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WHEN: Tuesday, July 19, 2005
9:00 a.m.–Noon

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

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 501

[BOP Docket No. 1117–F]

RIN 1120–AB17

Bureau of Prisons Emergencies

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: The Bureau of Prisons (Bureau) makes this final rule to clarify that, when there is an institutional or system-wide Bureau emergency which the Director or designee considers a threat to human life or safety, the Director or designee may suspend the operation of the rules in this chapter as necessary to handle the emergency. This rule clarifies that the Director may suspend Bureau rules as needed in light of any emergency affecting the Bureau, and the Warden may do so to deal with emergencies at the institution level. This rule change clarifying the Director's authority to modify Bureau rules to handle emergencies is especially necessary in light of the recent terrorist attacks, threats to national security, threats of anthrax surrounding mail processing, and other events occurring on and after September 11, 2001.

DATES: This rule is effective June 20, 2005.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: In this document, the Bureau finalizes an interim final rule we published on this subject on April 16, 2003 (68 FR 18544).

This Final rule clarifies that, when there is an institutional or system-wide Bureau emergency which the Director or designee considers a threat to human life or safety, the Director or designee may suspend the operation of the rules in this chapter as necessary to handle the emergency. This rule change clarifying the Director's authority to modify Bureau rules to handle emergencies is especially necessary in light of the continued threats of terrorist attacks, dangers to national security, and other events occurring on and after September 11, 2001.

Response to Comments

We received a total of four comments which raised similar issues. We will therefore address each of the issues raised instead of addressing each comment separately.

Authority To Suspend Rules

One commenter claimed that "[t]here is no authority to suspend the rules."

This rule was promulgated on June 29, 1979 (44 FR 38244) and proposed on May 23, 1977 (42 FR 26334), along with several other core Bureau regulations. There were no amendments made to this rule after 1979, until the interim final rule was published in 2003. When we proposed this rule in 1977, we referred to 18 U.S.C. 4001 and 4042 as the authority for the rule.

18 U.S.C. 4001(b)(1) states that the Attorney General "shall promulgate rules for the government" of Federal penal and correctional institutions. Subsection (b)(2) also gives the Attorney General the authority to "provide for [inmates'] proper government, discipline, treatment, care, rehabilitation, and reformation." The Attorney General delegates these statutory rulemaking and custodial authorities to the Director of the Federal Bureau of Prisons in 28 CFR 0.96(o). 18 U.S.C. 4042(a) gives the Director of the Bureau of Prisons the authority to manage and regulate all Federal penal and correctional institutions and provide for the "safekeeping. care and subsistence" of inmates.

The Bureau's authority to promulgate rules, together with its authority to provide for the care and safekeeping of inmates, gives the Bureau implicit authority to create a rule that allows for the suspension of other rules as necessary in the limited situation of an emergency that threatens human life or safety.

Notice to Inmates

A commenter suggested that when rules are suspended, inmates should receive notice of the suspension immediately, including a description of the rules being suspended, a clear reason for the suspension and authority for suspension.

Because the reason for suspending the rules will necessarily involve an emergency, it will not always be practical or possible to provide notice to inmates of the specific circumstances surrounding suspension. However, the Bureau intends that inmates will be notified as soon as practicable of the suspension.

Administrative Remedies

Two commenters incorrectly assume that there is no way for an inmate to grieve a suspension of the rules. One commenter asked, "If the rules are suspended, does BOP waive any claim to administrative remedies regarding any incident occurring during the suspension period?" The Bureau will not waive claim to administrative remedies because inmates are permitted to follow the Administrative Remedy rules as set forth in 28 CFR part 542 to register complaints regarding incidents occurring during the suspension period.

Freedom of Information Act

A commenter asked whether the notice of suspension of rules, provided by the Warden to the Director, would be subject to release under the Freedom of Information Act (FOIA). The Warden's notice to the Director regarding suspension of the rules will be treated as any other Bureau document for the purposes of FOIA. Certain FOIA exemptions may apply, depending on the content of the notice.

Suspension of Rules Relating to Inmate Rights

Three commenters claimed that rule suspension would mean denial of Constitutional rights, such as attorney visits or other due process. Commenters asserted that there should never be a suspension of rules relating to other inmate programs or privileges, such as the Inmate Financial Responsibility Program, religious programs,

institutional lock-downs, meal service and hygiene allowances.

The Bureau intends that any suspension would be limited to those rules that are directly impacted or affected by the emergency necessitating suspension. As stated in the rule, no Bureau rules would be suspended unless there is a threat to human life or safety. In no situation would inmates be deprived of rights in a manner that violates the Constitution. *See Turner* v. *Safely*, 482 U.S. 78, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987).

30-Day Review of Suspension Is Not Frequent Enough

One commenter opined that more safeguards are needed to ensure that a prisoner's rights are not violated. The "removal or limitation of certain privileges * * * warrant[s] increased scrutiny. This * * * can be accomplished by shortening the 30 day time frame the Warden is given to certify to the Director that the institutional emergency still exist[s] and that suspension of the rules is necessary, while giving the prisoner an increased level of scrutiny by the Director."

After internal deliberation, we determined that the 30-day period of review and reporting to the Director regarding suspensions of rules is the best time frame alternative. Requiring the Warden to report more frequently than every 30 days would impose an obligation on the Warden and institution staff when their efforts should be on removing the emergency conditions which necessitated suspension of the rules in the first place.

The commenter posits that a shorter time frame for reporting would result in an "increased level of scrutiny by the Director." However, if an institutional or system-wide emergency arises causing suspension of rules, the Director and Bureau executives would necessarily be in constant contact with staff at any locations where rules are suspended, working to remove the emergency. The Bureau's "level of scrutiny" would already be heightened.

Further, as stated earlier, the Bureau intends that any suspension would be limited to those rules that are directly impacted or affected by the emergency necessitating suspension. To the extent that suspension is necessary to handle an emergency situation, prisoner's rights would not be compromised.

Director Should Report to the Attorney General

One commenter felt that suspension of the rules "should be reported to the Attorney General, subject to his review, in the same format as outlined [for the Warden to report to the Director]."

The Attorney General has delegated to the Director of the Bureau of Prisons the authority to promulgate rules "governing the control and management of Federal penal and correctional institutions and providing for the classification, government, discipline, treatment, care, rehabilitation, and reformation of inmates confined therein," (28 CFR 0.96), as further authorized by 18 U.S.C. 4001, 4041, and 4042. The Attorney General does not require the Director therefore to report suspension of the rules because the Director has been given authority to oversee and monitor such suspension.

Report Criteria

Finally, one commenter suggested that when the Warden reports a suspension to the Director, the Warden should be required to report "how long the suspension of the rules will last and what criteria must be fulfilled in order to end the suspension. This would provide interested parties with an idea of how and when to expect the restoration of the rules. Requiring this component in a report would help inmates and their families to understand why rules have been suspended and would enhance the policy process by providing defined criteria for resumption of normal operations."

We agree and therefore have added the two requested criteria to the rule in § 501.1(b)(1), subparagraphs (iii) and (iv). Under the revised rule, if the Warden suspends operation of the rules, the Warden must, within 24 hours of the suspension or as soon as practicable, notify the Director by providing written documentation which not only describes the emergency and gives reasons why suspension of rules is necessary, but also estimates how long the suspension will last and describes criteria which would allow normal rules application to resume.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects in 28 CFR Part 501

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

■ Under the rulemaking authority vested in the Attorney General in 5 U.S.C 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96, we amend 28 CFR part 501 as follows.

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 501—SCOPE OF RULES

■ 1. The authority citation for 28 CFR part 501 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed

in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

■ 2. Revise § 501.1 to read as follows:

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 501—SCOPE OF RULES

§ 501.1 Bureau of Prisons emergencies.

(a) *Suspension of rules during an emergency.* The Director of the Bureau of Prisons (Bureau) may suspend operation of the rules in this chapter as necessary to handle an institutional emergency or an emergency affecting the Bureau. When there is an institutional emergency which the Director or Warden considers a threat to human life or safety, the Director or Warden may suspend the operation of the rules in this chapter as necessary to handle the emergency.

(b) *Responsibilities of the Warden.*

(1) *Notifying the Director.* If the Warden suspends operation of the rules, the Warden must, within 24 hours of the suspension or as soon as practicable, notify the Director by providing written documentation which:

(i) Describes the institutional emergency that threatens human life or safety;

(ii) Sets forth reasons why suspension of the rules is necessary to handle the institutional emergency;

(iii) Estimates how long suspension of the rules will last; and

(iv) Describes criteria which would allow normal rules application to resume.

(2) *Submitting certification to Director of continuing emergency.* 30 days after the Warden suspends operation of the rules, and every 30 days thereafter, the Warden must submit to the Director written certification that an institutional emergency threatening human life or safety and warranting suspension of the rules continues to exist. If the Warden does not submit this certification to the Director, or if the Director so orders at any time, the suspension of the rules will cease.

[FR Doc. 05–10043 Filed 5–19–05; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 549

[BOP–1104–F]

RIN 1120–AB03

Infectious Disease Management: Voluntary and Involuntary Testing

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) finalizes regulations on the management of infectious diseases. The changes address the circumstances under which the Bureau conducts voluntary and involuntary testing for HIV, tuberculosis, and other infectious diseases. We intend this amendment to provide for the health and safety of staff and inmates.

DATES: This rule is effective on June 20, 2005.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: The Bureau finalizes its regulations on the infectious disease management program (28 CFR part 549, subpart A).

These regulations were first published in the **Federal Register** on October 5, 1995 (60 FR 52278) as interim final rules. We received no public comment on that interim rule. We had published an entry in the Unified Regulatory Agenda describing the finalization of that interim final rule (BOP–1017–F, RIN 1120–AA23). To clarify that this rulemaking is a change to the same interim rules, we merged that action into a proposed rule which we published on July 12, 2002 (67 FR 46136).

Why we are making this rule: The Correction Officers Health and Safety Act of 1998 gave the Bureau new statutory authority for conducting HIV tests. Additionally, the Centers for Disease Control (CDC) has issued a variety of recommendations on prevention and control of HIV, tuberculosis, and other infectious diseases. Consequently, the Bureau revises its regulations in accordance with the new statutory authority and in consideration of CDC recommendations.

Previously, Bureau regulations on the management of infectious diseases provided for mandatory HIV testing of a yearly random sample, yearly new commitment sample, new commitment re-test sample, pre-release testing, and clinically indicated testing. Any inmate refusing an order for one of these mandatory HIV testing programs is subject to an incident report for refusing to obey an order. Previous regulations did not allow for involuntary HIV testing of an inmate following any intentional or unintentional exposure, when there is a risk of transmission of HIV infection to Bureau employees or other persons in a Bureau institution.

The Correction Officers' Health and Safety Act of 1998 provides that each individual convicted of a Federal offense who is sentenced to a period of six months or more is to be tested for HIV, if such individual is determined to be at risk for HIV infection in accordance with the guidelines issued by the Bureau. The act also provides for involuntary HIV testing following any intentional or unintentional exposure when there is a risk of transmission of HIV infection to Bureau employees or other persons in a Bureau institution. Because of this new statutory authority, the Bureau amends its regulations to allow involuntary testing in those instances where an inmate refuses to be tested following any intentional or unintentional exposure. The inmate may also be subject to an incident report for refusing to obey an order.

The Bureau will continue to allow an inmate to request to be tested for HIV. Such testing is limited to no more than once per 12-month period, unless the Bureau determines that additional testing is warranted. The Bureau will also continue to provide pre- and post-test counseling, regardless of the test results.

The Bureau also amends its regulations on infectious disease management to address testing requirements for tuberculosis (TB). The Bureau's general authority to protect and provide for the safekeeping and care of inmates in Bureau custody (18 U.S.C. 4042(a)) allows us to conduct medical tests as necessary to protect the health of the inmate population. Currently, testing of inmates for TB is conducted in accordance with the recommendations and guidelines published by the Centers for Disease Control (CDC) in 1992. In response to the increased transmission of TB in correctional facilities, the CDC updated and expanded previously published recommendations for preventing and controlling TB in correctional facilities.

Based on these updated recommendations, the Bureau will screen each inmate for TB within two calendar days of initial incarceration. We intend to appropriately treat, isolate and/or protect inmates as a result of exposure in the two-day interim before testing. The Bureau will also conduct

follow-up testing for each inmate annually. In addition, the Bureau will screen an inmate for TB when health services staff determine that the inmate may be at risk for infection. An inmate who refuses TB screening may be subject to an incident report for refusing to obey an order. If an inmate refuses tuberculin skin testing, and there is no contraindication to tuberculin skin testing, institution medical staff will educate and counsel the inmate regarding the need for such testing in an institutional setting (for example, the need to identify HIV+ inmates who have not received a course of prophylaxis and are at high risk for the development of active tuberculous disease). If an inmate still refuses tuberculin testing despite education and counseling, institution medical staff will test the inmate involuntarily. The intent of this amendment is to control TB among staff and inmates in correctional facilities.

To provide for the protection, safekeeping, and care of inmates in our custody (as required by 18 U.S.C. 4042(a)), we retain, revised for clarity, regulations on diagnostics (549.12(c)); Programming, Duty and Housing Restrictions (549.13); Confidentiality of Information (549.14); and Infectious Disease Training and Preventive Measures (549.15).

Finally, the Bureau removes provisions dealing with medical isolation and quarantining as these are governed by normal medical protocols and do not need to appear in the regulations. Removing these provisions from regulation and retaining them in Bureau policy allows us the flexibility to adhere to ever-changing medical standards and Federal medical guidelines.

Public Comments and Bureau Responses: We received three comments to the proposed rule. One supported the rule, stating that it would "help control the epidemic of AIDS and other diseases in prison."

The second commenter expressed concern that using mandatory "PPD skin testing" to detect tuberculosis would contravene his Buddhist religious beliefs. The "PPD skin test" is a medical term of art referring to a test that, in earlier years, involved injecting purified pork derivative liquid under the skin. The commenter and other inmates were concerned that this would amount to consuming a pork product, which would contravene several religious beliefs, including Buddhism and Islam. The commenter further expressed concerns that there would be unnecessary follow-up testing after initial TB screening, thereby subjecting inmates to further violation of religious beliefs.

Although the use of PPD as a screening test is routine, questions frequently arise about the required tuberculin skin test. The current version of the PPD uses a Purified Protein Derivative instead of a pork derivative. Inmates who object to the "PPD skin test" frequently cite religious reasons based on a mistaken belief that the liquid solution injected under the skin is a fat and/or animal derivative. The solution is not a fat or animal derivative, but is instead synthetic. However, the guiding principle with medical issues and religion is weighing the individual interest and the compelling government interest. TB is a highly communicable disease. The tuberculin skin test is used as an early diagnostic tool because it is highly effective in determining TB infection. Some cite that the x-ray is a least restrictive alternative because it can detect TB. However, x-rays do not provide early diagnostic information. Therefore, the safety of the institution's population, staff and inmate, is put at risk if the x-ray is used as an alternative. The compelling government interest outweighs the sincerely held religious belief and motivation of the inmate.

In response to the comment, however, we recognize that the term "PPD test" may be misleading and therefore will change the name of the test to more accurately reflect what it is: The Tuberculin Skin Test. We also eliminate references to the term "PPD" in the rule text.

Also, our previous TB testing provision had stated that after the initial screening, we would conduct follow-up testing annually. To allay the commenter's apparent concern that inmates will be tested unnecessarily every year, we clarify that we will conduct TB screening for each inmate annually only as medically indicated.

Finally, the third commenter complained that he had been subjected to seven HIV tests as part of "random" testing. This inmate had filed an administrative remedy complaint with the Bureau requesting to be removed from the HIV testing program.

Before May 2000, the Bureau conducted random HIV testing. In May 2000, the Bureau began testing a new commitment sample and, new recommitment re-test sample in addition to voluntary, pre-release, and as clinically indicated as set forth in then-current regulation (28 CFR 549.13(b)). All new commitments between October 1, 1999, and March 31, 2000, with release dates projected at 3 years or more qualified initially for the new commitment testing. If baseline testing showed an inmate was HIV negative, new commitment re-testing was to be completed every year thereafter, until further notice.

The new commitment, new recommitment re-test sample was not a random sample. Unfortunately, when this system became effective, initial guidance referenced the testing incorrectly as a "subset of randomly selected inmates". This may have resulted in the use of the term "random" in discussing the seroconversion testing and subsequent misconceptions by staff and inmates.

Changes to § 549.14, Confidentiality of Information

After internal agency deliberation, we made changes to this part of the proposed rule for clarity and to more accurately reflect the intent of the Correction Officers Health and Safety Act (Pub. L. 105–370, codified at 18 U.S.C. 4014).

In our proposed rule, this section stated that any disclosure of test results or medical information would be made in accordance with the Privacy Act of 1974 and the HHS Standards for Privacy of Individually Identifiable Health Information promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

The Bureau of Prisons is not a "covered entity" under subsequent regulations promulgated by the Department of Health and Human Services to implement HIPAA. We therefore exclude references to the Health Insurance Portability and Accountability Act of 1996.

Also, when we proposed this regulation, we described four types of routine uses of such information maintained by the Bureau in its Privacy Act systems of records.

In our revised rule, instead of singling out four routine uses of such information, we merely state that a more thorough description of routine uses allowable for inmate health records may be found in the Department of Justice Privacy Act System of Records Notice entitled "Inmate Physical and Mental Health Record System, JUSTICE/BOP–007."

In addition, we clarify that test results may be disclosed in accordance with The Correction Officers Health and Safety Act of 1998 (codified at 18 U.S.C. 4014), which authorizes the Bureau to communicate test results to a person requesting the test, the person tested, and, if the results of the test indicate the presence of HIV, to correctional facility personnel consistent with Bureau policy on this issue.

Executive Order 12866

This rule has been reviewed as a "significant regulatory action" under section 3(f) of Executive Order 12866 by the Office of Management and Budget (OMB). This rule will not impose a substantial cost on the public, the government or regulated entities. This rule change, mandated by statute and required to conform to CDC guidelines, will benefit inmates by allowing us to detect and treat infectious diseases more efficiently, thereby decreasing further infection.

Executive Order 13212

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

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects in 28 CFR Part 549

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

■ Under rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend 28 CFR part 549 as follows.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 549—MEDICAL SERVICES

■ 1. Revise the authority citation for 28 CFR part 549 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4005, 4014, 4042, 4045, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4241–4247, 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

■ 2. Revise Subpart A to read as follows:

Subpart A—Infectious Disease Management

Sec.

549.10 Purpose and scope.
549.11 Program responsibility.
549.12 Testing.
549.13 Programming, duty, and housing restrictions.
549.14 Confidentiality of information.
549.15 Infectious disease training and preventive measures.

Subpart A—Infectious Disease Management

§ 549.10 Purpose and scope.

The Bureau will manage infectious diseases in the confined environment of a correctional setting through a comprehensive approach which includes testing, appropriate treatment, prevention, education, and infection control measures.

