner during the partnership's taxable year can have a 1446 tax liability. The term foreign partner means any partner of the partnership who is not a U.S. person within the meaning of section 7701(a)(30). Thus, a partner of the partnership is a foreign partner if the partner is a nonresident alien individual, foreign partnership, foreign corporation, foreign estate or trust, as those terms are defined under section 7701 and the regulations thereunder, or a foreign government within the meaning of section 892 and the regulations thereunder. For purposes of this section, a partner that is treated as a U.S. person for all income tax purposes (by election or otherwise, see *e.g.*, sections 953(d), 1504(d)) will not be a foreign partner, provided the partner has provided the partnership a valid Form W–9, "Request for Taxpayer Identification Number and Certification," or if the partnership uses other means to determine that the partner is not a foreign partner (see paragraph (c)(3) of this section). A partner that is treated as a U.S. person only for certain specified purposes is considered a foreign partner for purposes of section 1446, and a partnership must pay a withholding tax on the portion of ECTI allocable to that partner. For example, a partnership must generally pay 1446 tax on ECTI allocable to a foreign corporate partner that has made an election under section 897(i).

(2) *Forms W–8BEN, W–8IMY, and W–9*—(i) *In general.* Except as otherwise provided in this paragraph (c)(2) or paragraph (c)(3) of this section, a partnership must determine whether a partner is a foreign partner, and the partner's tax classification (*e.g.*, corporate or non-corporate), by obtaining from the partner a Form W–8BEN, "Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding," Form W–8IMY, "Certificate of Foreign Intermediary, Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding," or a Form W–9, as applicable. Specifically, a foreign partner that is a nonresident alien individual, a foreign estate or trust (other than a grantor trust described in this paragraph (c)(2)), a foreign corporation, or a foreign government should provide a valid Form W–8BEN. A partner that is a foreign partnership should provide a valid Form W–8IMY. A partner that is a U.S. person (other than a grantor trust described in this paragraph (c)(2)), including a domestic partnership, should provide a valid Form W–9. An entity that is disregarded as an entity separate from its owner under § 301.7701–3 of this chapter may not submit a Form W–8BEN, W–8IMY, or Form W–9. See §§ 301.7701–1 through 301.7701–3 of this chapter for determining the U.S. Federal tax classification of a partner. To the extent that a grantor or another person is treated as the owner of any portion of a trust under subpart E of subchapter J of the Internal Revenue Code, such trust shall not provide a Form W–8BEN or Form W–9 to the partnership, except to the extent that such trust is providing documentation on behalf of the grantor or other person treated as the owner of a portion of such trust as required by this paragraph (c)(2). Instead, if such trust is a foreign trust, the trust shall submit Form W–8IMY to the partnership identifying itself as a grantor trust and shall provide such documentation (*e.g.*, Forms W–8BEN, W–8IMY, or W–9) and information pertaining to its owner(s) to the partnership that permits the partnership to reliably associate (within the meaning of § 1.1441–1(b)(2)(vii)) such portion of the trust's allocable share of partnership ECTI with the grantor or other person that is the owner of such portion of the trust. If such trust is a domestic trust, the trust shall furnish the partnership a statement under penalty of perjury that the trust is, in whole or in part, a grantor trust and identifying that portion of the trust that is treated as owned by a grantor or another person under subpart E of subchapter J of the Internal Revenue Code. The trust shall also provide such documentation and information (*e.g.*, Forms W–8BEN, W–8IMY, or W–9) pertaining to its owner(s) to the partnership that permits the partnership to reliably associate such portion of the trust's allocable share of partnership ECTI with the grantor or other person that is the owner of such portion of the trust. With respect to nominees, only nominees described in § 1.1446–4(b)(3) holding interests in publicly traded partnerships subject to § 1.1446–4 may submit a Form W–9. See § 1.1446–4 for additional documentation that may be submitted by such a nominee. In all other cases where a nominee holds an interest in a partnership, the beneficial owner of the partnership interest, not the nominee, shall submit Form W–8BEN, Form W–8IMY, or Form W–9. A partnership that has obtained a valid Form W–8BEN, Form W–8IMY, or Form W–9 from a partner, nominee, or beneficial owner prior to the due date for paying any 1446 tax may rely on it to the extent provided in this paragraph (c)(2).

(ii) *Effect of Forms W–8BEN, W–8IMY, W–9, and Statement.* In general, for purposes of this section, a partnership may rely on a valid Form W–8BEN, Form W–8IMY, Form W–9, statement described in § 1.1446–4(e)(1), or statement described in this paragraph (c)(2) from a partner, nominee, beneficial owner, or grantor trust to determine whether that person, beneficial owner, or the owner of a grantor trust, is a domestic or foreign partner or a nominee, and if such person is a foreign partner, to determine whether or not such person is a corporation for U.S. tax purposes. To the extent a partnership receives a Form W–8IMY from a foreign grantor trust or a statement described in this paragraph (c)(2) from a domestic grantor trust, but does not receive a Form W–8BEN, Form W–8IMY, or Form W–9 identifying such grantor or other person, the rules of paragraph (c)(3) of this section shall apply. Further, a partnership may not rely on a Form W–8BEN, Form W–8IMY, Form W–9, or statement described in § 1.1446–4(e)(1) or this paragraph (c)(2), and such form or statement is therefore not valid, if the partnership has actual knowledge or has reason to know that any information on the withholding certificate or statement is incorrect or unreliable and, if based on such knowledge or reason to know, it should pay a 1446 tax in an amount greater than would be the case if it relied on the information or certifications. A partnership has reason to know that information on a withholding certificate or statement is incorrect or unreliable if its knowledge

of relevant facts or statements contained on the form or other documentation is such that a reasonably prudent person in the position of the withholding agent would question the claims made. See §§ 1.1441–1(e)(4)(viii) and 1.1441–7(b)(1) and (2). If the partnership does not know or have reason to know that a Form W–8BEN, Form W–8IMY, Form W–9, or statement received from a partner, nominee, beneficial owner, or grantor trust contains incorrect or unreliable information, but it subsequently determines that it does contain incorrect or unreliable information, and, based on such knowledge the partnership should pay 1446 tax in an amount greater than would be the case if it relied on the information or certification, the partnership will not be subject to penalties for its failure to pay the 1446 tax in reliance on such form or statement for any installment payment date prior to the date that the determination is made. See §§ 1.1446–1(c)(4) and 1.1446–3 concerning penalties for failure to pay the withholding tax when a partnership knows or has reason to know that the form or statement is incorrect or unreliable.

(iii) *Requirements for certificates to be valid.* Except as otherwise provided in this paragraph (c), for purposes of this section, the validity of a Form W–9 shall be determined under section 3406 and § 31.3406(h)–3(e) of this chapter which establish when such form may be reasonably relied upon. A Form W–8BEN, or Form W–8IMY is only valid for purposes of this section if its validity period has not expired, the partner submitting the form has signed it under penalties of perjury, and it contains all the required information.

(A) *When period of validity expires.* For purposes of this section, a Form W–8BEN or W–8IMY submitted by a partner shall be valid until the end of the period of validity determined for such form under § 1.1441–1(e). With respect to a foreign partnership submitting Form W–8IMY, the period of validity of such form shall be determined under § 1.1441–1(e) as if such foreign partnership submitted the form required of a nonwithholding foreign partnership. See § 1.1441–1(e)(4)(ii).

(B) *Required information for Forms W–8BEN and W–8IMY.* Forms W–8BEN and W–8IMY submitted under this section must contain the partner's name, permanent address and Taxpayer Identification Number (TIN), the country under the laws of which the partner is formed, incorporated or governed (if the person is not an individual), the classification of the partner for U.S. federal tax purposes (*e.g.*, partnership, corporation), and any other information required to be submitted by the forms or instructions to Form W–8BEN or Form W–8IMY, as applicable.

(iv) *Partner must provide new withholding certificate when there is a change in circumstances.* The principles of § 1.1441–1(e)(4)(ii)(D) shall apply when a change in circumstances has occurred (including situations where the status of a U.S. person changes) that requires a partner to provide a new withholding certificate.

(v) *Partnership must retain withholding certificates.* A partnership or nominee who has responsibility for paying the withholding tax under this section or § 1.1446–4, must retain each withholding certificate and other documentation received from its direct and indirect partners (including nominees) for as long as it may be relevant to the determination of the withholding agent's tax liability under section 1461 and the regulations thereunder.

(3) *Presumption of foreign status in absence of valid Form W–8BEN, Form W–8IMY, Form W–9, or statement.* Except as otherwise provided in this paragraph (c)(3), a partnership that does not receive a valid Form W–8BEN, Form W–8IMY, Form W–9, statement described in § 1.1446–4(e)(1), or statement required by paragraph (c)(2) of this section from a partner, nominee, beneficial owner, or grantor trust, or a partnership that receives a withholding certificate or statement but has actual knowledge or reason to know that the information on the certificate or statement is incorrect or unreliable, must presume that the partner is a foreign person. If the partnership knows that the partner is an individual and not an entity, the partnership shall treat the partner as a nonresident alien individual. If the partnership knows that the partner is an entity, the partnership shall treat the partner as a corporation if the entity is a corporation as defined in § 301.7701–2(b)(8) of this chapter. In all other cases, the partnership shall treat the partner as either a nonresident alien individual or a foreign corporation, whichever classification results in a higher 1446 tax being due, and shall pay the 1446 tax in accordance with this presumption. The presumption set forth in this paragraph (c)(3) that a partner is a foreign person (either because a Form W–9 was not furnished by such partner or the partnership determines that such form is incorrect or unreliable) shall not apply to the extent that the partnership relies on other means to ascertain the non-foreign status of a partner and the partnership is correct in its determination that such partner is a U.S. person. A partnership is in no event required to rely upon other means to determine the non-foreign status of a partner and may demand that a partner furnish a Form W–9. If a certification is not provided in such circumstances, the partnership may presume that the partner is a foreign partner, and for purposes of sections 1461 through 1463, will be considered to have been required to pay 1446 tax on such partner's allocable share of partnership ECTI.