§ 549.11 Program responsibility.

Each institution's Health Services Administrator (HSA) and Clinical Director (CD) are responsible for the operation of the institution's infectious disease program in accordance with applicable laws and regulations.

§ 549.12 Testing.

(a) *Human Immunodeficiency Virus (HIV).*

(1) *Clinically indicated.* The Bureau tests inmates who have sentences of six months or more if health services staff determine, taking into consideration the risk as defined by the Centers for Disease Control guidelines, that the inmate is at risk for HIV infection. If the inmate refuses testing, staff may initiate an incident report for refusing to obey an order.

(2) *Exposure incidents.* The Bureau tests an inmate, regardless of the length of sentence or pretrial status, when there is a well-founded reason to believe that the inmate may have transmitted the HIV infection, whether intentionally or unintentionally, to Bureau employees or other non-inmates who are lawfully present in a Bureau institution. Exposure incident testing does not require the inmate's consent.

(3) *Surveillance Testing.* The Bureau conducts HIV testing for surveillance purposes as needed. If the inmate refuses testing, staff may initiate an incident report for refusing to obey an order.

(4) *Inmate request.* An inmate may request to be tested. The Bureau limits such testing to no more than one per 12-month period unless the Bureau determines that additional testing is warranted.

(5) *Counseling.* Inmates being tested for HIV will receive pre- and post-test counseling, regardless of the test results.

(b) *Tuberculosis (TB).*

(1) The Bureau screens each inmate for TB within two calendar days of initial incarceration.

(2) The Bureau conducts screening for each inmate annually as medically indicated.

(3) The Bureau will screen an inmate for TB when health services staff determine that the inmate may be at risk for infection.

(4) An inmate who refuses TB screening may be subject to an incident report for refusing to obey an order. If an inmate refuses skin testing, and there is no contraindication to tuberculin skin testing, then, institution medical staff will test the inmate involuntarily.

(5) The Bureau conducts TB contact investigations following any incident in which inmates or staff may have been exposed to tuberculosis. Inmates will be tested according to paragraph (b)(4) of this section.

(c) *Diagnostics.* The Bureau tests an inmate for an infectious or communicable disease when the test is necessary to verify transmission following exposure to bloodborne pathogens or to infectious body fluid. An inmate who refuses diagnostic testing is subject to an incident report for refusing to obey an order.

§ 549.13 Programming, duty, and housing restrictions.

(a) The CD will assess any inmate with an infectious disease for appropriateness for programming, duty,

and housing. Inmates with infectious diseases that are transmitted through casual contact will be prohibited from work assignments in any area, until fully evaluated by a health care provider.

(b) Inmates may be limited in programming, duty, and housing when their infectious disease is transmitted through casual contact. The Warden, in consultation with the CD, may exclude inmates, on a case-by-case basis, from work assignments based upon the security and good order of the institution.

(c) If an inmate tests positive for an infectious disease, that test alone does not constitute sole grounds for disciplinary action. Disciplinary action may be considered when coupled with a secondary action that could lead to transmission of an infectious agent. Inmates testing positive for infectious disease are subject to the same disciplinary policy that applies to all inmates (*see* 28 CFR part 541, subpart B). Except as provided for in our disciplinary policy, no special or separate housing units may be established for HIV-positive inmates.

§ 549.14 Confidentiality of Information.

Any disclosure of test results or medical information is made in accordance with:

(a) The Privacy Act of 1974, under which the Bureau publishes routine uses of such information in the Department of Justice Privacy Act System of Records Notice entitled "Inmate Physical and Mental Health Record System, JUSTICE/BOP–007"; and

(b) The Correction Officers Health and Safety Act of 1998 (codified at 18 U.S.C. 4014), which provides that test results must be communicated to a person requesting the test, the person tested, and, if the results of the test indicate the presence of HIV, to correctional facility personnel consistent with Bureau policy.

§ 549.15 Infectious disease training and preventive measures.

(a) The HSA will ensure that a qualified health care professional provides training, incorporating a question-and-answer session, about infectious diseases to all newly committed inmates, during Admission and Orientation.

(b) Inmates in work assignments which staff determine to present the potential for occupational exposure to blood or infectious body fluids will receive annual training on prevention of work-related exposures and will be offered vaccination for Hepatitis B.

[FR Doc. 05–10042 Filed 5–19–05; 8:45 am]
BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 549

[BOP–1129–F]

RIN 1120–AB29

Over-The-Counter (OTC) Medications: Technical Correction

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: This document finalizes a minor technical correction to the Bureau of Prisons (Bureau) regulations on Over-The-Counter (OTC) medications. Previously, our rule defined an inmate without funds as one who has had an average daily trust fund account balance of less than $6.00 for the past 30 days. The words "average daily" in that definition resulted in incorrect classifications by the Bureau's business offices. The more accurate definition of an inmate without funds is one who has not had a trust fund account balance of $6.00 for the past 30 days. We therefore issue this technical correction.

DATES: This rule is effective June 20, 2005.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. Our email address is *BOPRULES@BOP.GOV*.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: We amend our regulations on Over-The-Counter (OTC) medications (28 CFR part 549, subpart B). We published a final rule on this subject in the **Federal Register** on August 12, 2003 (68 FR 47847), and this correction as an interim final rule on September 3, 2004 (69 FR 53804). We received no comments on the interim final rule, and therefore publish it as final without change.

Previously, our rule defined an inmate without funds as one who has had an average daily trust fund account balance of less than $6.00 for the past 30 days. The words "average daily" in that definition resulted in incorrect classifications by the Bureau's business offices. The more accurate definition of an inmate without funds is one who has not had a trust fund account balance of $6.00 for the past 30 days. We therefore issue this technical correction.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review", section 1(b), Principles of Regulation. The Director of the Bureau of Prisons has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications for which we would prepare a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies that it will not have a significant economic impact upon a substantial number of small entities because: This rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local and tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

based companies in domestic and export markets.

List of Subjects in 28 CFR Part 549

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

[FR Doc. 05–10044 Filed 5–19–05; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 571

[BOP–1108–F]

RIN 1120–AB21

Clarifying of Release Gratuities—Release Transportation Regulations to More Closely Conform to Statutory Provisions

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: This document finalizes an interim rule which made a minor clarifying change to the Bureau of Prisons (Bureau) regulations on release gratuities, transportation, and clothing. The rule clarified that the Bureau is authorized, upon an inmate's release, to provide transportation to an inmate's place of conviction or his/her legal residence only within the United States, under 18 U.S.C. 3624(d)(3).

DATES: This rule is effective on June 20, 2005

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: We published this rule as an interim final rule on June 9, 2003 (68 FR 34301). We received no comments on this rule. We therefore finalize it without change.

Previously, 28 CFR 571.22 (c) stated that "[t]ransportation will be provided to an inmate's place of conviction, his legal residence within the United States, *or to other such place as authorized and approved.*" However, 18 U.S.C. 3624(d)(3) allows only for "transportation to the place of the prisoner's conviction, to the prisoner's bona fide residence *within the United States*, or to such other place *within the United States* as may be authorized by the Director."

This rule revises the former rule only to the extent that it appeared to conflict with the Bureau's statutory authority. The new 28 CFR 571.22(c) correctly states that "[t]ransportation will be provided to an inmate's place of conviction or legal residence within the United States or its territories."

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review", section 1(b), Principles of Regulation. The Director of the Bureau of Prisons has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects in 28 CFR Part 571

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we adopt as final the interim rule published on June 9, 2003 (68 FR 34301), without change.

[FR Doc. 05–10045 Filed 5–19–05; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD 07–05–012]

RIN 1625–AA08

Special Local Regulations: Annual Fort Myers Beach Air Show, Fort Myers Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent special local regulations for the Fort Myers Beach Air Show, Fort Myers Beach, Florida. This event will be held annually on the second consecutive Friday, Saturday, and Sunday of May between 8:30 a.m. and 4:30 p.m. EDT (eastern daylight time). This regulation is needed to restrict persons and vessels from entering the sterile zone (air box) below the aerial demonstration and restrict vessels from mooring/anchoring or transiting within the surrounding regulated area with the exception of the Matanzas Pass Channel. This rule is necessary to ensure the safety of life for the participating aircraft, spectators, and mariners in the area on the navigable waters of the United States.

DATES: This rule is effective May 20, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD 07–05–012] and are available for inspection or copying at

Coast Guard Marine Safety Office Tampa between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jennifer Andrew at Coast Guard Marine Safety Office Tampa (813) 228–2191 Ext 8203.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 1, 2005, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations: Annual Fort Myers Beach Air Show, Fort Myers Beach, FL in the **Federal Register** (70 FR 16781). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This rule is needed to minimize danger to the public and waiting delaying the effective date would be contrary to the public interest. A notice of proposed rulemaking for this rule was published in the **Federal Register** (70 FR 16781) with a thirty-day comment period ending May 2, 2005. During the comment period, no comments were received regarding this rulemaking, and this final rule does not change the provisions of the notice of proposed rulemaking.

Background and Purpose

The South West Florida Aviation Foundation's air show involves the performance of aerial demonstrations over the near-shore waters of Fort Myers Beach, Florida. The annual event will be held on the second consecutive Friday, Saturday, and Sunday of May from 8:30 a.m. until 4:30 p.m. The nature of aerial demonstrations requires aircraft to use markers in the water as points of reference for aircraft maneuvers. The Federal Aviation Administration (FAA) has published guidelines that aircraft must comply with based on the speed of the participating aircraft and the location of the audience. This regulation is in accordance with those guidelines for the sterile zone (air box) as well as egress routes and vessel movements outside the air box.

Discussion of Comments and Changes

No comments were received for this rule.

Discussion of Rule

This regulation will include a sterile zone (air box) directly under the aerial demonstration over the near-shore waters of Fort Myers Beach in Lee County, Florida. All vessels and persons are prohibited from entering, anchoring, mooring, or transiting the regulated area. Vessel traffic will be allowed to enter and exit Matanzas Pass Channel using the marked channel at Matanzas Pass Channel daybeacon #3 (26°25′54″ N, 82°58′12″ W, LLNR 16365) and #4 (26°26′06″ N, 82°57′48″ W, LLNR 16370) but may not linger within the regulated area. This regulation is intended to provide for the safety of life on the navigable waters of the United States for Air Show participants and for mariners transiting in the vicinity of the Air Show and is based on FAA guidelines in the FAA Code: Order 8700.1, Operations Inspector Handbook, Volume 2, Chapter 49. All coordinates referenced use datum NAD 83.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The regulation would last for only eight hours on each of the three event days. Vessel traffic is minimal in this area and vessels will still be allowed to enter and exit the Matanzas Pass Channel.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit near to shore at Fort Myers Beach, FL in the vicinity of Matanzas Pass annually from 8:30 a.m. to 4:30 p.m. on the second consecutive Friday, Saturday, and Sunday in May. This rule would not have a significant economic impact on a substantial number of small entities since it would be in effect for only eight hours a day on each of the three event days. Vessel traffic is minimal in this area and vessels will still be allowed to enter and exit through the Matanzas Pass Channel.

Assistance for Small Entities

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 may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. As a special local regulation issued in conjunction with an air show, this rule satisfies the requirements of paragraph (34)(h). Under figure 2–1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 100.736 to read as follows:

§ 100.736 Annual Fort Myers Beach air show; Fort Myers Beach, FL.

(a)(1) *Regulated Area.* The regulated area is formed by the following coordinates; point 1: 26°28′08″ N, 81°59′15″ W south to point 2: 26°27′37″ N, 81°59′39″ W east to point 3: 26°25′45″ N, 81°55′34″ W north to point 4: 26°26′14″ N, 81°55′22″ W and west along the contour of the shore to point 5: 26°27′52″ N, 81°58′04″ W to original point 1: 26°28′08″ N, 81°59′15″ W. All coordinates referenced use datum: NAD 83.

(2) *Air Box Area.* The air box area is contained within the regulated area and is formed by the following coordinates; point 1: 26°27′34″ N, 81°58′22″ W south to point 2: 26°27′07″ N, 81°58′39″ W east to point 3: 26°26′15″ N, 81°56′36″ W north to point 4: 26°26′42″ N, 81°56′22″ W and west to original point 1: 26°27′34″ N, 81°58′22″ W. All coordinates referenced use datum: NAD 83.

(b) *Special local regulations.*

(1) Vessels and persons are prohibited from entering the air box area defined in paragraph (a)(2) of this section.

(2) No vessel may anchor/moor or transit within the regulated area defined in paragraph (a)(1) of this section, with the exception of vessel transit permitted in the marked channel as set forth in paragraph (b)(3) of this section.

(3) Vessels entering and exiting Matanzas Pass Channel will be allowed to transit using the marked channel only at Matanzas Pass Channel day beacon #3 (26°25′54″ N, 82°58′12″ W, LLNR 16365) and #4 (26°26′06″ N, 82°57′48″ W, LLNR 16370) but may not linger within the regulated area. All coordinates referenced use datum: NAD 83.

(c) *Dates.* This section will be enforced annually on the second consecutive Friday, Saturday, and Sunday of May from 8:30 a.m. until 4:30 p.m.

Dated: May 10, 2005.

D.B. Peterman,

RADM, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 05–10047 Filed 5–19–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–05–047]

RIN 1625–AA08

Special Local Regulations for Marine Events; Delaware River, Delaware City, DE

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations during the "5th Annual Escape from Fort Delaware Triathlon," an event to be held June 18, 2005 over the waters of Delaware River at Delaware City, DE. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Delaware River during the 5th Annual Escape from Fort Delaware Triathlon.

DATES: This rule is effective from 8:30 a.m. to 11:30 a.m. on June 18, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the

docket are part of docket CGD05–05–047 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: D. M. Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, because publishing an NPRM would be impracticable and contrary to public interest as immediate action is necessary to protect those using the waterway. Because of the danger posed to the swimmers competing within a confined area, special local regulations are necessary to provide for the safety of event participants, support craft and other vessels transiting the event area.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, support craft, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. However advance notifications will be made to users of the waterway via marine information broadcasts and area newspapers.

Background and Purpose

On June 18, 2005, the Escape from Fort Delaware Triathlon, Inc. will sponsor the "5th Annual Escape from Fort Delaware Triathlon." The swimming segment of the event will consist of approximately 400 swimmers competing across a one mile course along the Delaware River between Pea Patch Island and Delaware City, Delaware. The competition will begin at Pea Patch Island. The participants will swim across to the finish line located at the Delaware City Wharf, swimming approximately one mile, across Bulkhead Shoal Channel. Approximately 20 support vessels will accompany the swimmers. Due to the need for vessel control during the swimming event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, support craft and other transiting vessels.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of the Delaware River between Fort Delaware on Pea Patch Island to the Delaware City Wharf at Delaware City, Delaware. The temporary special local regulations will be in effect from 8:30 a.m. to 11:30 a.m. on June 18, 2005. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Vessel traffic may be allowed to transit the regulated area at slow speed as the swim progresses, when the Coast Guard Patrol Commander determines it is safe to do so. The Patrol Commander will notify the public of specific enforcement times by Marine Radio Safety Broadcast. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

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.

Although this regulation restricts vessel traffic from transiting a portion of the Delaware River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts and area newspapers so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this section of the Delaware River during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period, from 8:30 a.m. to 11:30 a.m. on June 18, 2005. Vessels desiring to transit the event area will be able to transit the regulated area at slow speed as the swim progresses, when the Coast Guard Patrol Commander determines it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.** The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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 may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine event permit are specifically excluded from further analysis and documentation under those sections.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 100.35–T05–047 to read as follows:

§ 100.35–T05–047 Delaware River, Delaware City, DE.

(a) Regulated area. The regulated area includes all waters of the Delaware River within 500 yards either side of a line drawn southwesterly from a point near the shoreline at Pea Patch Island, at latitude 39°34′43.2″ N, 075°35′12″ W, thence to latitude 39°35′08″ N, 075°34′18″ W, a position located near the Delaware City Wharf, Delaware City, DE. All coordinates reference Datum NAD 1983.

(b) Definitions. (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Delaware Bay.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Delaware Bay with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(d) Enforcement period. This section will be enforced from 8:30 a.m. to 11:30 a.m. on June 18, 2005.

Dated: May 6, 2005.

Lawrence J. Bowling,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. 05–10048 Filed 5–19–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD07–05–042]

RIN 1625–AA87

Security Zone Regulations; St. Croix, United States Virgin Islands

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the vicinity of the HOVENSA refinery facility in St. Croix, U.S. Virgin Islands. This security zone extends approximately 2 miles seaward from the HOVENSA facility waterfront area along the south coast of the island of St. Croix, U.S. Virgin Islands. This security zone is needed for national security reasons to protect the public and the HOVENSA facility from potential subversive acts. Vessels without scheduled arrivals must receive permission from the U.S. Coast Guard Captain of the Port San Juan prior to entering this temporary security zone.

DATES: This rule is effective from May 15, 2005, until November 15, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD07–05–042] and are available for inspection or copying at Sector San Juan, 5 Calle La Puntilla, San Juan, Puerto Rico between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Katiuska Pabon, Sector San Juan, Puerto Rico at (787) 729–2376.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM and delaying the rule's effective date would be contrary to the public interest. Immediate action is needed to protect the public, ports and waterways of the United States from potential subversive acts against the HOVENSA facility.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Similar regulations were published in the **Federal Register** on January 17, 2002 (67 FR 2332), September 13, 2002 (67 FR 57952), April 28, 2003 (68 FR 22296), July 10, 2003 (68 FR 41081), February 10, 2004 (69 FR 6150), May 21, 2004 (69 FR 29232), and January 19, 2005 (70 FR 2950). We did not receive any comments on these regulations.

The Captain of the Port San Juan has determined that due to the continued risk, the need for the security zone persists. On February 10, 2005, the Coast Guard published a notice of proposed rulemaking to make this security zone permanent (70 FR 7065). While the Coast Guard intends to publish a final rule to ensure the security of this waterfront facility, this temporary rule is required in the interim.

Background and Purpose

The Coast Guard recognizes that subversive activity could be launched by vessels or persons in close proximity to the HOVENSA refinery on St. Croix, USVI, against tank vessels and the waterfront facility. Given the highly volatile nature of the substances stored at the HOVENSA facility, this security zone is necessary to decrease the risk of subversive activity launched against the HOVENSA facility. The Captain of the Port San Juan is reducing this risk by prohibiting all vessels without a scheduled arrival from coming within approximately 2 miles of the HOVENSA facility, unless specifically permitted by the Captain of the Port San Juan or a designated representative. The Captain of the Port San Juan can be reached on VHF Marine Band Radio, Channel 16 (156.8 Mhz), or by calling (787) 289–2040, 24-hours-a-day, 7-days-a-week. The HOVENSA Facility Port Captain can be reached on VHF Marine Band Radio channel 11 (156.6 Mhz) or by calling (340) 692–3488, 24-hours-a-day, 7-days-a-week.

Discussion of Rule

The temporary security zone around the HOVENSA facility encompasses all waters within a line connecting the following coordinates: 17°41′31″ N, 64°45′09″ W, to 17°39′36″ N, 64°44′12″ W, to 17°40′00″ N, 64°43′36″ W, to 17°41′48″ N, 64°44′25″ W, and back to the beginning point. All vessels without a scheduled arrival into the HOVENSA facility are prohibited from coming within this security zone-that extends approximately 2 mile seaward from the facility, unless specifically permitted by the Captain of the Port San Juan or a designated representative.

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). This security zone covers an area that is not typically used by commercial vessel traffic, including fishermen, and vessels may be allowed to enter the zone on a case by case basis with the permission of the Captain of the Port San Juan or a 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 effect upon a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: owners of small charter fishing or diving operations that may operate near the HOVENSA facility. This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This zone covers an area that is not typically used by commercial fishermen, and vessels may be allowed to enter the zone on a case-by-case basis with the permission of the Captain of the Port San Juan.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(g), of the Instruction, an Environmental Analysis Check List and a Categorical Exclusion Determination (CED) are not required for this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 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. From May 15, 2005, to November 15, 2005, add a new § 165.T07–042 to read as follows:

§ 165.T07–042 Security Zone; HOVENSA Refinery, St. Croix, U.S. Virgin Islands.

(a) *Location.* The following area is a security zone: All waters from surface to bottom, encompassed within a line connecting the following coordinates: 17°41′31″ N, 64°45′09″ W, to 17°39′36″ N, 64°44′12″ W, to 17°40′00″ N, 64°43′36″ W, to 17°41′48″ N, 64°44′25″ W, and then back to the point of origin.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, with the exception of vessels that have an arrival scheduled with the HOVENSA Facility, no vessel may enter the regulated area unless specifically authorized by the Captain of the Port (COTP) San Juan or a Coast Guard commissioned, warrant, or petty officer designated by COTP San Juan. The Captain of the Port will notify the public of any changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 16 (156.8 Mhz). The Captain of the Port San Juan can be reached on VHF Marine Band Radio, Channel 16 (156.8 Mhz) or by calling (787) 289–2040, 24-hours-a-day, 7-days-a-week. The HOVENSA Facility Port Captain can be reached on VHF Marine Band Radio channel 11 (156.6 Mhz) or by calling (340) 692–3488, 24-hours-a-day, 7-days-a-week.

(c) *Dates.* This section is effective from May 15, 2005, until November 15, 2005.

D.P. Rudolph, Commander,

U.S. Coast Guard, Captain of the Port, San Juan.

[FR Doc. 05–10046 Filed 5–19–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–05–015]

RIN 1625–AA00

Safety Zones: Columbia River, Astoria, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement.

SUMMARY: The Captain of the Port, Portland, Oregon, will enforce the safety zone established for the Astoria Regatta on the waters of the Columbia River. This action is being taken to safeguard watercraft and their occupants from safety hazards associated with the display of fireworks. Entry into these safety zones is prohibited unless authorized by the Captain of the Port.

DATES: This rule will be enforced on August 13, 2005, from 9:30 p.m. to 10:30 p.m.

FOR FURTHER INFORMATION CONTACT: Petty Officer Charity Keuter, c/o Captain of the Port Portland, OR, 6767 North Basin Avenue, Portland, OR 97217 at (503) 240–2590 to obtain information concerning enforcement of this rule.

SUPPLEMENTARY INFORMATION: On July 17, 2003, the Coast Guard published a final rule (68 FR 42289) establishing regulations in 33 CFR 165.1316 to safeguard watercraft and their occupants on the waters of the Columbia River from safety hazards associated with the display of fireworks within the Area of Responsibility of the Captain of the Port, Portland, Oregon. The Coast Guard is issuing notice that the Captain of the Port, Portland, Oregon will enforce on August 13, 2005, from 9:30 p.m. to 10:30 p.m. the safety zone established on the waters of the Columbia River in the vicinity of Astoria, Oregon and published in 33 CFR 165.1316. Entry into this safety zone is prohibited unless otherwise exempted or excluded under the final rule or unless authorized by the Captain of the Port or his designee. The Captain of the Port may be assisted by other Federal, State, or local agencies in enforcing these safety zones.

Dated: May 11, 2005.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port, Portland, OR.

[FR Doc. 05–10140 Filed 5–19–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–05–016]

RIN 1625–AA00

Safety Zones: Fort Vancouver Fireworks Display, Columbia River, Vancouver, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement.

SUMMARY: The Captain of the Port, Portland, Oregon, will enforce the safety zone established for the Fort Vancouver Fireworks Display, Vancouver, WA on the waters of the Columbia River on July 4, 2005. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the display of fireworks. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: This rule will be enforced on July 4, 2005, from 9:30 p.m. to 11 p.m.

FOR FURTHER INFORMATION CONTACT: Petty Officer Charity Keuter, c/o Captain of the Port Portland, OR 6767 North Basin Avenue, Portland, OR 97217 at (503) 240–2590 to obtain information concerning enforcement of this rule.

SUPPLEMENTARY INFORMATION: On May 28, 2003 the Coast Guard published a final rule (68 FR 31609) establishing regulations in 33 CFR 165.1314 to safeguard watercraft and their occupants on the waters of the Columbia River in the vicinity of Vancouver, WA from safety hazards associated with the display of fireworks within the Area of Responsibility of the Captain of the Port, Portland, Oregon. The Coast Guard is issuing notice that the Captain of the Port, Portland, Oregon on July 4, 2005, from 9:30 p.m. to 11 p.m. will enforce the established safety zones on the waters of the Columbia River between the Interstate 5 Bridge and channel buoy RG F1(1+2)R 6s published at 33 CFR 165.1314. Entry into this safety zone is prohibited unless otherwise exempted or excluded under the final rule or unless authorized by the Captain of the Port or his designee. The Captain of the Port may be assisted by other Federal, State, or local agencies in enforcing these safety zones.

Dated: May 11, 2005.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port, Portland, OR.

[FR Doc. 05–10141 Filed 5–12–05; 8:45 am]

BILLING CODE 4915–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2004–MI–0004; FRL–7915–8]

Approval and Promulgation of Maintenance Plans; Michigan; Southeast Michigan Ozone Maintenance Plan Update to the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a December 19, 2003, request from Michigan to revise the ground level ozone State Implementation Plan (SIP) for the Southeast Michigan area. EPA originally approved the Southeast Michigan ozone maintenance plan on April 6, 1995. This action approves an update to the plan prepared by Michigan to maintain the 1-hour national ambient air quality standard (NAAQS) for ozone in the Southeast Michigan maintenance area through the year 2015. This update is required by the Clean Air Act (CAA).

DATES: This "direct final" rule is effective July 19, 2005, unless EPA receives written adverse comment by June 20, 2005. If written adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R05–OAR–2004–MI–0004, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the on-line instructions for submitting comments.

Agency Web site: http://docket.epa.gov/rmepub/. RME, EPA's electronic public docket and comments system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the

online instructions for submitting comments.

E-mail: mooney.john@epa.gov.

Fax: (312) 886–5824.

Mail: You may send written comments to: John M. Mooney, Chief, Criteria Pollutant Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: John M. Mooney, Chief, Criteria Pollutant Section (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05–OAR–2004–MI–0004. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME website and the federal regulations.gov website are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Anthony Maietta, Life Scientist, at (312) 353–8777 before visiting the Region 5 office.) This Facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Life Scientist, Criteria Pollutant Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, *maietta.anthony@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," or "our" means EPA. This section provides additional information by providing General Information and addressing pertinent questions that follow:

General Information

Does this action apply to me?
How can I get copies of this document and other related information?
How and to whom do I submit my comments?
What is a SIP?
What is the federal approval process for a SIP?
What are the criteria for approval of a maintenance plan?
What does federal approval of a state regulation mean to me?
Have the requirements for approval of a SIP revision been met?
Did Michigan hold a public hearing?
What is in the State's plan to maintain the standard?
What action is EPA taking?
Statutory and executive order review.

General Information

Does This Action Apply to Me?

This action is non-regulatory in nature. It updates an earlier plan which is intended to maintain the 1-hour ozone NAAQS in Southeast Michigan.

How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an electronic public rulemaking file available for inspection at RME under RME ID No. R05–OAR–2004–MI–0004, and a hard copy file which is available for inspection at the Regional Office. The official public file 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 rulemaking file does not include CBI or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the regulations.gov web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

How and to Whom Do I Submit My Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking Region 5 Air Docket "R05–OAR–2004–MI–0004" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not

required to consider these late comments.

For detailed instructions on submitting public comments and on what to consider as you prepare your comments see the **ADDRESSES** section and the section I General Information of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

What Is a SIP?

The CAA, at section 110, requires states to develop air pollution regulations, laws, and control strategies to ensure that state air quality meets the NAAQS established under section 109 of the CAA. EPA has established standards for six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each state must submit regulations and control strategies to us for approval and incorporation into the federally-enforceable SIP. Each federally-approved SIP is designed to protect air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

For state regulations to be incorporated into the federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body. Once a state rule, regulation, or control strategy is adopted, the state submits it to us for approval into the SIP. We must provide public notice and seek additional public comment regarding the federal action on the state submission. If we receive adverse comments, we must address them prior to taking final federal action. All state regulations approved by EPA under section 110 of the CAA are incorporated into the federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at 40 CFR part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in the CFR but are "incorporated by reference," which means that we have approved a given state submission with a specific effective date.

What Are the Criteria for Approval of a Maintenance Plan?

Section 175A(b) of the CAA requires a state, eight years after redesignation of an area as attainment, to submit to EPA a revision to its SIP to maintain the NAAQS for ten years after the expiration of the initial ten year period as an attainment area. A maintenance plan must provide a demonstration of continued attainment of the applicable NAAQS, including the submission of control measures needed to maintain the standard. Further, the plan must provide contingency measures for the prompt correction of any violation of the standard, the continued operation of the ambient air quality monitoring network, a means of tracking the progress of the plan, inclusion of the attainment emissions inventory, and new emissions budgets for motor vehicle emissions.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the federally-approved SIP is primarily a state responsibility. However, after the state regulation is federally approved, it becomes federally enforceable, or enforceable by EPA and by citizens pursuant to section 304 of the CAA.

Have the Requirements for Approval of a SIP Revision Been Met?

Yes, the State has met all the necessary requirements for approval of a SIP revision as stated in section 110(A) of the CAA.

Did Michigan Hold a Public Hearing?

Yes, a public hearing was held on September 9, 2003, at 1:00 p.m., in the Southeast Michigan Council of Governments offices located at 535 Griswold, Suite 300, in Detroit, Michigan. Four people attended the hearing, and one comment was received.

What Is in the State's Plan To Maintain the Standard?

The Southeast Michigan area has been designated as attainment for the 1-hour ozone NAAQS since April 1995 (60 FR 12459). The Southeast Michigan ozone maintenance area consists of Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties. The existing plan demonstrates maintenance of the 1-hour ozone standard through 2005. On December 19, 2003, Michigan submitted its plan to maintain the ozone standard in Southeast Michigan during the second ten-year period beginning in 2005 and ending in 2015. Note that this action is in reference to the State's plan under the 1-hour ozone standard and is independent of other requirements for 8-hour ozone nonattainment. The following analysis will look at the elements necessary for approval of a maintenance plan and determine if they have been fulfilled.

1. Demonstration of Continued Attainment

The primary requirement for maintenance plans is the demonstration that the relevant NAAQS will be maintained for a ten year period. To make this demonstration, states must establish an attainment level of emissions of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) to maintain the 1-hour ozone standard. The state must maintain this attainment level of emissions throughout the maintenance period via a combination of control measures. These measures may include stationary, area, and mobile source controls. Michigan has made such a demonstration, establishing the annual emissions from the entire area for the year 2000, a period when no excursions or violations of the standard occurred, and 2015, the last year of the maintenance plan. These levels are summarized in Tables 1 and 2 below.

TABLE 1.—SOUTHEAST MICHIGAN VOC EMISSIONS

[Tons per day]

Source category	2000	2015	Change
Point	72.1	117.8	45.7
Area	250.1	306.6	56.5
On-Road Mobile	240.9	74.6	−166.3
Non-Road Mobile	113.2	79.0	−34.2
Total	676.3	578.0	−98.3

TABLE 2.—SOUTHEAST MICHIGAN NO_X EMISSIONS

[Tons per day]

Source category	2000	2015	Change 2000–2015
Point	422.6	159.5	−263.1
Area	33.5	36.7	3.2
On-Road Mobile	412.9	102.7	−310.2
Non-Road Mobile	116.3	107.1	−9.2
Total	985.3	406.0	−579.3

The demonstration projects that the total VOC and NO_X emissions will decrease significantly in the area through 2015. The State used methodologies to calculate these emissions which are consistent with EPA estimation techniques. Thus, the plan demonstrates that the 1-hour ozone standard will be maintained throughout the second ten-year segment of the maintenance plan, years 2005 through 2015. The full emissions benefits obtained from state and federal control measures are included in the table above. For the demonstration of maintenance, it is necessary to show only that there is no increase in the emissions over the intended time period. Not only does Michigan meet this test, it has also clearly identified excess emission reductions. Control measures used to reduce emissions and maintain the standard include stationary, mobile, and area source controls, including emission reductions from the Federal Motor Vehicle Control Program and from implementation of 7.8 pounds per square inch low-Reid Vapor Pressure (RVP) fuel requirements for Southeast Michigan.

2. Contingency Measures

Despite an area's best efforts to demonstrate continued compliance with the NAAQS, the area's ambient ozone concentrations may exceed or violate the NAAQS. The CAA makes allowances for this by establishing a requirement to submit contingency measures that can be implemented in response to violations of the NAAQS during the maintenance period. The Southeast Michigan area experienced a violation of the 1-hour ozone NAAQS in 2003. Therefore, as required by section 175(A) of the Act, Michigan has provided contingency measures to promptly correct this violation, as well as any future ozone air quality problems.

As a contingency measure for the years 2004 through 2006, Michigan has adopted rules to reduce NO_X from major industrial sources. Michigan promulgated these rules in response to EPA's NO_X SIP call, which EPA issued in 1998 to 22 states to address and reduce upwind sources of NO_X emissions. The NO_X SIP call has been implemented in Michigan since May 31, 2004. EPA believes that these rules will address the 2003 violation and any violations that may occur through 2006.

As a contingency measure for the years 2004 through 2009, Michigan has identified the Tier II vehicle standards. The Tier II vehicle standards, which will be phased in from 2004 through 2009, require all passenger vehicles, including sport utility vehicles (SUV's), minivans, vans, and pick-up trucks, to be 77 to 95 percent cleaner overall. For the heaviest light-duty vehicles, the Tier II program provides a three step phase-in of NO_X emission limits through 2009. By 2009, all light-duty vehicles will be held to a 0.07 grams per mile limit for NO_X emissions. EPA believes that this program will be effective in keeping the area within the NAAQS after 2006.

As a contingency measure for the years 2004 through 2012, Michigan has identified EPA's new combined emission standard for NO_X, particulate matter, and hydrocarbons (HC) for heavy-duty diesel vehicles weighing over 8,500 pounds ("Heavy Duty Diesel Vehicle Standards"). The Heavy Duty Diesel Vehicle Standards will reduce pollution from new trucks and buses by 95 percent when compared to today's trucks and buses.

3. Ambient Air Quality Monitoring

Michigan currently operates 8 monitors in and around the Detroit area. The Michigan Department of Environmental Quality (MDEQ) has committed to continue operating and maintaining an approved ozone monitor network throughout the maintenance period and beyond.

4. Tracking the Progress of the Plan

Continued attainment of the ozone NAAQS in Southeast Michigan depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. The tracking plan for Southeast Michigan primarily consists of continued ambient ozone monitoring in accordance with the requirements of 40 CFR part 58. MDEQ maintains a comprehensive ambient air quality monitoring network and air quality reporting program, including ozone monitoring sites throughout the state. These are mandated by state statute to continue through and beyond the maintenance period. The state will also evaluate future VOC and NO_X emissions inventories for increases over the 2000 base year levels. A violation of the one-hour ozone NAAQS (which must be confirmed by the State) will trigger

contingency measures as described above in section 2 ("Contingency Measures").

5. Emission Inventory and Motor Vehicle Emissions Budgets

Michigan prepared an emissions inventory for the Southeast Michigan maintenance area for the base year of 2000. Michigan selected the year 2000 for the inventory because no excursion or violations of the standard occurred in Southeast Michigan. The State then projected emissions to the years 2005, 2010, and 2015, and updated the emissions budgets for these years to reflect the State's adoption of low-RVP gasoline and also to reflect new planning assumptions, including updated vehicle registration data from the year 2000, vehicle miles traveled, speeds, fleet mix, and SIP control measures. The MOBILE6.2 emissions model was used for on-road mobile sources. The emission inventory values are shown in the Tables below.

TABLE 3.—SOUTHEAST MICHIGAN VOC EMISSIONS

[Tons per day]

Source type	2000	2005	2010	2015
Point	72.1	87.3	102.6	117.8
Area	250.1	269.0	287.7	306.6
On-road mobile	240.9	160.6	105.1	74.6
Off-road mobile	113.2	101.9	90.4	79.0
Total	676.3	618.8	585.8	578.0

TABLE 4.—SOUTHEAST MICHIGAN NO_X EMISSIONS

[Tons per day]

Source type	2000	2005	2010	2015
Point	422.6	334.9	247.2	159.5
Area	33.5	34.6	35.6	36.7
On-road mobile	412.9	305.1	183.1	102.7
Off-road mobile	116.3	113.2	110.2	107.1
Total	985.3	787.8	576.1	406.0

Michigan has submitted an emissions inventory of VOC and NO_X for the Southeast Michigan maintenance area. Based upon the updated emissions inventory, the revised maintenance plan contains new budgets (or limits) for motor vehicle emissions resulting from transportation plans for the Southeast Michigan maintenance area. We have reviewed the budgets and have found that the budgets meet all of the adequacy criteria in § 91.118 of the transportation conformity rule. These criteria include: (1) The SIP was endorsed by the Governor (or his designee) and was the subject of a state public hearing; (2) consultation among federal, state, and local agencies occurred; (3) the emissions budget is clearly identified and precisely quantified; (4) the motor vehicle emissions budget, when considered together with all other emissions, is consistent with attainment; and (5) the motor vehicle emissions budget is consistent with and clearly related to the emissions inventory and control strategy in the SIP.

The new area-wide budgets are shown in the Table below:

TABLE 5.—SOUTHEAST MICHIGAN MOBILE VEHICLE EMISSIONS BUDGETS

[Tons per day]

Year	VOC	NO_X
2005	218.1	412.9
2015	172.8	412.9

These new budgets are to be used in all subsequent conformity determinations concerning transportation plans in the Southeast Michigan maintenance area. We believe that the motor vehicle emissions budgets are consistent with the control measures identified in this maintenance plan, and that this plan demonstrates maintenance with the 1-hour ozone standard.