(4) *Consequences when partnership knows or has reason to know that Form W–8BEN, Form W–8IMY, or Form W–9 is incorrect or unreliable and does not withhold.* If a partnership knows or has reason to know that a Form W–8BEN, Form W–8IMY, Form W–9, statement described in § 1.1446–4(e)(1), or statement required by paragraph (c)(2) of this section submitted by a partner, nominee, beneficial owner, or grantor trust contains incorrect or unreliable information (either because the certificate or statement when given to the partnership contained incorrect information or because there has been a change in facts that makes information on the certificate or statement incorrect), and the partnership pays less than the full amount of withholding tax due on ECTI allocable to that partner, the partnership shall be fully liable under section 1461 and § 1.1461–3 (§ 1.1461–1 for publicly traded partnerships subject to § 1.1446–4), § 1.1446–3, and for all applicable penalties and interest, for any failure to pay the 1446 tax for the period during which the partnership knew or had reason to know that the certificate contained incorrect or unreliable information and for all subsequent installment periods. If a partner, nominee, beneficial owner, or grantor trust, submits a new valid Form W–8BEN, Form W–8IMY, Form W–9, or statement, as applicable, the partnership may rely on that form for paying installments of 1446 tax beginning with the installment period during which such form is received.

§ 1.1446–2 Determining a partnership's effectively connected taxable income allocable to foreign partners under section 704.

(a) *In general.* A partnership's effectively connected taxable income (ECTI) is generally the partnership's taxable income as computed under section 703, with adjustments as provided in section 1446(c) and this section, and computed with

consideration of only those partnership items which are effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States. For purposes of determining the section 1446 withholding tax (1446 tax) under § 1.1446–3, partnership ECTI allocable under section 704 to foreign partners is the sum of the allocable shares of ECTI of each of the partnership's foreign partners as determined under paragraph (b) of this section. The calculation of partnership ECTI allocable to foreign partners as set forth in paragraph (b) of this section, and the determination of the partnership's withholding tax obligation, is a partnership-level computation solely for purposes of determining the 1446 tax. Therefore, any deduction that is not taken into account in calculating a partner's allocable share of partnership ECTI (*e.g.*, percentage depletion), but which is a deduction that under U.S. tax law the foreign partner is otherwise entitled to claim, can still be claimed by the foreign partner when computing its U.S. tax liability and filing its U.S. income tax return, subject to any restriction or limitation that otherwise may apply.

(b) *Computation*—(1) *In general.* A foreign partner's allocable share of partnership ECTI for the partnership's taxable year that is allocable under section 704 to a particular foreign partner is equal to that foreign partner's distributive share of partnership gross income and gain for the partnership's taxable year that is effectively connected and properly allocable to the partner under section 704 and the regulations thereunder, reduced by the foreign partner's distributive share of partnership deductions for the partnership taxable year that are connected with such income under section 873 or 882(c) and properly allocable to the partner under section 704 and the regulations thereunder, in each case, after application of the rules of this section. For these purposes, a foreign partner's distributive share of effectively connected gross income and gain and the deductions connected with such income shall be computed by considering allocations that are respected under the rules of section 704 and § 1.704–1(b)(1), including special allocations in the partnership agreement (as defined in § 1.704–1(b)(2)(ii)(h)), and adjustments to the basis of partnership property described in section 743 pursuant to an election by the partnership under section 754 (see § 1.743–1(j)). The character of effectively connected partnership items (capital versus ordinary) shall be separately considered only to the extent set forth in paragraph (b)(3)(v) of this section.

(2) *Income and gain rules.* For purposes of computing a foreign partner's allocable share of partnership ECTI under this paragraph (b), the following rules with respect to partnership income and gain shall apply.

(i) *Application of the principles of section 864.* The determination of whether a partnership's items of gross income are effectively connected shall be made by applying the principles of section 864 and the regulations thereunder.

(ii) *Income treated as effectively connected.* A partnership's items of gross income that are effectively connected includes any income that is treated as effectively connected income, including partnership income subject to a partner's election under section 871(d) or section 882(d), any partnership income treated as effectively connected with the conduct of a U.S. trade or business pursuant to section 897, and any other items of partnership income treated as effectively connected under another provision of the Code, without regard to whether those amounts are taxable to the partner.

(iii) *Exempt income.* A foreign partner's allocable share of partnership ECTI does not include income or gain exempt from U.S. tax by reason of a provision of the Internal Revenue Code. A foreign partner's allocable share of partnership ECTI also does not include income or gain exempt from U.S. tax by operation of any U.S. income tax treaty or reciprocal agreement. In the case of income excluded by reason of a treaty provision, such income must be derived by a resident of an applicable treaty jurisdiction, the resident must be the beneficial owner of the item, and all other requirements for benefits under the treaty must be satisfied. The partnership must have received from the partner a valid withholding certificate, that is Form W–8BEN or Form W–8IMY (see § 1.1446–1(c)(2)(iii) regarding when a Form W–8BEN or Form W–8IMY is valid for purposes of this section), containing the information necessary to support the claim for treaty benefits required in the forms and instructions to those forms. In addition, for purposes of this section, the withholding certificate must contain the beneficial owner's taxpayer identification number.

(3) *Deduction and losses.* For purposes of computing a foreign partner's allocable share of partnership ECTI under this paragraph (b), the following rules with respect to deductions and losses shall apply.

(i) *Oil and gas interests.* The deduction for depletion with respect to oil and gas wells shall be allowed, but the amount of such deduction shall be determined without regard to sections 613 and 613A.

(ii) *Charitable contributions.* The deduction for charitable contributions provided in section 170 shall not be allowed.

(iii) *Net operating losses and other suspended or carried losses.* The net operating loss deduction of any foreign partner provided in section 172 shall not be taken into account. Further, the partnership shall not take into account any suspended losses (*e.g.*, losses in excess of a partner's basis in the partnership, see section 704(d)) or any capital loss carrybacks or carryovers available to a foreign partner.

(iv) *Interest deductions.* The rules of this paragraph (b)(3)(iv) shall apply for purposes of determining the amount of interest expense that is allocable to income which is (or is treated as) effectively connected with the conduct of a trade or business for purposes of calculating the foreign partner's allocable share of partnership ECTI. In the case of a non-corporate foreign partner, the rules of § 1.861–9T(e)(7) shall apply. In the case of a corporate foreign partner, the rules of § 1.882–5 shall apply by treating the partnership as a foreign corporation and using the partner's pro-rata share of the partnership's assets and liabilities for these purposes. For these purposes, the rules governing elections under § 1.882–5(a)(7) shall be made at the partnership level.

(v) *Limitation on capital losses.* Losses from the sale or exchange of capital assets allocable under section 704 to a partner shall be allowed only to the extent of gains from the sale or exchange of capital assets allocable under section 704 to such partner.

(vi) *Other deductions.* No deduction shall be allowed for personal exemptions provided in section 151 or the additional itemized deductions for individuals provided in part VII of subchapter B of the Internal Revenue Code (section 211 and following).

(vii) *Limitations on deductions.* Except as provided in paragraph (b)(3) or (4) of this section, any limitations on losses or deductions that apply at the partner level when determining ECTI allocable to a foreign partner shall not be taken into account.

(4) *Other rules*—(i) *Exclusion of items allocated to U.S. partners.* In computing ECTI allocable to a foreign partner, the partnership shall not take into account any item of income, gain, loss, or deduction to the extent allocable to any

partner that is not a foreign partner, as that term is defined in § 1.1446–1(c) of this section.

(ii) *Partnership credits.* See § 1.1446–3(a) providing that the 1446 tax is computed without regard to a partner's distributive share of the partnership's tax credits.

(5) *Examples.* The following examples illustrate the application of this section:

Example 1. Limitation on capital losses. PRS partnership has two equal partners, A and B. A is a nonresident alien individual and B is a U.S. citizen. A provides PRS with a valid Form W–8BEN, and B provides PRS with a valid Form W–9. PRS has the following annualized tax items for the relevant installment period, all of which are effectively connected with its U.S. trade or business and are allocated equally between A and B: $100 of long-term capital gain, $400 of long-term capital loss, $300 of ordinary income, and $100 of ordinary deductions. Assume that these allocations are respected under section 704(b) and the regulations thereunder. Accordingly, A's allocable share of PRS's effectively connected items includes $50 of long-term capital gain, $200 of long-term capital loss, $150 of ordinary income, and $50 of ordinary deductions. In determining A's allocable share of partnership ECTI, the amount of the long-term capital loss that may be taken into account pursuant to paragraph (b)(3)(v) of this section is limited to A's allocable share of gain from the sale or exchange of capital assets. The amount of partnership ECTI allocable under section 704 to A is $100 ($150 of ordinary income less $50 of ordinary deductions, plus $50 of capital gains less $50 of capital loss).

Example 2. Limitation on capital losses—special allocations. PRS partnership has two equal partners, A and B. A and B are both nonresident alien individuals. A and B each provide PRS with a valid Form W–8BEN. PRS has the following annualized tax items for the relevant installment period, all of which are effectively connected with its U.S. trade or business: $200 of long-term capital gain, $200 of long-term capital loss, and $400 of ordinary income. A and B have equal shares in the ordinary income, however, pursuant to the partnership agreement, capital gains and losses are subject to special allocations. The long-term capital gain is allocable to A, and the long-term capital loss is allocable to B. It is assumed that all of the partnership's allocations are respected under section 704(b) and the regulations thereunder. Pursuant to paragraph (b)(3)(v) of this section, A's allocable share of partnership ECTI is $400 ($200 of ordinary income plus $200 of long-term capital gain), and B's allocable share of partnership ECTI is $200 ($200 of ordinary income).

Example 3. Withholding tax obligation where partner has net operating losses. PRS partnership has two equal partners, FC, a foreign corporation, and DC, a domestic corporation. FC and DC provide a valid Form W–8BEN and Form W–9, respectively, to PRS. Both FC and PRS are on a calendar taxable year. PRS is engaged in the conduct of a trade or business in the United States and for its first installment period during its taxable year has $100 of annualized ECTI that is allocable to FC. As of the beginning of the taxable year, FC had an unused effectively connected net operating loss carryover in the amount of $300. The net operating loss carryover is not taken into account in determining PRS's withholding tax liability for ECTI allocable under section 704 to FC. PRS must pay 1446 tax with respect to the $100 of ECTI allocable to FC.

§ 1.1446–3 Time and manner of calculating and paying over the 1446 tax.

(a) *In general*—(1) *Calculating 1446 tax.* This section provides rules for calculating, reporting, and paying over the section 1446 withholding tax (1446 tax). A partnership's 1446 tax is equal to the amount determined under this section and shall be paid in installments during the partnership's taxable year (see paragraph (d)(1) of this section for installment payment due dates), with any remaining tax due paid with the partnership's annual return required to be filed pursuant to paragraph (d) of this section. For these purposes, a partnership shall not take into account either a partner's liability for any other tax imposed under any other provision of the Internal Revenue Code (*e.g.*, section 55 or 884) or a partner's distributive share of the partnership's tax credits when determining the amount of the partnership's 1446 tax.

(2) *Applicable percentage.* In the case of a foreign partner that is a corporation, the applicable percentage is the highest rate of tax specified in section 11(b)(1) for such taxable year. Except to the extent provided in § 1.1446–5, in the case of a foreign partner that is not taxable as a corporation (*e.g.*, partnership, individual, trust or estate), the applicable percentage is the highest rate of tax specified in section 1.

(b) *Installment payments*—(1) *In general.* Except as provided in § 1.1446–4 for certain publicly traded partnerships, a partnership must pay its 1446 tax by making installment payments of the 1446 tax based on the amount of partnership ECTI allocable under section 704 to its foreign partners, without regard to whether the partnership makes any distributions to its partners during the partnership's taxable year. The amount of the installment payments are determined in accordance with this paragraph (b), and the tax must be paid at the times set forth in paragraph (d) of this section. Subject to paragraph (b)(3) of this section, in computing its first installment of 1446 tax for a taxable year, a partnership must choose whether it will pay its 1446 tax for the entire taxable year by using the safe harbor set forth in paragraph (b)(3) of this section, or by using one of several annualization methods available under paragraph (b)(2)(ii) of this section for computing partnership ECTI allocable to foreign partners. In the case of any underpayment of an installment payment of 1446 tax by a partnership, the partnership shall be subject to an addition to tax equal to the amount determined under section 6655, as modified by this section, as if such partnership were a domestic corporation, as well as any other applicable interest and penalties. See § 1.1446–3(f). Section 6425 (permitting an adjustment for an overpayment of estimated tax by a corporation) shall not apply to a partnership with respect to the payment of its 1446 tax.

(2) *Calculation*—(i) *General application of the principles of section 6655.* Installment payments of 1446 tax required during the partnership's taxable year are based upon partnership ECTI for the portion of the partnership taxable year to which they relate, and, except as set forth in this paragraph (b)(2) or paragraph (b)(3) of this section, shall be calculated using the principles of section 6655. Under the principles of section 6655, the partnership's effectively connected items are annualized to determine each foreign partner's allocable share of partnership ECTI under § 1.1446–2. Each foreign partner's allocable share of partnership ECTI is then multiplied by the applicable percentage for each foreign partner. This computation will yield an annualized 1446 tax with respect to such partner. The installment of 1446 tax due with respect to a foreign partner's allocable share of partnership ECTI equals the excess of the section 6655(e)(2)(B)(ii) percentage of the annualized 1446 tax for that partner (or, if applicable, the adjusted seasonal amount) for the relevant installment period, over the aggregate of any amounts paid under section 1446 with respect to that partner in prior installments during the partnership's taxable year.

(ii) *Annualization methods.* A partnership that chooses to annualize its income for the taxable year shall use one of the annualization methods set forth in section 6655(e) and the regulations thereunder, and as described in the forms and instructions for Form 8804, "Annual Return for Partnership Withholding Tax (Section 1446)," Form 8805, "Foreign Partner's Information Statement of Section 1446 Withholding Tax," and Form 8813, "Partnership Withholding Tax Payment Voucher."

(iii) *Partner's estimated tax payments.* In computing its installment payments of 1446 tax, a partnership may not take

into account a partner's estimated tax payments.

(iv) *Partner whose interest terminates during the partnership's taxable year.* With respect to a partner whose interest in the partnership terminates prior to the end of the period for which the partnership is making an installment payment, the partnership shall take into account the income that is allocable to the partner for the portion of the partnership taxable year that the person was a partner.

(v) *Exceptions and modifications to the application of the principles under section 6655.* To the extent not otherwise modified in §§ 1.1446–1 through 1.1446–6, or inconsistent with those rules, the principles of section 6655 apply to the calculation of the installment payments of 1446 tax made by a partnership, except that:

(A) *Inapplicability of special rules for large corporations.* The principles of section 6655(d)(2), concerning large corporations (as defined in section 6655(g)(2)), shall not apply.

(B) *Inapplicability of special rules regarding early refunds.* The principles of section 6655(h), applicable to amounts excessively credited or refunded under section 6425, shall not apply. See paragraph (b)(1) of this section providing that section 6425 shall not apply for purposes of the 1446 tax.

(C) *Period of underpayment.* The period of the underpayment set forth in section 6655(b)(2) shall end on the earlier of the 15th day of the 4th month following the close of the partnership's taxable year (or, in the case of a partnership described in § 1.6081–5(a)(1) of this chapter, the 15th day of the 6th month following the close of the partnership's taxable year), or with respect to any portion of the underpayment, the date on which such portion is paid.

(D) *Other taxes.* Section 6655 shall be applied without regard to any references to alternative minimum taxable income and modified alternative minimum taxable income.

(E) *1446 tax treated as tax under section 11.* The principles of section 6655(g)(1) shall be applied to treat the 1446 tax as a tax imposed by section 11.

(F) *Prior year tax safe harbor.* The safe harbor set forth in section 6655(d)(1)(B)(ii) shall not apply and instead the safe harbor set forth in paragraph (b)(3) of this section applies.

(3) *1446 tax safe harbor*—(i) *In general.* The addition to tax under section 6655 shall not apply to a partnership with respect to a current installment of 1446 tax if—

(A) The average of the amount of the current installment and prior installments during the taxable year is at least 25 percent of the total 1446 tax that would be payable on the amount of the partnership's ECTI allocable under section 704 to foreign partners for the prior taxable year;

(B) The prior taxable year consisted of twelve months;

(C) The partnership timely files (including extensions) an information return under section 6031 for the prior year; and

(D) The amount of ECTI for the prior taxable year is not less than 50 percent of the ECTI shown on the annual return of section 1446 withholding tax that is (or will be) timely filed for the current year.

(ii) *Permission to change to standard annualization method.* Except as otherwise provided in this paragraph (b)(3), if a partnership chooses to pay its 1446 tax for the first installment period based upon the safe harbor method set forth in this paragraph (b)(3), the partnership must use the safe harbor method for each installment payment made during the partnership's taxable year. Notwithstanding the foregoing, if a partnership paying over 1446 tax during the taxable year pursuant to this paragraph (b)(3) determines during an installment period (based upon the standard option annualization method set forth in section 6655(e) and the regulations thereunder, as modified by the forms and instructions to Forms 8804, 8805, and 8813) that it will not qualify for the safe harbor in this paragraph (b)(3) because the prior year's ECTI will not meet the 50-percent threshold in paragraph (b)(3)(i)(D) of this section, then the partnership is permitted, without being subject to the addition to tax under section 6655, to pay over its 1446 tax for the period in which such determination is made, and all subsequent installment periods during the taxable year, using the standard option annualization method. A change pursuant to this paragraph shall be disclosed in a statement attached to the Form 8804 the partnership files for the taxable year and shall include information to allow the Service to determine whether the change was appropriate.