What Action Is EPA Taking?

We are approving the Southeast Michigan ozone maintenance plan update and the transportation conformity budgets for the Southeast Michigan 1-hour ozone maintenance area into the Michigan SIP.

The EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse comments are filed. This rule will be effective July 19, 2005, without further notice unless we receive relevant adverse written comments by June 20, 2005. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. We will address all public comments received in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective July 19, 2005.

Statutory and Executive Order Review

Executive Order 12866; Regulatory Planning and Review

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

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

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely 1995 (Public Law 104–4).

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

Executive Order 13132 Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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

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

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

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

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 19, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: May 11, 2005.

Norman Niedergang,

Acting Regional Administrator, Region 5.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart X—Michigan

■ 2. Section 52.1174 is amended by adding paragraph (v) to read as follows:

§ 52.1174 Control Strategy: Ozone.

* * * * *

(v) Approval—On December 19, 2003, Michigan submitted an update to the Section 175(A) maintenance plan for the Southeast Michigan 1-hour ozone maintenance area, which consists of Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne counties. This update addresses the second 10-year period of maintenance of the ozone standard in Southeast Michigan, which spans the years 2005 through 2015. The maintenance plan also revises the Motor Vehicle Emissions Budget (MVEB). For the year 2005, the MVEB for VOC is 218.1 tons per day (tpd), and the MVEB for NO_X is 412.9 tpd. For the year 2015, the MVEB for VOC is 172.8 tpd, and the MVEB for NO_X is 412.9 tpd.

[FR Doc. 05–10150 Filed 5–19–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1600

[WO–350–2520–24 1B]

RIN 1004–AD57

Land Use Planning; Correction

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Final rule; correcting amendments.

SUMMARY: This document contains corrections to the final regulations that were published in the **Federal Register** on Wednesday, March 23, 2005, (70 FR 14561). The regulations related to cooperating agencies and cooperating agency status.

DATES: Effective on April 22, 2005.

FOR FURTHER INFORMATION CONTACT: Robert Winthrop at (202) 452–6597 or Mark Lambert at (202) 452–7763.

SUPPLEMENTARY INFORMATION:

Background

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and need to be clarified. The final regulations stated the corrections in singular form when some of the actual regulation text was in plural form. We need to make these corrections so that all of the necessary changes appear in the Code of Federal Regulations.

List of Subjects in 43 CFR Part 1600

Administrative practice and procedures, Environmental Impact Statements, Indians, Intergovernmental relations, Public lands.

■ Accordingly, 43 CFR part 1600 is corrected by making the following correcting amendments:

PART 1600—PLANNING, PROGRAMMING, BUDGETING

■ 1. The authority citation for part 1600 continues to read as follows:

Authority: 43 U.S.C. 1711–1712.

§ 1610.1 [Corrected]

■ 2. Section 1610.1(a)(1) is amended by removing the misspelled word "suct" and add in its place the word "such."

§ 1610.1 Resource management planning guidance [Amended]

■ 3. Amend § 1610.1(a)(1) and (b) by revising the phrases "resource area" and "resource areas" to read "resource or field office area" and "resource or field office areas", respectively.

§ 1610.2 [Amended]

■ 4. Amend § 1610.2(j) by removing the phrase "District or Area Manager" and adding the phrase "Field Manager" and removing the phrase "Area or Field Manager" and adding the phrase "Field Manager."

§ 1610.3–1 [Amended]

■ 5. Amend § 1610.3–1 by removing the phrase "District Managers" from paragraph (d) introductory text and adding in its place the phrase "Field Manager."

Dated: May 11, 2005.

Ian Senio,

Acting Group Manager, Regulatory Affairs.

[FR Doc. 05–10015 Filed 5–19–05; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

48 CFR Parts 1437 and 1452

RIN 1084–AA00

Woody Biomass Utilization

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: This rule converts an interim final rule to a final rule, with minor adjustments in response to public comment. In addition, the numbering scheme was revised to conform to the existing regulatory structure. As a result of this rulemaking, Department of the Interior will allow service contractors to remove woody biomass generated as a result of land management service contracts whenever ecologically appropriate and in accordance with applicable law.

DATES: *Effective Date:* May 20, 2005.

FOR FURTHER INFORMATION CONTACT: Delia Emmerich, Office of Acquisition and Property Management, Department of the Interior at (202) 208–3348, or e-mail at *Delia_Emmerich@os.doi.gov.* Individuals who use telecommunications devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 twenty-four hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: On August 27, 2004, the Department published an interim final rule with request for comments at 69 FR 52607; the interim rule established procedures to allow service contractors to remove woody biomass generated as a result of land management service contracts whenever ecologically appropriate and in accordance with applicable law. This publication revises that rule in response to public comments. This rule establishes consistent and efficient procedures to allow contractors the option to remove woody biomass by-products from Department of the Interior land management activities. This option, where ecologically appropriate, will provide economic and social benefits by creating jobs and conserving natural resources. Removal or use of woody biomass will reduce smoke and emissions from prescribed and natural fires; preserve landfill capacities, reduce the threat of catastrophic wildfires to communities and public/private utilities; improve watershed and wildlife habitat protection; and improve forest, woodland, and rangeland health.

This final rule, while substantially the same as the interim final rule published on August 27, 2004, contains minor changes to respond to comments and to improve clarity. It is also reformatted to move the required contract clause to Part 1452 of 48 CFR.

I. Response to Public Comments

We received several comments from two sources. Our response to each comment follows, in order by section. The discussion of the comments shows the former section title and number, followed by the revised section number and (if different) title.

Section 1437.100 General (New § 1437.7200)

Comment: The woody biomass should stay where it is.

Response: The fundamental method of addressing forest health and hazardous fuel reduction strategies under the National Fire Plan and Healthy Forests Initiative is to remove small diameter trees. Contractors are cutting the trees to meet resource objectives. The removal is incidental to the project. The projects would occur whether or not there was an option for removal. The Rule simply makes these materials available for removal by contractors, rather than disposal through burning or other on-site disposal methods.

Comment: I oppose allowing the contractors to damage and destroy this area for their own enrichment.

Response: Contractors have been secured to provide a service to the federal agency, which includes the cutting or destruction of vegetation to meet a prescribed management objective, such as thinning small trees to improve forest growth or clearing of roads and building sites. Projects under Rule are developed under the requirements of the National Environment Policy Act, which is designed to "prevent or eliminate damage to the environment * * *" If damage beyond that anticipated in the NEPA analysis were to occur, by design this would be accidental. By the nature of these projects, the removal of the low-value biomass has very little if any commercial value. If the biomass had commercial value, the project would most likely be a timber/vegetative sales contract offering unrelated to the

procurement regulations covered under this Rule.

Comment: There does not need to be any immediate need to rush through this plundering. I think the rush is to try to make it escape from public view. The Administrative procedure act calls for public input. I ask for extension of the time for the public to comment instead for a 90-day period.

Response: Urgent and immediate actions are called for under the National Fire Plan Hazardous Fuel Reduction Program. Thousands of projects are taking place every year. This Rule will make the by-products from these treatments immediately available. Removal of the biomass, in most cases, is preferable to leaving the material in the woods. Removal will reduce the threat of escaped wildfires from burning the material, reduce air pollution, and stimulate jobs for the local economy. Only two comments were received during the public comment period, one of which was from a federal agency. The Rule does not appear to be controversial, complex, or require additional analysis such that a 90-day comment period is necessary. No additional comments were received after closure of the official public comment period.

Comment: There is no "threat".

Response: The **Federal Register** of August 17, 2001 (66 FR 43435) includes 11,376 communities within the vicinity of Federal lands that are at high risk to wildfire. This list was jointly developed by States, tribes, and Federal agencies. The 2004 wildfire season, as well as the 2000 and 2002 seasons, are well above the 10-year average for acres burned due to wildfires. The trend for larger, more damaging fires has been increasing, with little relief in sight. The Congress, the Administration, and the States have made a national and local priority of addressing wildfire threats.

Comment: This rule will have an effect of $100 million and therefore has a significant economic effect.

Response: Optimistic projections of woody biomass removal under the National Fire Plan, the largest and most active vegetation management program in the Federal government, could include the removal of approximately 7 million green tons per year. At the minimum rate of $0.10 per green ton, or even an optimistic $0.25 to $0.50 per green ton, this represents less than $5 million.

Comment: NEPA plans must be prepared and the public must be allowed to comment.

Response: As specific in the Interim Rule, "Federal agencies should consider the environmental effects of woody biomass utilization in each project where woody biomass utilization is appropriate and make a determination of significance for the project." This would include, where appropriate, a public comment solicitation and a public record of decision. It is not necessary, nor in the best interest of the public, to delay implementation in order to prepare an environmental impact statement.

Section 1437.104 Definitions (New § 1437.7203)

Comment: The definition of "ecologically appropriate" states, "where the Deciding Officer and/or Contracting Officer determines it is not necessary to retain specific woody material * * *" Only the Deciding Officer (Field Manager or other responsible line officer) will make this decision.

Response: The Responsible Official for the NEPA document makes the decision to include or not include woody biomass removal. The procurement Contracting Officer decides whether to include the clause from § 1452.237–71 in the solicitation or service contract, presumably in consultation with the Responsible Official. The timber/vegetative sales contract, if required, may be executed by the timber/vegetative sales Contracting Officer with the delegated authority to dispose of forest products, per Bureau policies. Clarification has been included in the final rule.

II. Procedural Matters

1. Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule and the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal communities. The contractors and the general public are not required to perform services or process materials' woody products will be removed and compensated, if appropriate, at fair market value as agreed upon.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This policy only applies to Department of the Interior Bureaus; other agencies and governments could positively benefit from the development of small-wood markets and any tax or economic rewards.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The contractor will be provided a new option, if executed,which is exclusive of other rights and benefits.

(4) This rule does not raise novel legal or policy issues. This policy uses existing authorities within existing policies.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The scope of the action is minor (less than $100 million in economic impact); the benefits of the rule are to the contractor and may be exercised at their discretion.

3. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. The woody by-products have limited economic value (small diameter, low trees and woody material), are unused or underutilized in current market conditions, and/or are by nature, incidental by-products.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The quantities are small in size and amounts, are widely scattered across the nation, and are low-value products.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The policy would increase U.S.-based economic opportunities, employment, innovation, and conservation of energy and resources.

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State local or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. No rights, property or compensation has been, or will be taken. A takings implication assessment is not required.

6. Federalism (E.O. 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The rule grants optional rights and increased economic opportunities to individuals, States, local governments, and Tribes, in furtherance of section 2(h) of E.O. 13132. A federalism assessment is not required.

7. Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

8. Consultation With Indian Tribes (E.O. 13175)

In accordance with Executive Order 13175, we have evaluated this rule and determined that it has no potential negative effects on federally recognized Indian tribes. We have fully considered tribal views in the final rule. We have consulted with the appropriate bureaus and offices of the Department about the potential effects of this rule on Indian tribes, including the Bureau of Indian Affairs.

9. Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

10. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. Federal agencies should consider the environmental effects of woody biomass utilization in each project where woody biomass utilization is appropriate and make a determination of significance for that project.

List of Subjects

48 CFR Part 1437

Government contracts, Forests and forest products, Wood, Fire prevention, Service contracting.

48 CFR Part 1452

Government contracts, Forests and forest products, Wood, Fire prevention, Contract clause.

Dated: March 22, 2005.

P. Lynn Scarlett,

Assistant Secretary—Policy, Management and Budget.

■ For the reasons given in the preamble, the Department of the Interior hereby amends 48 CFR chapter 14 as set forth below.

PART 1437—[AMENDED]

■ 1. Part 1437 is revised to read as follows:

PART 1437—SERVICE CONTRACTING

Subpart 1437.72—Utilization of Woody Biomass

Sec.

1437.7200 General.
1437.7201 When can woody biomass be removed?
1437.7202 When is the biomass utilization clause required?
1437.7203 Definitions.

Authority: 30 U.S.C. 601–604, 611, as amended; 16 U.S.C. 668dd; 16 U.S.C. 1; 25 U.S.C. 3101 *et seq;* 43 U.S.C. 1701 *et seq.*

Subpart 1437.72—Utilization of Woody Biomass

§ 1437.7200 General.

This subpart establishes consistent and efficient procedures to allow contractors the option to remove woody biomass by-products from Department of the Interior land management activities where ecologically appropriate. If the woody biomass has fair market value and payment is required, or as required by regulation, Bureau policy or the Mineral Materials Disposal Act of 1947 (30 U.S.C. 601 *et seq*) a separate timber/vegetative sales contract must be executed.

§ 1437.7201 When can woody biomass be removed?

(a) The Department of the Interior allows and encourages contractors to remove and use woody biomass from project areas when:

(1) The biomass is generated during land management service contract activity; and

(2) Removal is ecologically appropriate.

(b) A contractor removing biomass under this part shall:

(1) Do so only within legal limits applicable to the contractor, including National Environmental Policy Act (NEPA) compliance; and

(2) If required, comply with the terms, conditions and special provisions of the applicable timber/vegetative sales notice.

§ 1437.7202 When is the biomass utilization clause required?

(a) The contracting officer must insert a clause reading substantially the same as § 1452.237–71 in each solicitation and contract that is expected to generate woody biomass that meets the criteria in § 1437.7201(a), unless biomass removal is required elsewhere in the contract.

(b) In addition, the contract will specify any limitations on types of woody biomass that may not be removed and any areas from which woody biomass must not be removed.

§ 1437.7203 Definitions.

Ecologically appropriate means those situations where the Responsible Official determines it is not necessary to retain specific woody material or reserve specific areas from woody biomass removal to meet ecological objectives. For example, it may be necessary to retain snags or small woody debris to meet wildlife habitat objectives, or to create specific prescribed burning conditions to stimulate native plant development; therefore it would not be appropriate to allow removal of the specified woody biomass.

Responsible Official means the Secretary of the Interior or designee having the delegated authority to responsibility to:

(1) Oversee the planning process and make decisions to carry out a specific planning action;

(2) Render a National Environmental Policy Act decision; or

(3) Sign the authorizing environmental document.

Timber/vegetative sales contract and/or notice means the agency-specific authorized contract instrument for the sale, barter, exchange, billing or other compensation for the payment, removal, and/or transportation of woody biomass material.

Woody biomass means the trees and woody plants, including limbs, tops, needles, leaves, and other woody parts, grown in a forest, woodland, or rangeland environment, that are the by-products of management, restoration and/or hazardous fuel reduction treatment.

Woody biomass utilization or use means the harvest, sale, offer, trade, and/or utilization of woody biomass to produce the full range of wood products, including timber, engineered lumber, paper and pulp, furniture and value-added commodities, and bio-energy and/or bio-based products such as plastics, ethanol and diesel.

PART 1452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 2. The authority for part 1452 is revised to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 5 U.S.C. 301; 30 U.S.C. 601–604, 611, as amended; 16 U.S.C. 668dd; 16 U.S.C. 1; 25 U.S.C. 3101, et seq.; 43 U.S.C. 1701, *et seq.*,

■ 3. A New § 1437–237–71 is added to read as follows:

§ 1452.237–71 Utilization of Woody Biomass.

As prescribed in § 1437.7202, insert the following clause:

Utilization of Woody Biomass

1. The contractor may remove and utilize woody biomass, if:

(a) Project work is progressing as scheduled; and

(b) Removal is completed before contract expiration.

2. To execute this option, the contractor must submit a written request to the Government.

3. Following receipt of the written request, and if appropriate, the Government and the contractor will negotiate and execute a separate timber/vegetative sales contract. Payment under the timber/vegetative sales contract must be at a price equal to or greater than the appraised value of the woody biomass. The contractor must make any appropriate payment specified in the related timber/vegetative sales contract before removal may be authorized.

4. If required by law, regulation or Bureau policy, the Government will prepare a timber/vegetative sales notice and/or prospectus, including volume estimates, appraised value and any appropriate special provisions.

5. The contractor must treat any woody biomass not removed in accordance with the specifications in the service contract.

6. The sales contract and service contract are severable; default or termination under either contract does not remove the contractor from payment or performance obligations under the other contract.

7. Definitions:

Timber/vegetative sales contract and/or notice means the agency-specific authorized contract instrument for the sale, barter, exchange, billing or other compensation for the payment, removal, and/or transportation of woody biomass material.

Woody biomass means the trees and woody plants, including limbs, tops, needles, leaves, and other woody parts, grown in a forest, woodland, or rangeland environment, that are the by-products of management, restoration and/or hazardous fuel reduction treatment.

[FR Doc. 05–10095 Filed 5–19–05; 8:45 am]

BILLING CODE 4310–RF–M

Proposed Rules

Federal Register
Vol. 70, No. 97
Friday, May 20, 2005

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–058–2]

Flag Smut; Importation of Wheat and Related Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations regarding the importation of wheat and related articles by removing the prohibitions related to flag smut. Based on a number of considerations, we have concluded that U.S. wheat would not be at risk if those prohibitions were removed. We would, however, continue to prohibit the importation of wheat and related articles from flag smut-affected countries until a risk evaluation can be completed to ensure that those articles do not introduce other plant pests. This action would remove flag smut-related prohibitions that no longer appear to be necessary while continuing to provide protection against other potential pests or diseases of wheat.

DATES: We will consider all comments that we receive on or before July 19, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 02–058–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–058–2.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Mr. William D. Aley, Senior Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1228; (301) 734–8262.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Wheat Diseases" (7 CFR 319.59 through 319.59–4, referred to below as the regulations) prohibit or restrict the importation of wheat and related articles into the United States from certain parts of the world to prevent the introduction of foreign strains of flag smut and Karnal bunt. This proposed rule concerns only the prohibitions on flag smut. Flag smut is a plant disease caused by a highly infective fungus, *Urocystis agropyri*, which attacks wheat and substantially reduces its yield.

Flag smut was first described in 1868 in Australian wheat fields. Affected plants within the growing crop are often severely stunted and produce excessive numbers of tillers. Unlike other bunts and smuts of wheat, flag smut does not affect the quality of harvested grain for feed or flour. Flag smut of wheat was first discovered in the United States in 1919, and a quarantine on wheat from countries having flag smut was put in effect. Until the 1930s, flag smut was a significant disease of wheat in the United States, but has recently been found only on wheat in the Pacific Northwest when the seed is sown in late August and early September at depths of more than 2 inches.

To address the risk presented by foreign strains of flag smut, the regulations have prohibited the importation, except by the United States Department of Agriculture under a departmental permit, of certain articles from specified countries and localities. Specifically, the regulations prohibit the importation of the following articles of *Triticum* spp. (wheat) or *Aegilops* spp. (barb goatgrass, goatgrass):

- Seeds;
- Plants;
- Straw (other than straw, with or without heads, that has been processed or manufactured for use indoors, such as for decorative purposes or for use as toys);
- Chaff; and
- Products of the milling process (*i.e.*, bran, shorts, thistle sharps, and pollards) other than flour.

The regulations also prohibit the importation of seeds of Melilotus indica (annual yellow sweetclover) and seeds of any other field crops that have been separated from wheat during the screening process.