(c) *Coordination with other withholding rules*—(1) *Fixed or determinable, annual or periodical income.* Fixed or determinable, annual or periodical income subject to tax under section 871(a) or section 881 is not subject to withholding under section 1446, and such income is independently subject to the withholding requirements of sections 1441 and 1442 and the regulations thereunder.

(2) *Real property gains*—(i) *Domestic partnerships.* A domestic partnership that is otherwise subject to the withholding requirements of sections 1445 and 1446 will be subject to the payment and reporting requirements of section 1446 only and not section 1445(e)(1) and the regulations thereunder, with respect to partnership gain from the disposition of a U.S. real property interest (as defined in section 897(c)), provided that the partnership complies fully with the requirements under section 1446 and the regulations thereunder, including any reporting obligations, with respect to dispositions of U.S. real property interests. A partnership that has complied with such requirements will be deemed to satisfy the withholding requirements of section 1445 and the regulations thereunder. In the event that amounts are withheld under section 1445(a) at the time of the disposition of a U.S. real property interest, such amounts may be credited against the section 1446 tax.

(ii) *Foreign partnerships.* A foreign partnership that is subject to withholding under section 1445(a) during its taxable year may credit the amount withheld under section 1445(a) against its section 1446 tax liability for that taxable year only to the extent such gain is allocable to foreign partners.

(3) *Coordination with section 1443.* A partnership that has ECTI allocable under section 704 to a foreign organization described in section 1443(a) shall be required to withhold under this section.

(d) *Reporting and crediting the 1446 tax*—(1) *Reporting 1446 tax.* This paragraph (d) sets forth the rules for reporting and crediting the 1446 tax paid by a partnership. To the extent that 1446 tax is paid on behalf of a domestic trust (including a grantor or other person treated as an owner of a portion of such trust) or a grantor or other person treated as the owner of a portion of a foreign trust, the rules of this paragraph (d) applicable to a foreign trust or its beneficiaries shall be applied to such domestic or foreign trust and its beneficiaries or owners, as applicable, so that appropriate credit for the 1446 tax may be claimed by the trust, beneficiary, grantor, or other person.

(i) *Reporting of installment tax payments and notification to partners of installment tax payments.* Each partnership required to make an installment payment of 1446 tax must file Form 8813, "Partnership Withholding Tax Payment Voucher (Section 1446)," in accordance with the instructions of that form. When making a payment of 1446 tax, a partnership must notify each foreign partner of the

1446 tax paid on its behalf. A foreign partner generally may credit a 1446 tax paid by the partnership on the partner's behalf against the partner's estimated tax that the partner must pay during the partner's own taxable year. No particular form is required for a partnership's notification to a foreign partner, but each notification must include the partnership's name, the partnership's Taxpayer Identification Number (TIN), the partnership's address, the partner's name, the partner's TIN, the partner's address, the annualized ECTI estimated to be allocated to the foreign partner, and the amounts of tax paid on behalf of the partner for the current and prior installment periods during the partnership's taxable year.

(ii) *Payment due dates.* The 1446 tax is calculated based on partnership ECTI allocable under section 704 to foreign partners during the partnership's taxable year, as determined under section 706. Payments of the 1446 tax generally must be made during the partnership's taxable year in which such income is derived. A partnership must pay to the Internal Revenue Service a portion of its estimated annual 1446 tax in installments on or before the 15th day of the fourth, sixth, ninth, and twelfth months of the partnership's taxable year as provided in section 6655. Any additional amount determined to be due is to be paid with the filing of the annual return of tax required under this section and clearly designated as for the prior taxable year. Form 8813 should not be submitted for a payment made under the preceding sentence.

(iii) *Annual return and notification to partners.* Every partnership (except a publicly traded partnership that has not elected to apply the general withholding tax rules under section 1446) that has effectively connected gross income for the partnership's taxable year allocable under section 704 to one or more of its foreign partners (or is treated as having paid 1446 tax under § 1.1446–5(a)), must file Form 8804, "Annual Return for Partnership Withholding Tax (Section 1446)." Additionally, every partnership that is required to file Form 8804 also must file Form 8805, "Foreign Partner's Information Statement of Section 1446 Withholding Tax," and furnish this form to the Internal Revenue Service and to each of its partners with respect to which the 1446 tax was paid. Forms 8804 and 8805 are separate from Form 1065, "U.S. Return of Partnership Income," and the attachments thereto, and are not to be filed as part of the partnership's Form 1065. A partnership must generally file Forms 8804 and 8805 on or before the due date for filing the partnership's Form 1065. See § 1.6031(a)-1(c) for rules concerning the due date of a partnership's Form 1065. However, with respect to partnerships described in § 1.6081–5(a)(1), Forms 8804 and 8805 are not due until the 15th day of the sixth month following the close of the partnership's taxable year. Any additional tax owed under section 1446 for the prior taxable year of the partnership must be paid to the Internal Revenue Service with the Form 8804.

(iv) *Information provided to beneficiaries of foreign trusts and estates.* A foreign trust or estate that is a partner in a partnership subject to withholding under section 1446 shall be provided Form 8805 by the partnership. The foreign trust or estate must provide to each of its beneficiaries a copy of the Form 8805 furnished by the partnership. In addition, the foreign trust or estate must provide a statement for each of its beneficiaries to inform each beneficiary of the amount of the credit that may be claimed under section 33 (as determined under this section) for the 1446 tax paid by the partnership. Until an official IRS form is available, the statement from a foreign trust or estate that is described in this paragraph (d)(1)(iv) shall contain the following information—

(A) Name, address, and TIN of the foreign trust or estate;

(B) Name, address, and TIN of the partnership;

(C) The amount of the partnership's ECTI allocated to the foreign trust or estate for the partnership taxable year (as shown on the Form 8805 provided to the trust or estate);

(D) The amount of 1446 tax paid by the partnership on behalf of the foreign trust or estate;

(E) Name, address, and TIN of the beneficiary of the foreign trust or estate;

(F) The amount of the partnership's ECTI allocated to the trust or estate for purposes of section 1446 that is to be included in the beneficiary's gross income; and

(G) The amount of 1446 tax paid by the partnership on behalf of the foreign trust or estate that the beneficiary is entitled to claim on its return as a credit under section 33.

(v) *Attachments required of foreign trusts and estates.* The statement furnished to each foreign beneficiary under this paragraph (d)(1) must also be attached to the foreign trust or estate's U.S. Federal income tax return filed for the taxable year including the installment period to which the statement relates.

(vi) *Attachments required of beneficiaries of foreign trusts and estates.* The beneficiary of the foreign trust or estate must attach the statement provided by the trust or estate, along with a copy of the Form 8805 furnished by the partnership to such trust or estate, to its U.S. income tax return for the year in which it claims a credit for the 1446 tax. See § 1.1446–3(d)(2)(ii) for additional rules regarding a partner or beneficial owner claiming a credit for 1446 tax.

(vii) *Information provided to beneficiaries of foreign trusts and estates that are partners in certain publicly traded partnerships.* A statement similar to the statement required by paragraph (d)(1)(iv) of this section shall be provided by trusts or estates that hold interests in publicly traded partnerships subject to § 1.1446–4.

(2) *Crediting 1446 tax against a partner's U.S. tax liability*—(i) *In general.* A partnership's payment of 1446 tax on the portion of ECTI allocable to a foreign partner relates to the partner's U.S. income tax liability for the partner's taxable year in which the partner is subject to U.S. tax on that income. Subject to paragraphs (d)(2)(ii) and (iii) of this section, a partner may claim as a credit under section 33 the 1446 tax paid by the partnership with respect to ECTI allocable to that partner. The partner may not claim an early refund of these amounts under the estimated tax rules.

(ii) *Substantiation for purposes of claiming the credit under section 33.* A partner may credit the amount paid under section 1446 with respect to such partner against its U.S. income tax liability only if it attaches proof of payment to its U.S. income tax return for the partner's taxable year in which the items comprising such partner's allocable share of partnership ECTI are included in the partner's income. Except as provided in the next sentence, proof of payment consists of a copy of the Form 8805 the partnership provides to the partner (or in the case of a beneficiary of a foreign trust or estate, the statement required under paragraph (d)(1)(iv) of this section to be provided by such trust or estate and the related Form 8805 furnished to such trust or estate), but only if the name and TIN on the Form 8805 (or the statement provided by a foreign trust or estate) match the name and TIN on the partner's U.S. tax return, and such form (or statement) identifies the partner (or beneficiary) as the person entitled to the credit under section 33. In the case of a partner of a publicly traded partnership that is subject to withholding on distributions under § 1.1446–4, proof of payment consists of

a copy of the Form 1042–S, "Foreign Person's U.S. Source Income Subject to Withholding," provided to the partner by the partnership.

(iii) *Tiered structures including trusts or estates*—(A) *Foreign trusts and estates.* Section 1446 tax paid on the portion of ECTI allocable under section 704 to a foreign trust or estate that the foreign trust or estate may claim as a credit under section 33 shall bear the same ratio to the total 1446 tax paid on behalf of the trust or estate as the total ECTI allocable to such trust or estate and not distributed (or treated as distributed) to the beneficiaries of such trust or estate, and, accordingly not deducted under section 651 or section 661 in calculating the trust or estate's taxable income, bears to the total ECTI allocable to such trust or estate. Any 1446 tax that a foreign trust or estate is not entitled to claim as a credit under this paragraph (d)(2) may be claimed as a credit by the beneficiary or beneficiaries of such trust or estate that includes the partnership's ECTI (distributed or deemed distributed) allocated to the trust or estate in gross income under section 652 or section 662 (with the same character as effectively connected income as in the hands of the trust or estate). The trust or estate must provide each beneficiary with a copy of the Form 8805 provided to it by the partnership and prepare the statement required by paragraph (d)(1)(iv) of this section.

(B) *Use of domestic trusts to circumvent section 1446.* This paragraph (d)(2)(iii)(B) shall apply if a partnership knows or has reason to know that a foreign person that is the ultimate beneficial owner of the ECTI holds its interest in the partnership through a domestic trust (and possibly other entities), and such domestic trust was formed or availed of with a principal purpose of avoiding the 1446 tax. The use of a domestic trust in a tiered trust structure may have a principal purpose of avoiding the 1446 tax even though the tax avoidance purpose is outweighed by other purposes when taken together. In such case, a partnership is required to pay 1446 tax under this paragraph as if the domestic trust was a foreign trust for purposes of section 1446 and the regulations thereunder. Accordingly, all applicable penalties and interest shall apply to the partnership for its failure to pay 1446 tax under this paragraph (d)(2)(iii)(B), commencing with the installment period during which the partnership knew or had reason to know that this paragraph (d)(2)(iii)(B) applied.

(iv) *Refunds to withholding agent.* A partnership (or nominee pursuant to § 1.1446–4) may apply for a refund of the 1446 tax paid only to the extent allowable under section 1464 and the regulations thereunder.

(v) *1446 tax treated as cash distribution to partners.* Amounts paid by a partnership under section 1446 with respect to a partner are treated as distributed to that partner on the earliest of the day on which such tax was paid by the partnership, the last day of the partnership taxable year for which the tax was paid, or, the last day during the partnership's taxable year on which the partner owned an interest in the partnership. Thus, for example, 1446 tax paid by a partnership after the close of a partnership taxable year that relates to ECTI allocable to a foreign partner for the prior taxable year will be considered distributed by the partnership to the respective foreign partner on the last day of the partnership's prior taxable year.

(vi) *Examples.* The following examples illustrate the application of this section:

Example 1. Simple trust that reports entire amount of ECTI. PRS is a partnership that has two partners, FT, a foreign trust, and A, a U.S. person. FT is a simple trust under section 651. FT and A each provide PRS with a valid Form W–8BEN and Form W–9, respectively. FT has one beneficiary, NRA, a nonresident alien individual. In computing its installment obligation during the 2004 taxable year, PRS has $200 of annualized income, all of which is ordinary ECTI. The $200 of income will be allocated equally to FT and A under section 704 and it is assumed that such an allocation will be respected under section 704(b) and the regulations thereunder. FT's allocable share of ECTI is $100. PRS withholds $35 under section 1446 with respect to the $100 of ECTI allocable to FT. FT's only income for its tax year is the $100 of income from PRS. Pursuant to the terms of the trust's governing instrument and local law, the $100 of ECTI is not included in FT's fiduciary accounting income and the deemed distribution of the $35 withholding tax paid under paragraph (d)(2)(v) of this section is not included in FT's fiduciary accounting income. Accordingly, the $100 of ECTI is not income required to be distributed by FT, and FT may not claim a deduction under section 651 for this amount. FT must report the $100 of ECTI in its gross income and may claim a credit under section 33 in the amount of $35 for the 1446 tax paid by PRS. NRA is not required to include any of the ECTI in gross income and accordingly may not claim a credit for any amount of the $35 of 1446 tax paid by PRS.

Example 2. Simple trust that distributes a portion of ECTI to the beneficiary. Assume the same facts as in *Example 1*, except that PRS distributes $60 to FT, which is included in FT's fiduciary accounting income under local law. FT will report the $100 of ECTI in its gross income and may claim a deduction for the $60 required to be distributed under section 651(a) to NRA. Pursuant to paragraph (d)(2)(iii) of this section, FT may claim a credit under section 33 in the amount of $14 for the 1446 tax paid by PRS ($40/$100 multiplied by $35). NRA is required to include the $60 of the ECTI in gross income under section 652 (as ECTI) and may claim a credit under section 33 in the amount of $21 for the 1446 tax paid by PRS ($35 less $14 or $60/$100 multiplied by $35).

Example 3. Complex trust that distributes entire ECTI to the beneficiary. Assume the same facts as in *Example 1*, except that FT is a complex trust under section 661. PRS distributes $60 to FT, which is included in FT's fiduciary accounting income. FT distributes the $60 of fiduciary accounting income to NRA and also properly distributes an additional $40 to NRA from FT's principal. FT will report the $100 of ECTI in its gross income and may deduct the $60 required to be distributed to NRA under section 661(a)(1) and may deduct the $40 distributed to NRA under section 661(a)(2). FT may not claim a credit under section 33 for any of the $35 of 1446 tax paid by PRS. NRA is required to include $100 of the ECTI in gross income under section 662 (as ECTI) and may claim a credit under section 33 in the amount of $35 for the 1446 tax paid by PRS ($35 less $0).

(e) *Liability of partnership for failure to withhold*—(1) *In general.* Every partnership required to pay a 1446 tax is made liable for that tax by section 1461. Therefore, a partnership that is required to pay a 1446 tax but fails to do so, or pays less than the amount required under this section, is liable under section 1461 for the payment of the tax required to be withheld under chapter 3 of the Internal Revenue Code and the regulations thereunder unless the partnership can demonstrate pursuant to paragraph (e)(2) of this section, to the satisfaction of the Commissioner or his delegate, that the full amount of effectively connected taxable income allocable to such partner was included in income on the partner's U.S. Federal income tax return and the full amount of tax due on such return was paid by such partner to the Internal Revenue Service. See paragraph (e)(3) of this section and section 1463 regarding the partnership's liability for penalties and interest even though a foreign partner has satisfied the underlying tax liability. See § 1.1461–3 for applicable penalties when a partnership fails to pay 1446 tax. See paragraph (b) of this section for an addition to tax under section 6655 when there is an underpayment of 1446 tax.

(2) *Proof that tax liability has been satisfied.* Proof of payment of tax may be established for purposes of paragraph (e)(1) of this section on the basis of a Form 4669, "Statement of Payments Received," or such other form as the Internal Revenue Service may prescribe

in published guidance (see § 601.601(d)(2) of this chapter), establishing the amount of tax, if any, actually paid by the partner on the income. Such partnership's liability for tax, and the requirement that such partnership file Forms 8804 and 8805 shall be deemed to have been satisfied with respect to such partner as of the date on which the partner's income tax return was filed and all tax required to be shown on the return is paid in full.

(3) *Liability for interest and penalties.* Notwithstanding paragraph (e)(2) of this section, a partnership that fails to pay over tax under section 1446 is not relieved from liability under section 6655 or for interest under section 6601. See § 1.1463–1. Such liability may exist even if there is no underlying tax liability due from a foreign partner on its allocable share of partnership ECTI. The addition to tax under section 6655 or the interest charge under section 6601 that is required by those sections shall be imposed as set forth in those sections, as modified by this section. For example, under section 6601, interest shall accrue beginning on the last date for paying the tax due under section 1461 (which is the due date, without extensions, for filing the Forms 8804 and 8805). The interest shall stop accruing on the 1446 tax liability on the date, and to the extent, that the unpaid tax liability under section 1446 is satisfied. A foreign partner is permitted to reduce any addition to tax under section 6654 or 6655 by the amount of any section 6655 addition to tax paid by the partnership with respect to its failure to pay adequate installment payments of the 1446 tax on ECTI allocable to the foreign partner.

(f) *Effect of withholding on partner.* The payment of the 1446 tax by a partnership does not excuse a foreign partner to which a portion of ECTI is allocable from filing a U.S. tax or informational return, as appropriate, with respect to that income. Information concerning installment payments of 1446 tax paid during the partnership's taxable year on behalf of a foreign partner shall be provided to such foreign partner in accordance with paragraph (d) of this section and such information may be taken into account by the foreign partner when computing the partner's estimated tax liability during the taxable year. Form 1040NR, "U.S. Nonresident Alien Income Tax Return," Form 1065, "U.S. Return of Partnership Income," Form 1120F, "U.S. Income Tax Return of a Foreign Corporation," or such other return as appropriate, must be filed by the partner, and any tax due must be paid, by the filing deadline (including extensions) generally applicable to such person. Pursuant to § 1.1446–3(d), a partner may generally claim a credit under section 33 for its share of any 1446 tax paid by the partnership against the amount of income tax (or 1446 tax in the case of tiers of partnerships) as computed in such partner's return.

§ 1.1446–4 Publicly traded partnerships.

(a) *In general.* This section sets forth rules for applying the section 1446 withholding tax (1446 tax) to publicly traded partnerships. A publicly traded partnership (as defined in paragraph (b) of this section) that has effectively connected gross income, gain or loss must pay 1446 tax by withholding from distributions to a foreign partner. Publicly traded partnerships that withhold on distributions must pay over and report any 1446 tax as provided in paragraph (c), and generally are not to pay over and report the 1446 tax under the rules in § 1.1446–3. However, under paragraph (g) of this section, a publicly traded partnership may elect not to apply the rules of this section, and instead, to pay the 1446 tax based on the effectively connected taxable income (ECTI) allocable under section 704 to foreign partners under the general rules of §§ 1.1446–1 through 1.1446–3. The amount of the withholding tax on distributions, other than distributions excluded under paragraph (f) of this section, that are made during any partnership taxable year, equals the applicable percentage (defined in paragraph (b)(2) of this section) of such distributions.