The countries and localities from which the importation of those articles is prohibited are listed in § 319.59–3(b) of the regulations. The listed countries and localities are: Afghanistan, Algeria, Armenia, Australia, Azerbaijan, Bangladesh, Belarus, Bulgaria, Chile, China, Cyprus, Egypt, Estonia, Falkland Islands, Georgia, Greece, Guatemala, Hungary, India, Iran, Iraq, Israel, Italy, Japan, Kazakhstan, Kyrgyzstan, Latvia, Libya, Lithuania, Moldova, Morocco, Nepal, North Korea, Oman, Pakistan, Portugal, Romania, Russia, Spain, Tajikistan, Tanzania, Tunisia, Turkey, Turkmenistan, South Africa, South Korea, Ukraine, Uzbekistan, and Venezuela.

On February 7, 2003, we published an advanced notice of proposed rulemaking (ANPR) in the **Federal Register** (68 FR 6362–6363, Docket No. 02–058–1) in which we announced that, based on a risk assessment,[1] we were

[1] The pest risk assessment, titled "Evaluation of the need for continued quarantine of foreign strains of the wheat flag smut pathogen, Urocystis agropyri (Preuss) Schroet," may be viewed on the EDOCKET Web site (see **ADDRESSES** above for instructions for

considering easing restrictions on the importation of wheat and related articles from those countries and solicited comments on whether and how we should amend the regulations. In particular, we asked the public for comments and recommendations regarding the current prohibitions related to foreign strains of flag smut, whether lesser restrictions or safeguards might be necessary if those prohibitions were removed, whether we should require the completion of risk assessments before allowing wheat or related articles to be imported from countries covered by the flag smut regulations and from those countries not currently covered by the regulations, and the effects that any of these options might have on wheat producers, consumers, and other related entities in the United States.

We solicited comments on the ANPR for 60 days, ending April 8, 2003. We received nine comments by that date. They were from State and Federal researchers, plant pathologists, wheat industry associations, and an agricultural import/export company. All of the commenters supported the removal of the flag smut-related prohibitions. None of the commenters supported the imposition of lesser restrictions or safeguards related to flag smut.

Based on our review of the public comments and the findings of the pest risk analysis, we are proposing to amend the regulations to eliminate the flag smut-based prohibition on the importation of wheat and related articles from those countries. We would also remove the definition of *foreign strains of flag smut* from § 319.59–1. We are, however, proposing to continue prohibitions on wheat and related articles from those countries pending the completion of an evaluation by APHIS of the potential risks associated with the articles.

The amended regulations would provide an address to which the national plant protection organization of each country could write to request that such an evaluation be performed. If supported by the results of the risk evaluation, we would then take action to remove the country from the "prohibited pending" list.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the regulations regarding the importation of wheat and related articles by removing the prohibitions related to flag smut. Based on a number of considerations, we have concluded that U.S. wheat would not be at risk if those prohibitions were removed. We would, however, continue to prohibit the importation of wheat and related articles from flag smut-affected countries until a risk evaluation can be completed to ensure that those articles do not introduce other plant pests. This action would remove flag smut-related prohibitions that no longer appear to be necessary while continuing to provide protection against other potential pests or diseases of wheat.

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small businesses, organizations, and governmental jurisdictions and to use flexibility to provide regulatory relief when regulations create economic disparities between different-sized entities. According to the Small Business Administration's (SBA's) Office of Advocacy, regulations create economic disparities based on size when they have a significant impact on a substantial number of small entities.

We expect that this proposed rule would affect domestic producers and processors of wheat. It is likely that the entities affected would be small according to Small Business Administration (SBA) guidelines. As detailed below, information available to APHIS indicates that the effects on these small entities would not be significant.

Affected U.S. wheat producers and processors are expected to be small based on the 2002 Census of Agriculture data. According to the census, there were 169,528 farms in the United States that sold wheat, collectively valued at $5.64 billion. SBA guidelines for entities in Wheat Farming and Wheat Farming, Field, and Seed Production (North American Industry Classification System [NAICS] code 111140) classify producers in these farm categories as small entities if their total annual sales are no more than $750,000. APHIS does not have information on the size distribution of domestic wheat producers, but according to 2002 Census data, there were a total of 2,128,892 farms in the United States. Of this number, approximately 97 percent had total annual sales of less than $500,000 in 2002, which is well below the SBA's small entity threshold for commodity farms. This indicates that the majority of farms are considered small by SBA standards, and it is reasonable to assume that most of the 169,528 wheat farms that could be affected by the proposed rule would also qualify as small.

Additionally, there were 157 wheat milling establishments reported in the census. Of these entities, 153 were wheat flour (except flour mixes) milling establishments (NAICS code 3112111), with a total of 6,720 employees, and 4 were wheat products (except flour) milling establishments (NAICS code 3112114), with a total of 288 employees. In the case of these milling establishments, those entities with fewer than 500 employees are considered small by SBA standards. Therefore, all 157 milling establishments are considered to be small entities.

The United States is the world's leading wheat exporter. The average annual value of exported U.S. wheat over the last 5 years is $4.4 billion. The volume of wheat exports from the United States has, on average, been 14 times greater than import volume.

Annual costs and benefits that would be associated with removing the import prohibitions associated with flag smut would depend upon the level of U.S. domestic wheat production as well as on import levels. The lower the import level when compared to the level of domestic availability after export, the lower the potential impact of this proposed action on the economic welfare of domestic wheat importers and producers.

Nevertheless, the economic impact on U.S. domestic producers and processors of wheat should be negligible since the percentage of imported wheat has been relatively low (6 percent of the domestic supply) when compared with the domestic supply levels overall. In particular, domestic wheat producers should not face competition from foreign producers given the small percentage of imported wheat in the domestic supply.

Given the relatively small amount of wheat in the domestic supply when compared to U.S. wheat production and the size of the domestic supply overall the proposed change would not have any measurable economic affect on either domestic producers or processors of wheat.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

accessing EDOCKET) or on the Internet at *http://www.cphst.org/docs/FlagSmut.pdf.*

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.59–1 [Amended]

1. In section 319.59–1, the definition for *Foreign strains of flag smut* would be removed.

2. In section 319.59–2, the introductory text of paragraph (b) would be revised to read as set forth below and paragraph (b)(3) would be amended by removing the words "(including foreign strains of flag smut)."

§ 319.59–2 General import prohibitions; exceptions.

* * * * *

(b) *Triticum* spp. plants, articles listed in § 319.59–3 as prohibited importation pending risk evaluation, and articles regulated for Karnal bunt in § 319.59–4(a) may be imported by the U.S. Department of Agriculture for experimental or scientific purposes if:

* * * * *

3. In § 319.59–3, the section heading and the introductory text of the section would be revised to read as follows:

§ 319.59–3 Articles prohibited importation pending risk evaluation.

The articles listed in paragraph (a) of this section from the countries and localities listed in paragraph (b) of this section are prohibited from being imported or offered for entry into the United States, except as provided in § 319.59–2(b), pending the completion of an evaluation by APHIS of the potential pest risks associated with the articles. The national plant protection organization of any listed country or locality may contact APHIS [1] to initiate the preparation of a risk evaluation. If supported by the results of the risk evaluation, APHIS will take action to remove that country or locality from the list in paragraph (b) of this section.

* * * * *

Done in Washington, DC, this 13th day of May 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–10094 Filed 5–19–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 410

[Docket No. 95–051P]

RIN 0583–AC72

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 130

[Docket No. 1995N–0294]

RIN 0910–AC54

Food Standards; General Principles and Food Standards Modernization

AGENCIES: Food Safety and Inspection Service, USDA; Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) and the Food and Drug Administration (FDA) (we, our, the agencies) are proposing to establish a set of general principles for food standards. The adherence to these principles will result in standards that will better promote honesty and fair dealing in the interest of consumers and protect the public, allow for technological advances in food production, be consistent with international food standards to the extent feasible, and be clear, simple, and easy to use for both manufacturers and the agencies that enforce compliance with the standards. The proposed general principles will establish the criteria that the agencies will use in considering whether a petition to establish, revise, or eliminate a food standard will be the basis for a proposed rule. In addition, each agency may propose to establish, revise, or eliminate a food standard on its own initiative or may propose revisions to a food standard in addition to those a petitioner has requested. These proposed general principles are the agencies' first step in instituting a process to modernize their standards of identity (and any accompanying standards of quality and fill of container) and standards of composition.

DATES: Submit written or electronic comments by August 18, 2005.

ADDRESSES: *You may submit comments to FSIS, identified by Docket No. 95–051P, by any of the following methods:*

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail/Hand delivery/Courier (For paper, disk, or CD-ROM submissions): Send an original and two copies of comments to: FSIS Docket Clerk, Docket No. 95–051P, rm. 102, Cotton Annex Bldg., 300 12th St. SW., Washington, DC 20250–3700.

Instructions: All submissions received must include the agency name and Docket No. 95–051P or regulatory information number (RIN) 0583–AC72.

Other Information: All comments submitted in response to this proposal, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/OPPDE/rdad/FRDockets.htm.*

You may submit comments to FDA, identified by Docket No. 1995N–0294 and/or RIN 0910–AC54, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments.* Follow the instructions for submitting comments on the agency Web site.
- E-mail: *fdadockets@oc.fda.gov.* Include Docket No. 1995N–0294 and/or RIN 0910–AC54 in the subject line of your e-mail message.
- FAX: 301–827–6870.
- Mail/Hand delivery/Courier (For paper, disk, or CD-ROM submissions):

[1] Requests should be submitted in writing to Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236.

Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and Docket No. 1995N–0294 or RIN 0910–AC54. All comments received will be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:
FSIS: Robert C. Post, Labeling and Consumer Protection Staff, rm. 602, Cotton Annex Bldg., 1400 Independence Ave. SW., Washington, DC 20250–3700, 202–205–0279.

FDA: Ritu Nalubola, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2371.

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I. Background

FSIS and FDA share responsibility for ensuring that food labels are truthful and not misleading. FSIS has the authority to regulate the labeling of meat and poultry products, and FDA has the authority to regulate the labeling of all other foods. Some foods, such as eggs, are regulated by both agencies. Food standards are used to ensure that products sold under particular names have the characteristics expected by consumers.

A. FSIS Food Standards

Meat and poultry product standards of identity or composition are codified in title 9 of the Code of Federal Regulations (CFR). FSIS has established by regulation approximately 80 meat and poultry product standards of identity or composition (9 CFR parts 319 and 381, subpart P, for meat and poultry products, respectively) under its authorities in the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 607(c) and 457(b)). These sections provide:

> The Secretary [of Agriculture], whenever he determines such action is necessary for the protection of the public, may prescribe * * * definitions and standards of identity or composition for articles subject to [the FMIA and PPIA] and standards of fill of container for such articles not inconsistent with any such standards established under the Federal Food, Drug, and Cosmetic Act [act] (21 U.S.C. 301 *et seq.*) and there shall be consultation between the Secretary [of Agriculture] and the Secretary of Health and Human Services prior to the issuance of such standards under [the FMIA, PPIA, or act] relating to articles subject to this chapter to avoid inconsistency in such standards and possible impairment of the coordinated effective administration of [the FMIA, PPIA and the act]. There shall also be consultation between the Secretary [of Agriculture] and an appropriate advisory committee provided for in [21 U.S.C. 454 and 661] prior to the issuance of such standards * * * to avoid, insofar as feasible, inconsistency between Federal and State standards.

Consistent with the statutes, FSIS has consulted with FDA regarding the proposed general principles. In addition, FSIS consulted with the National Advisory Committee on Meat and Poultry Inspection about this proposed rule in November 2001, and incorporated their comments in this document. FSIS's food standards regulations cover many different foods. The contents of individual food standards or groups of food standards are extremely varied, depending on the complexity of the food and the level of detail necessary to define the characterizing features of the food. Some food standards are relatively simple, consisting of only a sentence or two (e.g., beef stew, 9 CFR 319.304), or a paragraph or two (e.g., deviled ham, 9 CFR 319.760). Other food standards are extremely detailed and prescriptive. For example, the standard for frankfurter, frank, furter, hotdog, weiner, vienna, bologna, garlic bologna, knockwurst and similar products describes the form of the product, the expected ingredients, and the allowable meat and nonmeat ingredients and poultry products that can be used in these products (9 CFR 319.180). There are more standards for meat products than for poultry products because processed meat products have been in existence longer and have been consumed more widely than processed poultry products. Although the FMIA and PPIA authorized standards of fill, FSIS has not established any standards of fill in regulations.

FSIS standards of identity generally require the presence of certain expected ingredients in a food product or mandate how a product is to be formulated or prepared. For example, a poultry product labeled "(kind) a la Kiev" is required to be stuffed with butter, which may be seasoned (9 CFR 381.161). In the poultry products inspection regulations, the term "kind" refers to the type of poultry used. In this standard of identity, butter is an expected ingredient, and the standard also requires that the product be prepared by stuffing the butter in the poultry. The standard of identity for barbecued meats requires that barbecued meats be cooked by the direct action of dry heat resulting from the burning of hard wood or the hot coals therefrom for a sufficient period to assume the usual characteristics of a barbecued article, which include the formation of a brown crust on the surface and the rendering of surface fat (9 CFR 319.80). This standard of identity specifies exactly how the product must be prepared and also includes a description of the defining characteristics of products that meet the standard.

Standards of composition specify the minimum or maximum amount of ingredients in a product. Many of these standards for meat products establish a minimum amount of meat or a maximum amount of fat in the product. For example, the standards of composition for ground beef, chopped beef, hamburger, and fabricated steaks require that the product contain no more than 30 percent fat (9 CFR 319.15). Several of the poultry standards of composition specify minimum poultry levels and maximum added liquid levels. For example, canned boned poultry, labeled, "boned (kind)" must

contain at least 90 percent cooked, deboned poultry meat of the kind indicated on the label, with skin, fat and seasoning, and may contain no more than 10 percent added liquid (9 CFR 381.157). The standards of composition for mechanically separated (species) (9 CFR 319.5) and mechanically separated (kind) (9 CFR 381.173) limit the amount and size of bone particles that the product may contain.

Some FSIS standards require that product be labeled with a specific name, such as "hamburger" (9 CFR 319.15(b)) or "(kind) patties" (9 CFR 381.160), while other standards provide examples of terms that can be used to label the products but do not prescribe the exact terms or phrases that must be used to label the product. For example, numerous phrases may be used in labeling fabricated steaks, including "beef steak, chopped, shaped, frozen," "minute steak, formed, wafer sliced, frozen," or "veal steaks, beef added, choppedmolded- cubed-frozen, hydrolyzed plant protein, and flavoring" (9 CFR 319.15(d)). Fabricated steaks also may be labeled with other terms not specified in the regulations.

In addition, some FSIS standards require specific label information. For example, Italian sausage products that are cooked must be labeled with the word "cooked" in the product name (9 CFR 319.145(c)), and cooked sausages, such as frankfurters, franks, furters, or hotdogs, that are prepared with meat from a single species of cattle, sheep, swine, or goats must be labeled with the term.designating the particular species in conjunction with the generic name of the sausage (9 CFR 319.180(c)). The standard for poultry rolls requires that when binding agents are added in excess of 3 percent for cooked rolls and 2 percent for raw rolls, the common name of the agent or the term "binders added" must be included in the name of the product (9 CFR 381.159(a)).

Under FSIS's food standards regulations, products that do not conform to a standard may not represent themselves as the standardized food. However, such products still may be sold under another name. For example, a beef stew that contains less than 25 percent beef can be marketed as "gravy, vegetables, and beef" or "chunky beef soup," but can not be identified as "beef stew" because the food standard for meat stew requires that the product contain not less than 25 percent of meat of the species named on the label (9 CFR 319.304). A product that does not meet the sausage standard (9 CFR 319.140) because it contains more than 10 percent of added water in the finished product may be marketed under another name, such as "pork, water, and soy protein concentrate link."

Finally, in addition to its food standards regulations, FSIS has established numerous informal or "policy" food standards for meat and poultry products in the FSIS "Food Standards and Labeling Policy Book" (Policy Book).

B. FDA Food Standards

FDA has established over 280 food standards of identity, some of which include standards of quality and fill of container, under the authority set forth in section 401 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 341). This section provides in part:

> Whenever in the judgment of the Secretary [of Health and Human Services] such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food, under its common or usual name so far as practicable, a reasonable definition and standard of identity, a reasonable standard of quality, or reasonable standards of fill of container.

The standards of identity, quality, and fill of container for foods regulated by FDA are codified in title 21, parts 130 to 169 (21 CFR 130 to 169). FDA food standards establish the common or usual name for a food and define the nature of the food, generally in terms of the types of ingredients that it must contain (i.e., mandatory ingredients), and that it may contain (i.e., optional ingredients). FDA food standards may specify minimum levels of the valuable constituents and maximum levels for fillers and water. They also may describe the manufacturing process when that process has a bearing on the identity of the finished food. Finally, FDA food standards provide for label declaration of ingredients used in the food and may require other specific labeling, such as the declaration of the form of the food, packing medium, and flavorings or other characterizing ingredients, as part of the name of the food or elsewhere on the principal display panel of the label.

Individual FDA food standards vary widely in their content. These variations have developed because of the different aspects of food technology that are responsible for providing the defining characteristics of a food. Some foods are defined and distinguished by their ingredients. The standards for these foods set specific limits on the levels of ingredients that must be used. For example, the standard of identity for fruit preserves and jams (§ 150.160 (21 CFR 150.160)) lists the minimum amount of fruit and sugar that these foods must contain. Other food standards focus on compositional characteristics of the food, rather than on the specific ingredients. For example, the standards of identity for milk products (part 131) list the minimum levels of milkfat and milk solids (excluding fat) that must be contained in these foods. Still other foods owe their distinctive characteristics to the manner in which they are produced, and the standards for these foods reflect this fact. For example, the standards of identity for cheese products (part 133) specify the manufacturing process, in addition to compositional characteristics, to distinguish one cheese from another. Some other foods are defined by their physical characteristics. For example, particle size is an important factor in distinguishing cracked wheat from crushed wheat, and the standards of identity for these foods (§ 137.190 and 137.195, respectively) include methods of analysis for the determination of the particle size of these foods. Depending on the level of detail necessary to define the characteristics of the food, some food standards of identity consist of only a few paragraphs (e.g., sap sago cheese in § 133.186), while others are longer. For example, the canned tuna standard (§ 161.190) covers approximately eight pages in the CFR and prescribes the vegetables that must be used if the tuna is seasoned with vegetable broth.

FDA's food standards of quality set minimum specifications for such factors as tenderness, color, and freedom from defects for canned fruits and vegetables. Such characteristics would not be readily apparent to the purchaser of these foods because of the nature of the foods and the manner in which they are presented to the consumer (inside a can). FDA food standards of fill of container set out requirements as to how much food must be in a container. These requirements are particularly important when foods are packed in liquids and sealed in opaque containers.