(b) *Definitions*—(1) *Publicly traded partnership.* For purposes of this section, the term publicly traded partnership has the same meaning as in section 7704 (including the regulations thereunder), but does not include a publicly traded partnership treated as a corporation under that section.

(2) *Applicable percentage.* For purposes of this section, applicable percentage shall have the meaning as set forth in § 1.1446–3(a)(2).

(3) *Nominee.* For purposes of this section, the term nominee means a domestic person that holds an interest in a publicly traded partnership on behalf of a foreign person.

(4) *Qualified notice.* For purposes of this section, a qualified notice is a notice given by a publicly traded partnership regarding a distribution that is attributable to effectively connected income, gain or loss of the partnership, and in accordance with the notice requirements with respect to dividends described in 17 CFR 240.10b–17(b)(1) or (3) issued pursuant to the Securities Exchange Act of 1934, 15 U.S.C. section 78(a).

(c) *Time and manner of payment.* The withholding tax required under this section is to be paid pursuant to the rules and procedures of section 1461, §§ 1.1461–1, 1.1461–2, and 1.6302–2. However, the reimbursement and set-off procedures set forth in those regulations shall not apply. A publicly traded partnership must use Form 1042, "Annual Withholding Tax Return for U.S. Source Income of Foreign Persons," and Form 1042–S, "Foreign Person's U.S. Source Income Subject to Withholding," to report withholding from distributions under this section. See § 1.1461–1(b). See § 1.1446–3(d)(1)(vii) requiring a foreign trust or estate that holds an interest in a publicly traded partnership to provide a statement to the beneficiaries of such foreign trust or estate with respect to the credit to be claimed under section 33. For penalties and additions to the tax for failure to comply with this section, see §§ 1.1461–1 and 1.1461–3.

(d) *Rules for designation of nominees to withhold tax under section 1446.* A nominee that receives a distribution from a publicly traded partnership subject to withholding under this section, and which is to be paid to (or for the account of) any foreign person, may be treated as a withholding agent under this section. A nominee is treated as a withholding agent under this section only to the extent of the amount specified in the qualified notice (as defined in paragraph (b)(4) of this section) that the nominee receives. Where a nominee is designated as a withholding agent with respect to a foreign partner of the partnership, then the obligation to withhold on distributions to such foreign partner in accordance with the rules of this section shall be imposed solely on the nominee. A nominee under this section shall identify itself as a nominee by providing Form W–9, "Request for Taxpayer Identification Number and Certification," to the partnership, along with the statement required by paragraph (e)(1) of this section. If a nominee furnishes Form W–9 and the statement required by paragraph (e)(1) of this section to the partnership, but a qualified notice is not received by the nominee from the partnership, the nominee shall not be a withholding agent subject to the rules of this section and the partnership shall presume that such nominee is a nonresident alien individual or foreign corporation, whichever classification results in a higher 1446 tax being due, and pay a withholding tax consistent with such presumption. A nominee responsible for

withholding under the rules of this section shall be subject to liability under sections 1461 and 6655, as well as for all applicable penalties and interest, as if such nominee was a partnership responsible for withholding under this section.

(e) *Determining foreign status of partners*—(1) *In general.* Except as provided in paragraph (d) of this section permitting nominees to submit a Form W–9 to a publicly traded partnership, the rules of § 1.1446–1 shall apply in determining whether a partner of a publicly traded partnership is a foreign partner for purposes of the 1446 tax (see § 1.1446–4(a)) and a nominee obligated to withhold under this section shall be entitled to rely on a Form W–8BEN, "Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding," Form W–8IMY, "Certificate of Foreign Intermediary, Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding," or Form W–9, "Request for Taxpayer Identification Number," received from persons on whose behalf it holds interests in the partnership to the same extent a partnership is entitled to rely on such forms under those rules. In addition to the rules stated in §§ 1.1446–1 through 1.1446–3 with respect to certificates establishing a partner as a domestic or foreign person, a nominee shall attach a brief statement to the Form W–9 that it furnishes to the partnership, informing the partnership that the nominee holds interests in the partnership on behalf of one or more foreign persons, including information that permits the partnership to determine the partnership interest held on behalf of such foreign persons. A statement furnished by a nominee pursuant to § 1.6031(c)–1T satisfies the requirements of the previous sentence.

(2) *Presumptions regarding payee's status in absence of documentation.* The rules of § 1.1446–1(c)(3) shall apply to determine a partner's status in the absence of documentation.

(f) *Distributions subject to withholding*—(1) *In general.* Except as provided in this paragraph (f)(1), a publicly traded partnership must withhold at the applicable percentage with respect to any actual distribution made to a foreign partner. The amount of a distribution subject to 1446 tax includes the amount of any 1446 tax required to be withheld on the distribution and, in the case of a partnership that receives a partnership distribution from another partnership in which it is a partner (*i.e.*, a tiered structure described in § 1.1446–5), any 1446 tax that was withheld from such distribution. For example, a foreign publicly traded partnership, UTP, owns an interest in domestic publicly traded partnership, LTP. UTP does not provide LTP any documentation with respect to its domestic or foreign status. LTP and UTP each have a calendar taxable year. LTP makes a distribution subject to section 1446 of $100 to UTP during its taxable year beginning January 1, 2004, and withholds 35 percent (the highest rate in section 1) of that distribution under section 1446. UTP receives a net distribution of $65 which it immediately redistributes to its partners. UTP has a liability to pay 35 percent of the total actual and deemed distribution it makes to its foreign partners as a section 1446 withholding tax. UTP may credit the $35 withheld by LTP against this liability as if it were paid by UTP. When UTP distributes the $65 it actually receives from LTP to its partners, UTP is treated for purposes of section 1446 as if it made a distribution of $100 to its partners ($65 actual distribution and $35 deemed distribution). UTP's partners (U.S. and foreign) may claim a credit against their U.S. income tax liability for their allocable share of the $35 of 1446 tax paid on their behalf.

(2) *In-kind distributions.* If a publicly traded partnership distributes property other than money, the partnership shall not release the property until it has funds sufficient to enable the partnership to pay over in money the required 1446 tax.

(3) *Ordering rule relating to distributions.* Distributions from publicly traded partnerships are deemed to be paid out of the following types of income in the order indicated—

(i) Amounts attributable to income described in section 1441 or 1442 that are not effectively connected, without regard to whether such amounts are subject to withholding because of a treaty or statutory exemption;

(ii) Amounts attributable to recurring dispositions of crops and timber that are subject to withholding under § 1.1445–5(c)(3)(iv) of the regulations, which continue to be subject to the rules of § 1.1445–5(c)(3);

(iii) Amounts effectively connected with a U.S. trade or business, but not subject to withholding under section 1446 (*e.g.*, exempt by treaty);

(iv) Amounts subject to withholding under section 1446; and

(v) Amounts not listed in paragraphs (f)(3)(i) through (iv) of this section.

(4) *Coordination with section 1445(e)(1).* Except as otherwise provided in this section, a publicly traded partnership that complies with the requirements of withholding under section 1446 and this section will be deemed to have satisfied the requirements of section 1445(e)(1) and the regulations thereunder. Notwithstanding the excluded amounts set forth in paragraph (f)(3) of this section, distributions subject to withholding at the applicable percentage shall include the following—

(i) Amounts subject to withholding under section 1445(e)(1) upon distribution pursuant to an election under § 1.1445–5(c)(3); and

(ii) Amounts not subject to withholding under section 1445 because the distributee is a partnership or is a foreign corporation that has made an election under section 897(i).

(g) *Election to withhold based upon ECTI allocable to foreign partners instead of withholding on distributions.* A publicly traded partnership may elect to comply with the requirements of §§ 1.1446–1 through 1.1446–3 (relating to withholding on ECTI allocable to foreign partners) and § 1.1446–5 (relating to tiered partnership structures) instead of the rules of this section. A publicly traded partnership shall make the election described in this paragraph (g) by complying with the payment and reporting requirements of §§ 1.1446–1 through 1.1446–3 and by complying with the information reporting requirements of this paragraph (g). The election is made by attaching a statement to a timely filed Form 8804, "Annual Return for Partnership Withholding Tax (Section 1446)," that is required to be filed by the partnership for the taxable year, indicating that the partnership is a publicly traded partnership that is electing to pay the 1446 tax under section 1446 based upon ECTI allocable under section 704 to its foreign partners. Once made, an election under this paragraph (g) may be revoked only with the consent of the Commissioner.

§ 1.1446–5 Tiered partnership structures.

(a) *In general.* The rules of this section shall apply in cases where a partnership (lower-tier partnership) that has effectively connected taxable income (ECTI), has a partner that is itself a partnership (upper-tier partnership). A partnership that directly or indirectly (through a chain of partnerships) owns a partnership interest in a lower-tier partnership shall be allowed a credit against its own section 1446 withholding tax (1446 tax) for the tax paid by the lower-tier partnership on its behalf. If an upper-tier domestic partnership directly owns an interest in a lower-tier partnership, the lower-tier partnership is not required to pay a withholding tax with respect to the upper-tier partnership's allocable share

of effectively connected taxable income (ECTI), regardless of whether the upper-tier domestic partnership's partners are foreign.