In a manner similar to the FSIS food standard regulations, FDA's food standard regulations do not permit products that do not conform to a standard to be represented as the standardized food; such products, however, may be sold under other nonstandardized names. For example, a fruit product that does not meet the standard of identity for fruit preserves and jams (§ 150.160), because its fruit content is lower than the standard requires, may be marketed under another name, such as "fruit topping."

C. Advance Notices of Proposed Rulemaking

In 1995, FSIS and FDA began reviewing our regulatory procedures and requirements for food standards to determine whether food standards were still needed, and if so, whether they should be modified or streamlined. To initiate this review, we published advance notices of proposed rulemaking (ANPRMs) on food standards (60 FR 67492, December 29, 1995 (FDA), and 61 FR 47453, September 9, 1996 (FSIS)). These ANPRMs discussed regulations and policy governing food standards, the history of food standards, and the possible need to revise the food standards.

In the ANPRMs, we identified problems with existing food standards. Specifically, we stated that some food standards might impede technological innovation in the food industry. FSIS stated that the existing food standards also may prevent the food industry from producing products that have lower amounts of constituents associated with negative health implications, such as fat, saturated fat, cholesterol, and sodium (61 FR 47453). FDA stated that manufacturers of nonstandardized foods are developing new ingredients and plant varieties to enhance a food's organoleptic or functional properties, alter its nutritional profile, or extend shelf life. Incorporation of these advances into standardized foods may be difficult without the laborious amendment of the relevant standard (60 FR 67492).

In the ANPRMs, FDA and FSIS presented alternatives to the existing food standards. The alternatives presented by FSIS included permitting the use of a lesser amount of meat or poultry in standardized products provided the product's label contained a declaration of the percentage of the meat or poultry content in the product; establishing a general standard of identity for standardized products that would provide for deviations from current ingredient allowances and restrictions (deviations would be highlighted in the ingredient statement on the product label); establishing categories of meat or poultry products and corresponding recommendations for expected meat and poultry contents; amending the statutes to allow private organizations to certify that food products meet consumer expectations; and revoking existing food standards and regulating all foods as nonstandardized foods (61 FR 47453).

The alternatives presented by FDA included revoking existing food standards and regulating all foods as nonstandardized foods; requiring that products declare the percentage of all major ingredients on the label; requiring that products declare the percentage of characterizing ingredients in the food name; identifying "parent" products with minimum compositional requirements (for example, creating a standard for jam or jelly that specifies minimum fruit content requirements) to avoid misleading use of percentage declaration on the food label; establishing generic food standards (such as the standards of identity for hard cheeses (§ 133.150) and spiced, flavored standardized cheeses (§ 133.193)); amending the statute to allow private organizations to certify that food products meet consumer expectations; and requiring appropriate labeling of foods that deviate from government quality standards (60 FR 67492).

In the ANPRMs, the agencies asked for comments on the benefits or lack of benefits of the food standards regulations in facilitating domestic and international commerce and on the benefits of the food standards regulations to consumers. We asked how the food standards could be revised to grant the flexibility necessary for timely development and marketing of products that meet consumer needs, while at the same time providing consumer protection. We also asked for comments on the alternatives to the food standards presented in the ANPRMs and whether to coordinate efforts to revise the food standards regulations.

D. Comments to the ANPRMs

FSIS received 28 letters, each containing one or more comments, from industry, consumers, a consumer group, and the U.S. Department of Agriculture (USDA) Food and Consumer Service (FCS) (now known as Food, Nutrition, and Consumer Services) in response to its ANPRM. FDA received 95 letters, each containing 1 or more comments, from industry, consumers, consumer groups, and the USDA FCS in response to its ANPRM. Most comments to both ANPRMs strongly supported the concept of food standards, while a few requested that standards be eliminated. However, very few comments to both ANPRMs supported the existing food standards as currently written. The types of concerns expressed in the comments to the ANPRMs follow.

Many of the comments that supported retaining food standards stated that they protect consumers from fraudulent and substandard products by establishing the basis upon which similar products are formulated. Others argued that food standards ensure that products meet consumers' nutritional expectations and needs. Several comments from industry, a consumer, and two consumer groups stated that nutrition labeling and ingredient declarations cannot substitute for food standards, as reliance on nutrition labeling and ingredient declarations would be a burden to consumers.

Several industry comments that supported food standards also stated that the Federal food standards ensure a level playing field for industry because they provide direction to industry members producing standardized products. Several industry comments and one comment from the USDA FCS also stated that, in the absence of Federal food standards, the States would be able to establish their own food standards and manufacturers would be confronted with the challenge of meeting different States' requirements. In addition, many industry comments stated that the food standards provide a basis for negotiations related to the international harmonization of standards and facilitate international trade. One comment stated that, without a U.S. food standards system, food standards development could shift to international bodies, which may not be sensitive to the American consumer or industry. Another comment stated that the absence of food standards could pose a barrier to exports and international markets.

Although most comments supported retaining food standards in some form, they requested that food standards be simplified, be made more flexible, or be clarified. For example, one industry comment stated that food standards should not include manufacturing methods, prohibitions regarding classes of ingredients, or product-specific labeling (other than the acceptable product name). This comment also stated that standardized and nonstandardized food product labeling should be the same. Similarly, other industry comments requested that the food standards be made more flexible to allow for alternative safe and suitable ingredients and alternative technologies that do not change the basic nature or basic characteristics of the food. Several industry comments recommended limiting food standards to the name of the product and the essential characterizing properties of the product. Several industry comments to FSIS's ANPRM recommended that food standards be limited to meat and poultry content requirements. Conversely, other industry comments to FSIS's ANPRM recommended that

industry be given the flexibility to reduce the percentage of meat in standardized products.

Several industry comments and a consumer comment to FDA's ANPRM recommended that FDA revise certain specific food standards (e.g., jams, jellies, preserves, milk chocolate, and sweetened condensed milk) to provide more flexibility in food technology and ingredient options.

In response to FSIS's and FDA's requests for suggestions as to how they should revise food standards, several comments from industry and from a consumer group recommended rescinding or modifying them on a case-by-case basis. Some comments from industry recommended instituting advisory committees, contracting with independent groups, or forming nongovernment groups to revise the food standards. Further, several industry comments recommended establishing general or "guiding" principles or a fundamental philosophy for reviewing food standards and revising them. Other industry comments and a consumer group suggested that revisions to standards should be initiated by petitions and supported by adequate data. Finally, several comments to both ANPRMs stated that FSIS and FDA food standards should be consistent, and that we should attempt to harmonize our efforts to revise the food standards.

Comments to FSIS's alternatives: Few comments supported the alternatives to food standards that FSIS presented in its ANPRM. A consumer organization was opposed to all of the alternatives presented in the ANPRM. Several trade groups specifically stated their opposition to percentage labeling. One of these groups stated that products would be cheapened if this alternative were allowed. The USDA FCS comment stated that percentage labeling had merit, but that this alternative does not address all the factors that might make a product inferior in quality. The USDA FCS comment-and several industry comments that generally opposed the other alternatives presented in the ANPRM-expressed support for the general standard alternative that would provide for deviations from current ingredient allowances and restrictions. These comments stated that this approach would allow consumers to discern differences between the standardized product and the modified version. One of these comments stated that this approach may not allow enough ingredient deviations in standardized products. Another of these comments stated that a general standard's approach should expressly permit reduction of meat and poultry content in standardized products. Many of the industry comments opposed private certification that food products meet consumer expectations.

Comments to FDA's alternatives: Several comments opposed the alternatives presented in FDA's ANPRM. One trade association stated that percentage labeling was not an adequate substitute for standards. One industry comment stated that percentage labeling might be acceptable if it provided for the marketing of "heavily breaded shrimp" without requiring "imitation" labeling but that any other use of percentage labeling would be too cumbersome and could give away proprietary information. The USDA FCS comment stated that percentage labeling has merit but does not address all of the factors that could make a product inferior in quality. Another alternative that was presented in conjunction with percentage characterizing ingredient labeling was to identify a "parent" product, for example, a standardized jam or jelly that complies with minimum compositional requirements, to avoid misleading use of the percentage declaration on a food label. In response, one industry comment stated that this approach might be useful, but would not be adequate to replace all standards. Another industry comment stated that minimal compositional standards are necessary to provide a benchmark to ensure product integrity and to satisfy consumer expectations. Comments also opposed the alternative of extending the generic food standard concept (such as the existing standard of identity for hard cheeses (§ 133.150) or the generic standard for nutritionally modified versions of traditional standardized foods in § 130.10 (21 CFR 130.10)) to other classes of food standards. Two industry comments stated that generic food standards should not be used to create standards for nonstandardized foods, while another industry comment stated that the current generic standards in § 130.10 were adequate. On the other hand, an industry comment stated that generic standards in addition to those covered in § 130.10 could be beneficial to maintain product characteristics. Similarly, the USDA FCS stated that the generic standards approach has merit. With regard to the alternative of requiring that foods that deviate from government quality standards be labeled appropriately, one comment stated that foods that deviate from standards should be named so that they are readily distinguishable from the standardized food. Another comment stated that current labeling requirements provide sufficient information concerning deviation from standards. While two industry comments supported private certification of foods that meet consumer expectations, most comments opposed this alternative.

E. Options in the Food Standards Modernization Process

As noted previously, several comments recommended that FDA and FSIS establish general principles or a fundamental philosophy for reviewing food standards and revising them. The agencies agree with these comments supporting the development of general principles for reviewing and revising food standards regulations and also agree with the comments that stated that the agencies should work in concert to develop consistent food standards regulations.

On September 12, 1996, FDA convened an internal agency task force to discuss the current and future role of food standards and to draft a set of principles for reviewing and revising FDA's food standards regulations. The task force agreed that the food standards should protect consumers without unduly inhibiting technological advances in food production and marketing.

To ensure that FSIS and FDA were consistent as the food standards reform process continued, in January 1997, a joint FDA and FSIS Food Standards Work Group (the Work Group) was convened, chaired by the Director of the FDA's former Office of Food Labeling (now incorporated into the Office of Nutritional Products, Labeling, and Dietary Supplements) and the Director of the FSIS Labeling and Compounds Review Division (now the Labeling and Consumer Protection Staff). The Work Group revised the principles that the FDA task force had developed to reflect the goals and needs of both agencies.

In addition to developing these general principles, the Work Group considered five options, as the next step in the process of food standards reform, and analyzed the advantages and disadvantages of each option. The first option the Work Group considered was not proceeding any further with the review of the food standards regulations. The advantage of this option is that, in the short run, it would require little or no increase in the agencies' use of resources.

A major disadvantage of this option is that there is very little industry or consumer support for it. As noted previously, the majority of comments supported revising the existing system of food standards to simplify them and

to make them more flexible. In addition, even if this first option were adopted, we would need to continue to expend resources interpreting and enforcing food standards that may be outdated. Additionally, a system of food standards that does not allow technological advancement in food production may not be in the long-term interest of consumers. If we do not revise the food standards, FDA would need to continue to devote resources to temporary marketing permit (TMP) applications, which allow companies to sell products that deviate from established food standards while testing the marketplace for consumer acceptance of the new product (§ 130.17), and both agencies would need to devote resources to keeping their respective standards systems functioning. In the long run, demands on each agency's resources would likely increase as technological and marketing advances conflict with the requirements in the existing food standards regulations. However, if food standards were revised to provide flexibility in manufacturing, the number of TMP applications would be reduced and agencies' resources conserved. Finally, not reviewing or revising food standards to ensure that they are current with international food standards, as appropriate, could create difficulties in international negotiations and trade.

The second option the Work Group considered was removing all food standards from the regulations and treating all foods as nonstandardized foods. One advantage of this option is that, in most cases, fewer agency resources would be required to eliminate food standards than to review and revise them. Also, under this option, we no longer would devote resources to responding to petitions requesting an amendment to an existing standard or the establishment of a new food standard.

As with the first option, however, very few comments on the ANPRMs supported eliminating food standards completely. We agree with the comments that stated that States might establish their own food standards in the absence of Federal food standards. For meat and poultry products, if there were no Federal standards, States with their own meat and poultry inspection programs could have State standards for meat and poultry products and these would only apply to products produced at establishments within the State that are distributed within the State. Such food standards for meat and poultry products could differ from State to State. For FDA-regulated food products, if there were no Federal food standards, States would be free to create their own standards which might differ from each other, making compliance by manufacturers more difficult. Without Federal food standards, there would be no reference point for ensuring consistency of products for national commodity programs or feeding programs, such as the National School Lunch Program. In addition, as comments stated, without Federal food standards, the United States would have no reference point for negotiating international food standards, or facilitating international trade.

Another disadvantage of this option is the loss of enforcement efficiency. Without food standards, we would have to rely solely on the general adulteration and misbranding provisions of our statutes rather than upon the specified requirements of a food standard to determine if a product were economically adulterated (i.e., adulterated under § 402(b)(1)) or misbranded. This would likely require more enforcement resources than a food standards system would require.

The third option the Work Group considered was using our resources to review and revise food standards to make them internally consistent, more flexible for manufacturers and consumers, and easier to administer. The majority of comments supported this option and several provided specific suggestions concerning regulatory revisions. If we were to revise the food standards, we would ensure that the revisions reduced the burden on industry and ensured adequate protection of consumers. The disadvantage of this option is competing priorities would make it unlikely we could do this in a timely manner.

The fourth option the Work Group considered was to request external industry groups to review, revise, and administer the food standards (private certification). This option would require little or no use of the agencies' resources. In addition, the revised food standards would provide the level of flexibility that industry desires. However, for private organizations to review, revise, and administer the food standards, the act, FMIA, and PPIA would have to be amended, so that these standards would have the force of law.

Although a few industry comments supported private certification of food standards, most comments to the ANPRMs opposed private certification. In addition, the Work Group determined that this option might not provide a mechanism for consumer input, unless required by legislation. Therefore, consumers' interests would not necessarily be reflected in the revised food standards, which might result in the standards failing to promote honesty and fair dealing in the interest of consumers or to protect the public. Also, food standards for which industry was unwilling to commit resources would not be revised. Under this option, there might be no mechanism for resolving conflict, should it arise, among industry segments, unless legislative changes provided such a mechanism. Furthermore, we determined that food standards established and maintained by industry would be voluntary, not mandatory, unless legislative changes authorized industry to establish and maintain the standards.

The fifth option the Work Group considered was to rely on external groups-consumer, industry, commodity, or other groups-to draft recommended revisions to existing Federal food standards but retain the agencies' authority to establish the final food standards. Under this option, we would continue to codify the food standards in our respective regulations. The external groups would use the general principles put forward by us to draft new food standards and would submit these in petitions. Similarly, external groups would use the general principles to draft revised food standards or to propose eliminating existing food standards. We would review any petitions submitted to ensure that they were consistent with the general principles. Under this option, if we determined that a petition to establish, revise, or eliminate a standard was consistent with the general principles, and provided adequate data and support for the suggested change, we would more quickly propose and, when appropriate, finalize a new or revised and simplified standard or the elimination of a standard.

One major advantage of this option is that it would require the use of fewer of our agencies' resources than would be required if we were to review and propose amendments to the food standards without the benefit of petitions. In addition, this option allows for the participation of consumer groups and an opportunity for them to express interest through the petition process and through the submission of comments in response to proposed rules on new or revised food standards. Because we would have ultimate authority and jurisdiction over the final food standard established or eliminated, we would ensure that consumer interests were protected. Another advantage of this option is that it would rely largely on information from those groups that have the most interest in, and knowledge of, the particular food standards being

considered for revision. These groups could draw on technical experts with knowledge of current production practices and marketing trends who could suggest which aspects of a specific standard are necessary to define the essential characteristics of a particular food. This approach would also likely result in consistent food standards because the general principles would govern all changes that are made to the standards.

The disadvantage to this fifth option is that, if a consumer, industry, or commodity group does not feel strongly about revising a particular group of food standards, we might not receive a petition and would then need to commit resources to reviewing the food standards without the benefit of a petition. However, comments to the ANPRMs and informal communications with external groups following publication of the ANPRMs indicate the willingness of consumer, industry, and commodity groups to submit for our consideration complete and thorough revisions for many food standards. In the event we do not receive a petition requesting that we revise, revoke, or establish a food standard, we, on our own initiative, may, when appropriate, propose to revise, revoke, or establish a standard.

For the reasons discussed previously, we have tentatively determined that the fifth option is the most appropriate course of action. The Work Group preliminarily determined that we could rely on external groups to suggest new food standards, revisions to existing food standards, or elimination of certain food standards that are consistent with the proposed general principles. The general principles approach would allow us to chart the basic course of food standards review and modernization. Moreover, it would allow consumer and industry groups to participate in the development of new and revised food standards and to identify food standards that should be eliminated. In addition, it would provide an opportunity for consumer and industry groups to submit data to support any claims made in petitions relating to consumer expectations or beliefs, and hence, protect consumer interests.

F. Consumer Research

To gain a preliminary understanding of current consumer attitudes toward Federal food standards of identity and the usefulness of food standards to consumers, we funded a series of focus group discussions (FGDs) that were conducted by the Research Triangle Institute, North Carolina. A total of 64 household grocery shoppers were recruited to participate in 8 FGDs held, 2 each in 4 cities: Raleigh, NC; San Diego, CA; Philadelphia, PA; and St. Louis, MO. Male and female participants were selected to represent diversity in age, level of education, and race. The purpose of this research was to collect the following information on consumers: (1) Attitudes toward arguments for and against standards of identity regulations; (2) preferences for standards of identity regulations for different types of food products; (3) preferences for various types of requirements in standards of identity regulations; (4) preferences for possible alternatives to standards of identity regulations; and (5) attitudes towards the standards setting process and suggestions for improving it.

The FGDs revealed that the opinion of participants on standards of identity varied widely ranging from those who felt that such standards are always necessary to those who felt that such standards are never necessary. However, the FGDs did not generate sufficient data to explain the basis for these differences. The majority of participants at these FGDs supported the need for food standards to ensure product quality and protect consumers, and opined that food standards should not be eliminated. Some participants stated that standards were necessary to ensure that products are named and labeled appropriately, and that food standards would allow consumers to base purchase decisions simply on the name of the product. Some participants also stated that standards should be based on consumers' beliefs about minimum acceptable levels of product characteristics and were concerned that a lack of standards would lead to increased shopping time and costs associated with trying different brands of a particular food to find one that meets their expectations. A majority of participants also indicated that food standards help ensure a certain degree of product uniformity.

However, some participants did not support the use of food standards. A few participants in the FGDs questioned the need for standards. With respect to quality provisions in standards, some participants stated that they prefer variety over a set standard quality of a food product; they also felt that some consumers might value the ability to choose a product of lower quality at a reduced price. These participants believed that standards were not necessary because consumer expectations of essential product characteristics and product quality can vary, and normal market forces, including the ability of a product to meet consumers' expectations, will determine whether it stays on the market. Therefore, they maintained that government oversight over product quality and uniformity was not needed. Some of these participants asserted that food standards do not serve consumers because they do not reflect the diversity of consumer expectations and beliefs, and restrict product choice and innovation.

In addition to being asked whether they support or oppose the need for food standards, participants were asked which food products or characteristics of food products it was most important to standardize and monitor. In response, participants stated that they considered food standards to be most necessary for foods with multiple, unrecognizable ingredients (e.g., cheeses or hot dogs) and least necessary for foods with a single, recognizable ingredient (e.g., milk or canned corn). Many participants identified requirements for the types and amounts of ingredients and the quality of a product as the most important ones of a food standard, while the physical characteristics of a food were stated as least important.

Additionally, several participants suggested that we review food standards periodically and revise them as needed on a case-by-case basis to accommodate changes in consumer preferences and reflect advances in processing and ingredient technologies. Finally, participants expressed the need for FSIS and FDA to obtain input from consumers during the process of establishing and revising food standards so consumers' preferences and beliefs are accurately reflected in food standards (Refs. 1 and 2).

Overall, although the opinion of participants on standards of identity varied widely, some tentative conclusions can be drawn. Many participants found standards of identity to be valuable. Participants stated that having uniform product names for products with certain defined characteristics makes shopping easier. Many participants also felt that standards of identity help ensure a product has its expected characteristics. Most participants did not agree that standards hinder the variety of products available on the market. In general, participants felt that it was more important for standards to address characteristics that participants could not readily observe (such as ingredients in products with multiple, unrecognizable ingredients) rather than characteristics they could observe (such as appearance, size, or number). Participants also stated that standards of

identity should be based on consumer beliefs and expectations about the product that are implied by a product's name and its minimum acceptable characteristics. In addition, participants believed that standards should be periodically revised to accommodate changes in consumer beliefs and technological advances. Most participants also expressed the desire for consumers to play a role in the development or revision of standards and did not feel that the government should rely solely on input from industry. Although tentative, and drawn from the limited focus group research data that is available, these conclusions provide support for the general principles discussed in section II of this document.

II. The Proposed General Principles

We are proposing general principles for establishing new food standards and for revising or eliminating existing food standards. In the list of proposed general principles for both of our agencies, the first four state the purpose or function of a food standard, and the remaining principles state how the requirements of a food standard should be written and what should be incorporated, in general, in the standard. Although the general principles have been developed to be consistent between our two agencies, they are not identical. Because FSIS and FDA regulate different products, principles that are specific to a particular agency were developed to reflect that agency's regulatory needs and perspectives.

FSIS is proposing to establish 9 CFR 410.1(a) and FDA is proposing to amend 21 CFR 130.5(b) to include these new general principles. Under this proposed rule, the agencies will deny a petition to establish a food standard if the proposed food standard is not consistent with all of the general principles that apply to the proposed standard. The agencies recognize that not all of the general principles will be applicable to every food standard. The agencies will deny a petition to revise an existing standard if the proposed revision is inconsistent with any of the general principles that apply to the proposed revision. Under this proposed rule, when proposing a revision to a standard, petitioners will not be required to propose all the revisions that might be needed to modernize the entire existing standard. Rather, the petitioner may propose only limited changes to existing standards, provided the proposed revisions are consistent with the general principles that apply to them.

The first four general principles state the purpose or function of a food standard. These principles are the most fundamental principles addressing consumer protection from an economic standpoint. Therefore, the agencies are proposing to deny a petition to eliminate a food standard if the petition does not demonstrate how the standard proposed to be eliminated is inconsistent with any one of the first four general principles. As stated in section I.B of this document, the act explicitly states that regulations establishing food standards of identity shall be issued when such action will "promote honesty and fair dealing in the interest of consumers" (21 U.S.C. 341). In addition, as stated in section I.A of this document, the FMIA and PPIA require that standards of identity or composition established under these acts be consistent with standards of identity, quality, or fill of container established under the act. Also, as stated previously, the FMIA and PPIA authorize the Secretary of Agriculture, after consultation with the Secretary of Health and Human Services, to prescribe definitions and standards of identity or composition for meat and poultry products whenever he or she determines that such action is necessary for the protection of the public. Therefore, all of the general principles set forth in this proposal have been designed to achieve the goals of promoting honesty and fair dealing in the interest of consumers and protecting the public. This is further explained as each individual or group of general principles is discussed below. Consistent with section 401 of the act, section 457(b) of the PPIA, and section 607(c) of the FMIA, the first four proposed general principles primarily address consumer protection from an economic standpoint. These first four principles are consistent with the findings of the focus group studies where a majority of participants maintained that food standards are needed to ensure product quality and uniformity and to protect consumers from economic deception. The first general principle listed under proposed 9 CFR 410.1(a)(1) and 21 CFR 130.5(b)(1) makes it explicit that FSIS' purpose for a food standard is to protect the public and FDA's is to promote honesty and fair dealing in the interest of consumers. Food standards would provide a system by which consumer interests are protected and consumer expectations of a food are met. Historically, food standards have been beneficial because they provide assurance to consumers of product uniformity with respect to certain significant characteristics of standardized foods, resulting in the expectation and belief of consumers that all products bearing a particular name will possess the same essential characteristics, irrespective of where they are purchased, or by whom they are manufactured or distributed. Thus, to ensure that consumers are not misled by the name of the food, to meet consumers' expectations of product characteristics and uniformity, and, in turn, to promote honesty and fair dealing in the interest of consumers and to protect the public, a food standard should, as stated in proposed 9 CFR 410.1(a)(2) and 21 CFR 130.5(b)(2), describe the basic nature of the food. The basic nature of the food is directly related to consumer expectations and beliefs about the food.

Also, to promote honesty and fair dealing in the interest of consumers and to protect the public, proposed 9 CFR 410.1(a)(3) and 21 CFR 130.5(b)(3) would state that the food standard should reflect the essential characteristics of the food. While the basic nature of a food is directly related to consumer expectations and beliefs about the food, the essential characteristics are the attributes of a food that make the food what it is even though they may not be readily apparent to the consumer. The essential characteristics of a food are those that define or distinguish a food or describe the distinctive properties of a food. Further, the essential characteristics of a food may contribute to achieving the basic nature of the food or may reflect relevant consumer expectations of a food product. Foods may be defined or distinguished by their ingredients, compositional characteristics, physical characteristics, levels of certain nutrients, or the manner in which they are produced—all of which are the essential characteristics of a food. For example, the essential characteristics of a hotdog include a certain fat and moisture content, and the use of water or ice to form an emulsion, whereas the basic nature of a hotdog is that it is a comminuted, semisolid sausage prepared from one or more kinds of raw skeletal muscle meat and/or cooked poultry meat. Similarly, the essential characteristics of a particular type of cheese may include the bacterial culture used, the processing method, and the fat and moisture content that contribute to the unique characteristics of that cheese and the basic nature of that cheese is that it is a milk-derived food of a certain form and consistency. Likewise, the essential characteristics of wheat flour

include granulation requirements (the percentage of flour that has to pass through a certain sieve size), its moisture content, and its ash content, whereas the basic nature of wheat flour is that it is a ground product of cleaned wheat grain. Therefore, although the essential characteristics of a food may contribute to achieving the basic nature of that food or may be relevant to meeting certain consumer expectations about the food, they differ from the basic nature of the food in that consumers may not be aware of the essential characteristics that make the food what it is.

Preserving the basic nature and essential characteristics of a food would promote honesty and fair dealing in the interest of consumers and protect the public by ensuring that consumer expectations of the economic and nutritional value of a food are met. Historically, food standards have been adopted to protect consumers of traditional foods from deceptive, inferior quality products of lesser economic value. Current food standards ensure the economic value of a food. For example, the standards of identity for cheeses (part 133) specify milk solids or milkfat content requirements to prevent the substitution of less valuable ingredients for more valuable ingredients.

In addition to ensuring the economic value of a food, FDA food standards, on occasion, also may serve to ensure the nutritional quality of a food by imposing requirements in addition to the labeling requirements in part 101 (21 CFR part 101). For example, the requirements for mandatory addition of vitamin D to evaporated milk and of vitamin A to margarine are specified within the standards of identity for these foods (§§ 131.130 and 166.110, respectively). These nutritional requirements are an integral part of the standards of identity of these two foods and are not regulated under FDA's other nutritional quality provisions, such as its nutrient content claims regulations (part 101). The use of food standards as vehicles to improve the nutritional quality of the food supply has always been based on documented public health need and substantiated with sound science to ensure that, within the context of the total diet, the food is suitable for its intended use with reasonable assurance of effectiveness and safety in achieving the nutritional goals. FDA will continue to apply this standard for any future use of standardized foods or any other food as a vehicle to improve the nutritional quality of the food supply.

Numerous FSIS standards specify the minimum amounts of meat and poultry and maximum amounts of fat or other ingredients a product may contain. These provisions ensure both the economic value and nutritional quality of standard meat and poultry products.

Therefore, proposed 9 CFR 410.1(a)(4) and 21 CFR 130.5(b)(4) state that the food standard should ensure that the food does not appear to be better or of a greater value than it is. Additionally, the food standard may be used as a vehicle to improve the overall nutritional quality of the food supply.

In addition to protecting the consumer, the next three proposed general principles would promote clear and straightforward requirements for food manufacturers. They would also promote, to the extent feasible, flexibility in food technology.

Regulatory requirements written in plain and simple language facilitate the manufacture of foods that comply with the regulations and, thereby, help reduce manufacturers' costs of compliance and government costs of enforcement. Lowered costs of producing foods that meet the standards may potentially benefit consumers in the form of lowered prices of products in the marketplace. Therefore, proposed 9 CFR 410.1(a)(5) and 21 CFR 130.5(b)(5) state that the food standard should contain clear and easily understood requirements to facilitate compliance by food manufacturers.

Establishing regulations that do not stifle innovations in food technology and allow for technological alternatives and advancements in food processing would improve manufacturing efficiency and lessen costs which may be passed on to the consumer. Improved technologies may additionally benefit product quality and diversity. Increased diversity in, and potentially lower costs of, food products in the marketplace that continue to meet consumer expectations would promote honesty and fair dealing in the interest of consumers and protect the public. Therefore, proposed 9 CFR 410.1(a)(6) and 21 CFR 130.5(b)(6) provide that the food standard should permit maximum flexibility in the food technology used to prepare the standardized food, so long as that technology does not alter the basic nature or essential characteristics, or adversely affect the nutritional quality, or safety of the food. In addition, these provisions would state that the food standard should provide for any suitable, alternative manufacturing process that accomplishes the desired effect and should describe ingredients as broadly and generically as feasible.

We are proposing the provision concerning flexibility in food technology to ensure that any requirement of a standard accomplishes its purpose without impeding technological advances that are not in conflict with the intent of the requirement. For example, in FSIS's current regulations, the standard for barbecued meats requires that products such as "beef barbecue" or "barbecued pork" be cooked by the direct action of dry heat (9 CFR 319.80). However, there may be other cooking methods that result in the same product characteristics that the direct action of dry heat achieves, such as infrared heating. During FGDs, consumers expressed the need to revise food standards to reflect current advances in food manufacturing technology, and we believe that this general principle provides an avenue to keep food standards current with technological advances.

In addition to addressing flexibility in food technology, proposed 9 CFR 410.1(a)(6) and 21 CFR 130.5(b)(6) would also state that the food standard should provide for any suitable, alternative manufacturing process that accomplishes the desired effect and should describe ingredients as broadly and generically as possible. Examples of standards that would permit flexibility in manufacturing processes would be those that provided for any suitable procedure for removing glucose from dried eggs, for instantizing flours, or for low-temperature rendering of meat. We proposed that any food standard that includes a specific manufacturing process should allow for alternative procedures. If the manufacturing process specified in a food standard is essential to the character of the food, the food standard should allow for the use of any alternative procedure that yields a product with the same physical, nutritional, and sensory characteristics as the food made according to the traditional procedure specified in existing food standards.

To allow for flexibility in ingredients used to formulate standardized products, the ingredients for frozen raw breaded shrimp, for example, might be described to be "batter and breading ingredients" (§ 161.175) and those in frankfurters, frank, furter, hotdog, weiner, vienna, bologna, garlic bologna, knockwurst, and similar products might be described to be "byproducts and variety meats" (9 CFR 319.180). If it is necessary to specify ingredients, the standard should specify these ingredients by functional use category, e.g., "stabilizers and thickeners" or "texturizers," rather than by listing specific ingredients. Also, where appropriate, in accordance with current

regulations, the specific levels of ingredients that can be used may be modified if they reflect safe and suitable levels or those levels that reflect good manufacturing practices.

The general principles would also promote uniformity between Federal food standards and any international standards for the same food. With the rising trend in globalization and increased accessibility of U.S. goods to other nations' markets, efforts to harmonize U.S. food standards with international food standards will facilitate international trade and foster competition. These efforts may also result in lowered costs and the increased diversity of the food supply, which in turn would benefit consumers. Therefore, we are proposing harmonization of U.S. standards with international food standards to the extent feasible, while preserving the integrity, quality, and economic value that U.S. consumers expect of the food. Proposed 9 CFR 410.1(a)(7) and 21 CFR 130.5(b)(7) state that the food standard should be harmonized with international food standards to the extent feasible. If a food standard presented in a petition is different from the requirements in a Codex standard for the same food, we are proposing that the petition should specify the reasons for these differences. This principle is consistent with FDA's existing regulation, 21 CFR 130.6, which states that food standards adopted by the Codex Alimentarius Commission will be reviewed by FDA, and either will be accepted (with or without change) or will not be accepted. This regulation also states that petitioners who petition FDA for a new or amended food standard based on the relevant Codex food standard shall specify any deviations in the requested standard from those in the Codex standard and the reasons for any such deviations.

The next six proposed general principles promote simplicity, brevity, and consistency in food standards. Providing regulatory requirements that are simply and concisely stated and are consistent among different foods would help improve efficiency and reduce the costs of compliance by industry, as well as reduce enforcement costs by regulatory agencies. Increased industry efficiency may also result in lowered costs of food products. Unnecessary details and requirements in a food standard not only burden enforcement and compliance efforts but also limit manufacturing options and create inefficiencies. Therefore, proposed 9 CFR 410.1(a)(8) and 21 CFR 130.5(b)(8) state that the food standard provisions should be simple, easy to use, and consistent among all food standards. This proposed principle also states that food standards should include only those elements that are necessary to define the basic nature and essential characteristics of a particular food, and that any unnecessary details should be eliminated. As noted in section I.B of this document, the existing FDA food standards vary widely in their content and level of detail. In this principle, we are proposing to make it clear that simplicity in, and consistency among, food standards is essential. This proposed principle makes it clear that any unnecessary details, such as details related to manufacturing processes, ingredients, or variations of different forms of the same food that are not necessary to define the basic nature and essential characteristics of a food, should be eliminated from the standards regulations. For example, in the FSIS food standards, the list of curing ingredients in the corned beef hash standard (9 CFR 319.303(a)(3)) is an unnecessary detail because curing agents permitted in meat products are listed in 9 CFR chapter III, subchapter E or in 21 CFR chapter I, subchapter A or B. Also, in addition to the standard for corned beef hash, the FSIS regulations contain a standard for hash (9 CFR 319.302). It may not be necessary to have separate standards for different forms of hash. An example of unnecessary detail in FDA food standards may be the provision for nutritive carbohydrate sweeteners in the standard for "yogurt" (§ 131.200), "lowfat yogurt" (§ 131.203), and "nonfat yogurt" (§ 131.206), which lists several sweeteners, because nutritive sweeteners have been defined in § 170.3(o)(21) (21 CFR 170.3(o)(21)). This provision could be incorporated by simply using the functional category "nutritive carbohydrate sweeteners" without listing the different sweeteners.

This general principle is consistent with the findings of FGDs where participants expressed the belief that certain characteristics of a food, such as its type and amount of ingredients, are the more important elements of a food standard than certain other characteristics of a food.

Proposed sections 9 CFR 410.1(a)(9) and 21 CFR 130.5(b)(9) state that the food standard should allow for variations in the physical attributes of the food. Also, this proposed principle states that where it is necessary to provide for specific variations in the physical attributes of a food within the food standard, the variations should be consolidated into a single food standard. Thus, this provision would promote simplification of food standards. For example, it is necessary to provide for specific variations of cereal flours (e.g., flour, bromated flour, instantized flour,, and phosphated flour (21 CFR part 137)). According to this proposed principle, the variations for these standards should be consolidated into a single food standard. Similarly, existing provisions in FSIS's food standards for different forms of ham (e.g., chopped, ground, flaked, chipped, and pressed for cured ham products ("ham patties," "chopped ham," "pressed ham," "spiced ham," and similar products (9 CFR 319.105) and "deviled ham" (9 CFR 319.760))) could be simplified or consolidated. In order to promote food standards that are simple and consistent, proposed 9 CFR 410.1(a)(10) and 21 CFR 130.5(b)(10) state that, whenever possible, general requirements that pertain to multiple food standards of a commodity group should be incorporated into general regulatory provisions that address the commodity group. For example, enrichment requirements for cereal flours and related products might be codified in a new subpart A of part 137 entitled "General Provisions." Further, the methods of analysis relevant to different foods within the same commodity group might be codified under the general provisions for that commodity group. Additionally, the curing requirements common to cured beef products could be codified in a new section at the beginning of 9 CFR part 319, subpart D. When provisions are of a general nature and affect more than one commodity group, we would consider codifying these requirements all together in an appropriate CFR section. For example, some fill of container requirements are codified in 21 CFR part 100, subpart F ("Misbranding for Reasons Other Than Labeling") and apply to a wide array of products. Likewise, § 130.10 Requirements for foods named by use of a nutrient content claim and a standardized term permits the modification of a standardized food to achieve a nutrition goal, such as a reduction in fat or calories. Such modified foods may be named by the use of a nutrient content claim, such as "reduced fat" and a standardized term, such as "cheddar cheese" (i.e., reduced fat cheddar cheese). To further promote consistency among food standards, proposed 9 CFR 410.1(a)(11) states that any proposed new or revised food standard should take into account whether there are FSIS labeling regulations or ingredient regulations that are affected by, or that cover, the new or revised food standard. FSIS is

proposing this principle so that any requirements of the standards are consistent with other regulatory requirements. Similarly, proposed § 130.5(b)(11) states that any proposed new or revised FDA food standard should take into account any other relevant regulations. For example, a proposed new or revised food standard should be consistent with common or usual name regulations for related commodities or products. FDA is proposing this general principle to encourage the grouping of similar food products when changes to food standards are addressed, so that there is a consistent approach to establishing, revising, and eliminating food standards in the regulations.