(b) *Reporting requirements*—(1) *In general.* To the extent that an upper-tier partnership that is a foreign partnership is a partner in a lower-tier partnership, and the lower-tier partnership has made 1446 tax installment payments on ECTI allocable to the upper-tier partnership, the upper-tier partnership shall receive a copy of the statements and forms filed by the lower-tier partnership allocable to its partnership interest in the lower-tier partnership under §§ 1.1446–1 through 1.1446–3 (*e.g.*, Form 8805, "Foreign Partner's Information Statement of Section 1446 Withholding Tax"). The upper-tier partnership may treat the 1446 tax paid by the lower-tier partnership on its behalf as a credit against its liability to pay 1446 tax, as if the upper-tier partnership actually paid over the amounts at the time that the amounts were paid by the lower-tier partnership. See § 1.1462–1(b). However, the upper-tier partnership may not obtain a refund for the amounts paid by the lower-tier partnership, but instead, must file such forms as prescribed by § 1.1446–3 and this section to allow the credits under section 33 to be properly claimed by the beneficial owners of such income. See § 1.1462–1. The upper-tier partnership must file Form 8804, "Annual Return for Partnership Withholding Tax (Section 1446)," and Form 8805, "Foreign Partner's Information Statement of Section 1446 Withholding Tax," with respect to its 1446 tax obligation, passing the credit for 1446 tax paid by the lower-tier partnership to its partners.

(2) *Publicly traded partnerships.* In the case of an upper-tier foreign partnership that is a publicly traded partnership, the rules of § 1.1446–4(c) shall apply.

(c) *Look through rules for foreign upper-tier partnerships.* For purposes of computing the 1446 tax obligation of a lower-tier partnership, if an upper-tier partnership owns an interest in the lower-tier partnership, the upper-tier partnership's allocable share of the lower-tier partnership's ECTI shall be treated as allocable to the partners of the upper-tier partnership (as if they were direct partners in the lower-tier partnership) to the extent that—

(1) The upper-tier partnership furnishes the lower-tier partnership with a valid Form W–8IMY, "Certificate of Foreign Intermediary, Flow Through Entity, or Certain U.S. Branches for United States Tax Withholding," indicating that it is a look-through foreign partnership for purposes of section 1446, and

(2) The lower-tier partnership can reliably associate (within the meaning of § 1.1441–1(b)(2)(vii)) the effectively connected partnership items allocable to the upper-tier partnership with a Form W–8BEN, "Certificate of Foreign Status of Beneficial Owner for U.S. Tax Withholding," Form W–8IMY, or Form W–9, "Request for Taxpayer Identification Number and Certification," for each of the upper-tier partnership's partners. The principles of § 1.1441–1(b)(2)(vii) shall apply to determine whether a lower-tier partnership can reliably associate effectively connected partnership items allocable to the upper-tier partnership to the partners of the upper-tier partnership. The upper-tier partnership shall provide the lower-tier partnership with a withholding certificate for each partner in the upper-tier partnership and information regarding the allocation of effectively connected items to the respective partners of the upper-tier partnership. To the extent the lower-tier partnership receives a valid Form W–8IMY from the upper-tier partnership but cannot reliably associate the upper-tier partnership's allocable share of effectively connected partnership items with a withholding certificate for each of the upper-tier partnership's partners, the lower-tier partnership shall withhold at the higher of the applicable percentages in section 1446(b). If a lower-tier partnership has not received a valid Form W–8IMY from the upper-tier partnership, the lower-tier partnership shall withhold at the higher of the applicable percentages in section 1446(b). See § 1.1446–1(c)(3). The approach set forth in this paragraph (c) shall not apply to partnerships whose interests are publicly traded. See § 1.1446–4.

(d) *Examples.* The following examples illustrate the provisions of § 1.1446–5:

Example 1. Sufficient documentation—tiered partnership structure. (i) Nonresident alien (NRA) and foreign corporation (FC) are partners in PRS, a foreign partnership, and share profits and losses in PRS 70 and 30 percent, respectively. All of PRS's partnership items are allocated based upon each partner's respective ownership interest and it is assumed that these allocations are respected under section 704(b) and the regulations thereunder. NRA and FC each furnish PRS with a valid Form W–8BEN establishing themselves as a foreign individual and foreign corporation, respectively. PRS holds a 40 percent interest in the profits, losses and capital of LTP, a lower-tier partnership. NRA holds the remaining 60 percent interest in profits, losses and capital of LTP. LTP has $100 of annualized ECTI for the relevant installment period. PRS has no income other than the income allocated from LTP. PRS provides LTP with a valid Form W–8IMY indicating that it is a foreign partnership and attaches the valid Form W–8BENs executed by NRA and FC, as well as a statement describing the allocation of PRS's effectively connected items among its partners. Further, NRA provides a valid Form W–8BEN to LTP.

(ii) LTP must pay 1446 tax on the $60 allocable to its direct partner NRA using the highest rate in section 1.

(iii) With respect to the effectively connected partnership items that LTP can reliably associate with NRA through PRS (70 percent of PRS's allocable share, or $28), LTP will pay 1446 tax on NRA's allocable share of LTP's partnership ECTI (as determined by looking through PRS) using the applicable percentage for non-corporate partners (the highest rate in section 1).

(iv) With respect to the effectively connected partnership items that LTP can reliably associate with FC through PRS (30 percent of PRS's allocable share, or $12), LTP will pay 1446 tax on FC's allocable share of LTP's ECTI (as determined by looking through PRS) using the applicable percentage for corporate partners.

(v) LTP's payment of the 1446 tax is treated as a distribution to NRA and PRS, its direct partners, that those partners may credit against their respective tax obligations. PRS will report its 1446 tax obligation with respect to its direct foreign partners, NRA and FC, on the Form 8804 and Form 8805 that it files with the Internal Revenue Service and will credit the amount withheld by LTP. Thus, PRS will pass along to NRA and FC the credit for the 1446 tax withheld by LTP which will be treated as a distribution to them.

Example 2. Insufficient documentation—tiered partnership structure. PRS is a domestic partnership that has two equal partners A and UTP. A is a nonresident alien individual and UTP is a foreign partnership that has two equal foreign partners, C and D. Neither A nor UTP provide PRS with a valid Form W–8BEN, Form W–8IMY, or Form W–9. Neither C nor D provide UTP with a valid Form W–8BEN, Form W–8IMY, or Form W–9. PRS must presume that UTP is a foreign person subject to withholding under section 1446 at the higher of the highest rate under section 1 or 11(b)(1). PRS has also not received any documentation with respect to A. PRS must presume that A is a foreign person, and, if PRS knows that A is an individual, compute and pay 1446 tax based on that knowledge.

§ 1.1446–6 Effective date.

Sections 1.1446–1 through 1.1446–5 shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

Par. 5. Section 1.1461–1 is amended as follows:

1. Paragraph (a)(1) is amended by adding three sentences at the end of the paragraph.

2. The second sentence of paragraph (c)(1)(i) is removed and two sentences are added in its place.

3. Paragraph (c)(1)(ii)(A)(*8*) is redesignated as paragraph (c)(1)(ii)(A)(*9*), and a new paragraph (c)(1)(ii)(A)(*8*) is added.

4. The first sentence of paragraph (c)(2)(i) is removed and two sentences are added in its place.

5. The first sentence of paragraph (c)(3) is removed and two sentences are added in its place.

6. Paragraph (i) is revised.

The additions and revisions read as follows:

§ 1.1461–1 Payment and returns of tax withheld.

(a) * * *

(1) * * * With respect to withholding under section 1446, this section shall only apply to publicly traded partnerships that have not made an election under § 1.1446–4(g). See § 1.1461–3 for penalties applicable to partnerships that fail to withhold under section 1446 on effectively connected taxable income allocable to foreign partners, including a publicly traded partnership that has made an election under § 11446–4(g). The previous two sentences shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

* * * * *

(c) * * *

(1) * * *

(i) * * * Notwithstanding the preceding sentence, any person that withholds or is required to withhold an amount under sections 1441, 1442, 1443, or § 1.1446–4(a) must file a Form 1042–S, "Foreign Person's U.S. Source Income Subject to Withholding," for the payment withheld upon whether or not that person is engaged in a trade or business and whether or not the payment is an amount subject to reporting. The reference in the previous sentence to withholding under § 1.1446–4 shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

* * *

(ii) * * *

(A) * * *

(*8*) A partner receiving a distribution from a publicly traded partnership subject to withholding under section 1446 and § 1.1446–4. This paragraph (c)(1)(ii)(A)(*8*) shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

* * * * *

(2) *Amounts subject to reporting*—(i) *In general.* Subject to the exceptions described in paragraph (c)(2)(ii) of this section, amounts subject to reporting on Form 1042–S are amounts paid to a foreign payee or partner (including persons presumed to be foreign) that are amounts subject to withholding as defined in § 1.1441–2(a) or § 1.1446–4(a). The reference in the previous sentence to withholding under § 1.1446–4 shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

* * *

* * * * *

(3) *Required information.* The information required to be furnished under this paragraph (c)(3) shall be based upon the information provided by or on behalf of the recipient of an amount subject to reporting (as corrected and supplemented based on the withholding agent's actual knowledge) or the presumption rules of §§ 1.1441–1(b)(3), 1.1441–4(a); 1.1441–5(d) and (e); 1.1441–9(b)(3), 1.1446–1(c)(3) or 1.6049–5(d). The reference in the previous sentence to presumption rules applicable to withholding under section 1446 shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

* * *

* * * * *

(i) *Effective date.* Unless otherwise provided in this section, this section shall apply to returns required for payments made after December 31, 2000.

Par. 6. Section 1.1461–2 is amended by:

1. Removing the first sentence of paragraph (a)(1) and adding two sentences in its place.

2. Revising paragraphs (b) and (d).

The revisions and addition read as follows:

§ 1.1461–2 Adjustments for overwithholding or underwithholding of tax.

(a) *Adjustments of overwithheld tax*—(1) *In general.* Except for partnerships or nominees required to withhold under section 1446, a withholding agent that has overwithheld under chapter 3 of the Internal Revenue Code, and made a deposit of the tax as provided in § 1.6302–2(a) may adjust the overwithheld amount either pursuant to the reimbursement procedure described in paragraph (a)(2) of this section or pursuant to the set-off procedure described in paragraph (a)(3) of this section. References in the previous sentence excepting from this section certain partnerships withholding under section 1446 shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

* * *

* * * * *

(b) *Withholding of additional tax when underwithholding occurs.* A withholding agent may withhold from future payments (or a partner's allocable share of ECTI under section 1446) made to a beneficial owner the tax that should have been withheld from previous payments (or paid under section 1446 with respect to a partner's allocable share of ECTI) to such beneficial owner under chapter 3 of the Internal Revenue Code. In the alternative, the withholding agent may satisfy the tax from property that it holds in custody for the beneficial owner or property over which it has control. Such additional withholding or satisfaction of the tax owed may only be made before the date that the annual return (*e.g.* Form 1042, Form 8804) is required to be filed (not including extensions) for the taxable year in which the underwithholding occurred. See § 1.6302–2 for making deposits of tax or § 1.1461–1(a) for making payment of the balance due for a calendar year. See also §§ 1.1461–1, 1.1461–3, and 1.1446–1 through 1.1446–5 for rules relating to withholding under section 1446. References in this paragraph (b) to withholding under section 1446 shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

* * * * *

(d) *Effective date.* Unless otherwise provided in this section, this section applies to payments made after December 31, 2000.

Par. 7. Section 1.1461–3 is added to read as follows.

§ 1.1461–3 Withholding under section 1446.

For rules relating to the withholding tax liability of a partnership or nominee under section 1446, see §§ 1.1446–1 through 1.1446–6. For penalties and additions to the tax for failure to timely pay the tax required to be paid under section 1446, see sections 6655 (in the case of publicly traded partnerships that have not made an election under § 1.1446–4(g), see section 6656), 6672, and 7202 and the regulations under those sections. For penalties and additions to the tax for failure to file returns or furnish statements in accordance with the regulations under section 1446, see sections 6651, 6662, 6663, 6721, 6722, 6723, 6724(c), 7201, 7203, and the regulations under those sections. This section shall apply to partnership taxable years beginning after the date that these regulations are

published as final regulations in the **Federal Register**.

Par. 8. Section 1.1462–1 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1.1462–1 Withheld tax as credit to recipient of income.

* * * * *

(b) *Amounts paid to persons who are not the beneficial owner.* Amounts withheld at source under chapter 3 of the Internal Revenue Code on payments to (or effectively connected taxable income allocable to) a fiduciary, partnership, or intermediary is deemed to have been paid by the taxpayer ultimately liable for the tax upon such income. Thus, for example, if a beneficiary of a trust is subject to the taxes imposed by section 1, 2, 3, or 11 upon any portion of the income received from a foreign trust, the part of any amount withheld at source which is properly allocable to the income so taxed to such beneficiary shall be credited against the amount of the income tax computed upon the beneficiary's return, and any excess shall be refunded. See § 1.1446–3 for examples applying this rule in the context of a partnership interest held through a foreign trust or estate. Further, if a partnership withholds an amount under chapter 3 of the Internal Revenue Code with respect to the distributive share of a partner that is a partnership or with respect to the distributive share of partners in an upper-tier partnership, such amount is deemed to have been withheld by the upper-tier partnership. See § 1.1446–5 for rules applicable to tiered partnership structures. References in this paragraph (b) to withholding under section 1446 shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

(c) *Effective date.* Unless otherwise provided in this section, this section applies to payments made after December 31, 2000.

Par. 9. Section 1.1463–1 is amended by:

1. Adding two sentences at the end of paragraph (a).

2. Revising paragraph (b).

The addition and revision read as follows:

§ 1.1463–1 Tax paid by recipient of income.

(a) * * * See § 1.1446–3(f) for additional rules where the tax was required to be withheld under section 1446. The reference in the previous sentence to withholding under section 1446 shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

(b) *Effective date.* Unless otherwise provided in this section, this section applies to failures to withhold occurring after December 31, 2000.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 10. The authority for 26 CFR part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 11. In § 301.6109–1 is amended as follows:

1. In paragraph (b)(2)(vi), remove the word "and".

2. In paragraph (b)(2)(vii), remove the period at the end of the paragraph and add "; and" in its place.

3. Paragraph (b)(2)(viii) is added.

4. In paragraph (c), the first three sentences are revised and a sentence is added at the end of the paragraph.

The amendments and additions read as follows:

§ 301.6109–1 Identifying numbers.

* * * * *

(b) * * *

(2) * * *

(viii) A foreign person that furnishes a withholding certificate described in § 1.1446–1(c)(2) or (3) of this chapter. This paragraph (b)(2)(viii) shall apply to partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

(c) *Requirement to furnish another's number.* Every person required under this title to make a return, statement, or other document must furnish such taxpayer identifying numbers of other U.S. persons and foreign persons that are described in paragraph (b)(2)(i), (ii), (iii), (vi), (vii), or (viii) of this section as required by the forms and the accompanying instructions. The taxpayer identifying number of any person furnishing a withholding certificate referred to in paragraph (b)(2)(vi) or (viii) of this section shall also be furnished if it is actually known to the person making a return, statement, or other document described in this paragraph (c). If the person making the return, statement, or other document does not know the taxpayer identifying number of the other person, and such other person is one that is described in paragraph (b)(2)(i), (ii), (iii), (vi), (vii), or (viii) of this section, such person must request the other person's number. * * * References in this paragraph (c) to paragraph (b)(2)(viii) of this section shall apply to partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

Par. 12. In § 301.6721–1, paragraph (g)(4) is revised to read as follows:

§ 301.6721–1 Failure to file correct information returns.

* * * * *

(g) * * *

(4) *Other items.* The term *information return* also includes any form, statement, or schedule required to be filed with the Internal Revenue Service with respect to any amount from which tax is required to be deducted and withheld under chapter 3 of the Internal Revenue Code (or from which tax would be required to be so deducted and withheld but for an exemption under the Internal Revenue Code or any treaty obligation of the United States), generally Forms 1042–S, "Foreign Person's U.S. Source Income Subject to Withholding," and 8805, "Foreign Partner's Information Statement of Section 1446 Withholding Tax." The provisions of this paragraph (g)(4) referring to Form 8805, shall apply to partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–22175 Filed 9–2–03; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

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H.R. 2195/P.L. 108–72

Smithsonian Facilities Authorization Act (Aug. 15, 2003; 117 Stat. 888)

H.R. 2465/P.L. 108–73

Family Farmer Bankruptcy Relief Act of 2003 (Aug. 15, 2003; 117 Stat. 891)

H.R. 2854/P.L. 108–74

To amend title XXI of the Social Security Act to extend the availability of allotments for fiscal years 1998 through 2001 under the State Children's Health Insurance Program, and for other purposes. (Aug. 15, 2003; 117 Stat. 892)

S. 1015/P.L. 108–75

Mosquito Abatement for Safety and Health Act (Aug. 15, 2003; 117 Stat. 898)

H.R. 1412/P.L. 108–76

Higher Education Relief Opportunities for Students Act of 2003 (Aug. 18, 2003; 117 Stat. 904)

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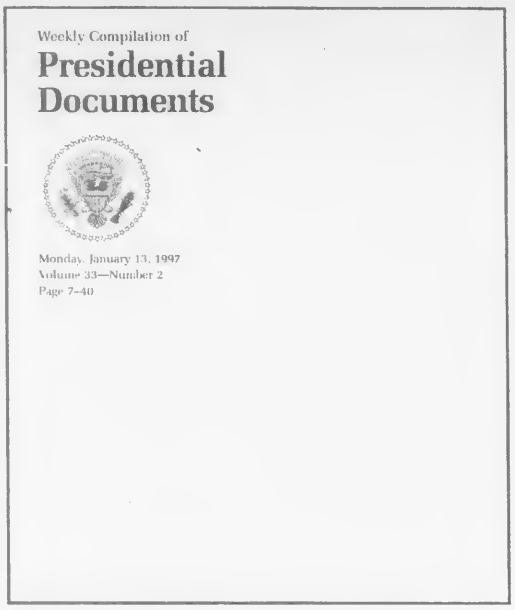

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