Separately from FSIS, FDA is further proposing within this general principle (§ 130.5(b)(11)) that any specific requirements for foods intended for further manufacturing should be incorporated within the reference food standard rather than being established as a separate food standard. FDA believes that any specific and important requirements for foods that are to be manufactured further could be incorporated within the standard for its particular reference food, and, therefore, existing FDA standards for foods-for-further manufacturing should be considered for elimination and incorporation within the appropriate reference food standard. For example, important elements of the requirements stated in the FDA food standard for cocoa with dioctyl sodium sulfosuccinate for manufacturing (21 CFR 163.117) could be incorporated as a separate paragraph within the standard for its reference food (i.e., cocoa). Similarly, the requirements stated in the FDA food standard, cheddar cheese for manufacturing (§ 133.114), could be incorporated into the food standard for cheddar cheese. This proposed principle also applies to FDA food standards where the differences between a standardized food and the same food-for-further-manufacturing are minimized by processes used to make a finished food from the food-for-further-manufacturing. Because FSIS does not have standards for foods-for-further-manufacturing, there is no parallel provision in FSIS's proposed general principle, 9 CFR 410.1(a)(11). Proposed 9 CFR 410.1(a)(12) and 21 CFR 130.5(b)(12) state that food standards should provide the terms that can be used to name a food and should allow such terms to be used in any order that is not misleading to consumers.

Thus, under this proposed principle, the food standard should provide the terms that can be used to name a food and should provide that such terms can be used in any order that is not misleading, rather than list every possible combination of terms that may be used to name a standardized food (e.g., the nomenclature in the current FDA standard of identity for wheat and soy macaroni product (21 CFR 139.140) and the FSIS standard for braunschweiger and liver sausage or liverwurst (9 CFR 319.182)).

Proposed 9 CFR 410.1(a)(13) and 21 CFR 130.5(b)(13) state that the names of ingredients and functional use categories in a food standard should be consistent with other food standards and relevant regulations and, when appropriate, incorporate current scientific nomenclature. Functional use categories include, but are not limited to, emulsifiers, sweeteners, antioxidants, stabilizers and thickeners, and texturizers. We are proposing these provisions because some discrepancies exist in the designated name of ingredients and the designated name of functional use categories in different food standards written at different times. For example, the standards for artificially sweetened canned fruits in 21 CFR part 145, for frozen concentrate for artificially sweetened lemonade in § 146.121 (21 CFR 146.121), and for artificially sweetened fruit jams, preserves, and jellies in part 150 are not consistent in the designated names of artificial sweeteners permitted. Another example is the use of the terms "thickening ingredient" in the standard for frozen concentrate for artificially sweetened lemonade in § 146.121 and "bulking agents" in the standards for cocoa or sweet and milk chocolates and vegetable fat coatings in 21 CFR part 163. Although these ingredients are designated using different terms, both of them fall into the functional category "stabilizers and thickeners" as described in § 170.3(o)(28). The food ingredients regulations in 21 CFR chapter I, subchapters A and B and in 9 CFR part 424 have specific names for different ingredients and functional use categories, which should be incorporated into the revised food standards.

To ensure that it is as easy as possible to monitor compliance with food standards, FSIS is proposing 9 CFR 410.1(a)(14), which states that the food standard should be based on the finished product. FSIS can most easily assess the compliance with a food standard when it is based on the finished product. For example, FSIS could verify that chicken tetrazzini is comprised of 15 percent chicken by weighing the poultry in the finished product (9 CFR 381.167). Some of the existing FSIS food standards are based on products as they are formulated for processing, such as when the ingredients are assembled for cooking. For example, the standard for meat stews requires that stews such as "beef stew" or "lamb stew" shall contain not less than 25 percent of meat of the species named on the label, computed on the weight of the fresh (that is, uncooked) meat (9 CFR 319.304). Therefore, to assess compliance with the standard, FSIS needs to observe the product's formulation or it needs to review relevant establishment records. In these cases, FSIS has traditionally monitored compliance at the point of formulation, while it is being assembled for cooking. FSIS is considering doing more of its consumer protection monitoring on a finished product basis, which would include in-distribution monitoring for compliance with standards.

FSIS believes that monitoring compliance with standards based on an analysis of the finished product would protect the public because consumers purchase products once they are finished, not at the point of formulation. By enforcing standards for finished products, FSIS could better ensure that products meet consumer expectations. In addition, enforcing standards for finished products would reduce compliance costs for FSIS, because monitoring for compliance when a product is in-distribution requires less staff time and is, therefore, less expensive for FSIS than monitoring compliance at the point of product formulation.

FSIS requests comment on how it should determine the compliance of a food with a standard based on the finished product. FSIS is interested in verification methods that can be used when the product is no longer in the plant. Any such verification methods will have to be able to measure the important characteristics of the finished product.

Although FDA food standards establish certain requirements about the product formulation, such as the ingredients or types of ingredients permitted in the manufacturing of a food, the essential characteristics of the food are based on the finished product, rather than at the point of formulation or at intermediate stages during manufacturing. Therefore, FDA does not believe there is a need for a parallel provision for this principle in the proposed FDA food standards principles.

FSIS is also proposing 9 CFR 410.1(a)(15), which states that the food

standard should identify whether the product is ready-to-eat or not ready-to-eat. FSIS is proposing this principle to ensure that manufacturer, consumer, and agency expectations for the product are the same. The existing FSIS food standards do not specifically require the food conforming to the standard to be ready-to-eat or not ready-to-eat. As part of its consumer focus group research, FSIS is asking whether this information should be required to appear on the label of the standardized food. FSIS believes that whether a product is ready-to-eat or not ready-to-eat is part of the basic nature of the food.

Therefore, this proposed principle would protect the public by ensuring that standardized products meet consumer expectations. Due to the basic nature of standardized foods regulated by FDA, FDA does not believe that there is a need for FDA food standards to address whether the food is ready to eat or not. Therefore, there is no parallel provision for this principle in the proposed FDA food standards principles.

In proposed 9 CFR 410.1(b), FSIS is proposing that a petition to establish a new food standard should include a comprehensive statement that explains how the proposed new standard conforms to the general principles that apply to the new standard. In addition, FSIS is proposing that a petition to revise an existing food standard should include a comprehensive statement that explains how the proposed revision to the existing standard conforms to the general principles that apply to the proposed revision. Also in proposed 9 CFR 410.1(b), FSIS is proposing that a petition to eliminate an existing standard should include a comprehensive statement that explains how the standard proposed to be eliminated does not conform to any one of the first four general principles. Similarly, in proposed § 130.5(c), FDA is proposing that, for petitions to FDA, this comprehensive statement should be provided as part of the "Statement of Grounds" currently required in a FDA citizen petition under 21 CFR 10.30.

The agencies are proposing that any revision to a food standard proposed in a petition to revise an existing food standard must be consistent with all of the general principles that apply to it. Therefore, according to this proposed rule, petitioners could consider proposing limited changes to existing standards. However, we recommend that petitioners consider all of the general principles and suggest appropriate changes to an existing standard that make that entire standard consistent with all of the general principles that apply to that standard.

If a petitioner proposes a revision that is consistent with the general principles that apply to the proposed revision but the revision does not include all of the changes that are needed to modernize the entire standard, the relevant agency will review the entire existing standard in light of all of the general principles to determine whether revisions in addition to those that the petitioner has requested are necessary to modernize the food standard. This process will ensure that there is a complete and thorough review of the food standard to address all relevant issues and incorporate all necessary revisions to the standard at one time, rather than through multiple rulemakings. Although we would not deny a petition solely because it proposed only limited changes to a standard, provided the proposed changes are consistent with the general principles that apply to them, it is likely that we would more quickly publish a proposed and final rule revising the standard, in response to a petition, if a petitioner has considered an entire existing standard in light of all the applicable general principles.

Finally, under proposed 9 CFR 410.1(c) and 21 CFR 130.5(d), we are proposing that petitions seeking to establish or revise a food standard that is not consistent with the applicable general principles will be denied. In addition, we are proposing that petitions seeking to eliminate a food standard that do not demonstrate that the food standard is inconsistent with any one of the first four general principles will be denied. The petitioner would be notified of the reason for the denial.

We would encourage organizations or individuals submitting petitions to establish, revise, or eliminate a food standard, under these proposed regulations, to confer with different interest groups (consumers, industry, the academic community, professional organizations, and others) in formulating them. We would recommend that petitioners seek out and document the support of consumers and industry for any recommended changes to the standards regulations to encourage communication with interested groups and to ensure broad support for any proposed standards. Petitioners could document consumer and industry support by including the written concurrence of representatives of various consumer and industry groups in the petitions submitted. Additionally, petitioners could include a statement of any meetings and discussions that have been held with interest groups. Appropriate weight would be given to petitions that reflect a consensus of different interest groups.

However, under the present regulations, documentation of the support of interest groups would not be an acceptable substitute for the information or data that is needed to substantiate statements and claims made in the petition. Thus, petitions that make claims about consumer expectations or beliefs for the purposes of defining the basic nature and essential characteristics of a food should also provide information or data that substantiate those claims. Marketing data, food formulary compilations, studies of restaurant menus, and consumer survey and focus group research data are potentially acceptable data sources to substantiate statements and claims made in the petition.

Finally, this proposed rule is not intended to and, when finalized, will not by itself change the existing food standards nor result in the complete modernization of all of the food standards; rather, it will address the submission of petitions to establish, revise, or eliminate individual food standards and the evaluation of such petitions by us. The proposed general principles are the agencies' first step in instituting a process to modernize their food standards. In the long term, the agencies expect that all food standards, including those for which the agencies receive no petitions to revise or eliminate, will be modernized or eliminated. However, as noted in section I.E of this document (see the third option that the Work Group considered), limited resources and competing priorities make it unlikely that the agencies could complete a comprehensive review of all food standards on their own initiative in a timely manner. A more efficient means of modernizing a food standard or a category of food standards is through petitions that demonstrate that a food standard(s) has been reviewed for consistency with the proposed principles. Thus, in the event we do not receive a petition requesting that we establish, revise, or eliminate a particular standard, we may, when appropriate, propose to establish, revise, or remove a standard on our own initiative. We will follow the proposed general principles as we review existing standards to determine whether a standard should be established, removed, or revised to ensure that all standards are consistent with the relevant statutes and the general principles.

The agencies welcome petitions to consolidate variations in the physical attributes in standardized foods within a single food standard. We also welcome petitions to incorporate general requirements that pertain to multiple food standards of a commodity group into general regulatory provisions that address the commodity group (see proposed general principles 9 CFR 410.1 (a)(9) and (10) and 21 CFR 130.5(b)(9) and (10)). However, the agencies recognize that developing these types of petitions may require more time than developing petitions that pertain to a single food standard. We request comment on the best way to efficiently and effectively make standards consistent with these two general principles. In particular, we are interested in recommendations concerning the role we should take and the role the public should take in revising the standards to make them consistent with these two general principles.

FSIS intends to eliminate all informal or "policy" standards in the Policy Book, which address the meat and poultry content of certain products or define methods of processing, for which it does not receive a petition requesting that it adopt the entry as a regulation. FSIS intends to follow this course of action because few of the standards in the Policy Book are consistent with the proposed general principles.

III. FSIS and FDA Requests for Information

After their submission of comments, a number of commenters on the FSIS and the FDA ANPRMs have informally indicated that they would like another opportunity to provide comments to us. This proposal provides that opportunity.

We request comments both on the general principles and on how to best implement them. In particular, we request comments on the usefulness of the general principles for evaluating petitions for new food standards and for revising or eliminating existing food standards. We are also seeking comments on how to enhance the usefulness of the principles as a guide to external groups or individuals in evaluating and preparing petitions to establish, revise, or eliminate food standards.

IV. Executive Order 12866: Cost Benefit Analysis

We have examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or more, adversely affecting in a material way a sector of the economy, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. We have determined that this proposed rule is a significant regulatory action as defined by Executive Order 12866 because it raises novel legal or policy issues. The Unfunded Mandates Reform Act of 1995 (Public Law 104–4), requires cost-benefit and other analyses for significant regulatory actions. Section 1532(a) of the Unfunded Mandates Reform Act of 1995 defines a significant rule as "any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 (adjusted annually for inflation) in any 1 year * * *" We have determined that this rule is not a significant rule under the Unfunded Mandates Reform Act.

A. Need for the Rule

Under some conditions, standards of identity may be economically desirable because they reduce product search costs for consumers. Standards can reduce search costs by requiring products that bear certain standardized names to have the set of characteristics that most consumers expect products bearing that name to have. In this document, we call this set of characteristics the "basic nature" of a food. Standards are most effective at reducing search costs when most consumers' beliefs about the basic nature of a food are similar, and less effective when many consumers have different beliefs about the basic nature of a food.

However, as currently written, some standards may contain requirements that do not contribute to this useful economic function because they do not correspond to most consumers' beliefs or expectations about the basic nature of those foods. Such standards may increase, rather than decrease, overall search costs because they may cause consumers to impute differences to products that do not actually exist. Increasing search costs reduces product variety and inhibits the introduction of new products because, if search costs increase, then some consumers may be more willing to settle for familiar products rather than spending additional time comparing products and examining ingredient statements to find a product they prefer. Many new products are developed specifically to enhance the healthfulness of traditional products. Therefore, increasing search costs and inhibiting the introduction of new products may also generate health costs for consumers because, if search costs increase, then some consumers may be more willing to settle for familiar products rather than spending additional time comparing products and examining ingredient statements to find similar but healthier products. In addition, standards that contain unnecessary elements or that fail to provide flexibility in terms of allowable food technology, may generate unnecessary production costs, and impede technological innovation in the food industry. Such standards may also serve as effective barriers to competition, thereby raising product prices and transferring resources from consumers to producers. Finally, some standards may be inconsistent with international standards, which may impede international trade. Impeding international trade may also restrict competition and lead to higher product prices.

The benefits of appropriate standards and the costs of inappropriate standards suggest that we need to develop: (1) A list of principles that will govern our assessment of the standards; and (2) a system to facilitate the timely revision, implementation, and elimination of standards regulations, as appropriate.

B. Regulatory Options

We considered the following regulatory options:

1. Take no action;
2. Take the proposed action;
3. Eliminate all food standards;
4. Establish principles for assessing standards (only); and
5. Establish principles for assessing standards, but allow external parties to administer those principles.

1. Option One: Take No Action

By convention, we treat the option of taking no new regulatory action as the base line for determining the costs and benefits of the other options. Therefore, we associate neither costs nor benefits with this option. The consequences of taking no action are reflected in the costs and benefits of the other options.

2. Option Two: Take the Proposed Action

The proposed action has two primary components: (1) The establishment of a set of principles that we will use when assessing food standards, and (2) a statement of the system by which we intend to revise, eliminate, or establish standards in response to petitions submitted by external parties or on our own initiative.

a. *Benefits.* One benefit of establishing a set of principles for assessing food standards is that it simplifies our assessment of standards. First, it eliminates the need for us to develop and explain the basis for accepting or rejecting proposed changes to standards in a piecemeal fashion. Establishing principles ensures that we use a consistent and systematic approach when assessing standards.

A second benefit is that the principles apprise external parties of the framework we intend to use when assessing standards, thereby reducing the costs for external parties to petition us to change standards. In the absence of principles, external parties would need to spend time reviewing past rulemakings to piece together the factors we consider relevant in assessing standards. Also, in the absence of established principles, external parties may expend resources developing petitions that we would be unable to accept, and we would expend resources evaluating such petitions. If the principles allow external parties to present more acceptable petitions, then we will be able to act on the petitions more quickly and make necessary changes to the standards regulations more quickly. This means that benefits for consumers and industry will take place more quickly than would otherwise have been the case. A third benefit is that establishing the set of principles specified in this proposed rule ensures that we assess standards with respect to their ability to reduce consumers' search costs, while also reducing the likelihood that standards will impose unnecessary costs, or reduce competition and thereby increase prices.

The proposed rule would establish a system by which we intend to revise, eliminate, or establish standards in response to petitions submitted by external parties or on our own initiative and would generate benefits by encouraging external parties to submit such petitions. External parties may already submit such petitions, and we already consider them. However, by stating that such petitions will henceforth be the primary means for initiating changes to the standards' regulations, we are making it clear to interested parties that they should submit petitions if they desire changes in the standards, rather than wait for us to act on our own initiative. The total social costs of revising, eliminating, or establishing standards are probably lower if external parties participate in the process than if they do not because external parties are often in the best position to identify problem areas. Such a system also transfers some of the costs that we currently bear in assessing standards to private individuals and groups, thereby allowing us to reallocate our resources to issues that may have greater public health significance, while still allowing us to address standards reform in a timely fashion. However, this public health benefit is probably small because we have been unable to devote significant resources to standards reform to date. We do not know the net effect of this transfer on social costs because private expenditures on standards also displace activity associated with social benefits. We have insufficient information to quantify these benefits. However, we will also conduct cost-benefit, regulatory flexibility, and other relevant analyses for all proposed and final regulations changing the standards regulations.

b. *Costs.* One of the potential costs of establishing the proposed principles results from the possibility that we might finalize a set of principles that do not maximize the net social benefits from standards regulations. This could generate costs because we will be assessing the standards with respect to those principles. If the principles in the final rule do not maximize net social benefits within the statutory framework of food standards, then we might deny some changes to the standards that would have net social benefits, or might accept some changes that would have net social costs. However, we believe that this potential cost is small because we believe the principles as stated maximize net social benefits, and because we can revise the principles in response to comments or in subsequent rulemakings, if necessary.

A second potential cost of establishing the proposed principles results from the inherent limitations of the approach to standards that we have adopted in the proposed principles. Under the proposed principles, a standard must reflect the basic nature of a food and its essential characteristics.

Standards may accommodate certain variations of a food, provided those variations preserve the basic nature of the food and its essential characteristics. For example, shredded, grated, or diced forms of cheese would be permitted because they do not alter the basic nature of the food. However, this restriction may also generate certain costs. For example, if we did not require that standards preserve the basic nature of the food and its essential characteristics, the information the standards provide for consumers might be reduced. Without such restrictions, a particular standard might be able to cover more diverse compositions of a particular food under a single name and thus address a greater variety of consumer health and dietary needs and preferences. Under this alternate approach, a "cheese" could be made with non-milk ingredients to be free of lactose or milk protein, and "bread" could be made using soy flour to improve the protein composition of the food. Under the proposed principles, such variations of these foods would not be permitted because they do not preserve the basic nature of these foods consistent with consumer expectations and beliefs. Such foods, however, can be marketed using nonstandardized names (although we recognize that, in some cases, having to market under a nonstandardized name may be costly and, therefore, may create a disincentive to create such foods). To the extent the proposed general principles lead to an increase in the number of foods covered by standards, the costs described here and other costs associated with standards will increase.

Another potential cost of establishing a system to revise, eliminate, or establish standards in response to petitions submitted by external parties is that the goals and interests of such parties may differ from our goals. For example, external parties that work for for-profit entities will presumably submit petitions only if they believe that the changes requested in their petitions will increase their profits by more than the cost of preparing the petitions. Such parties might request changes that raise profits in a manner consistent with the proposed principles, such as by eliminating unnecessary or inappropriate requirements, or in a manner that is inconsistent with the proposed principles, such as by restricting competition or preventing the introduction of new products or technology. Similarly, external nonprofit (or not-for-profit) groups also may have incentives, such as increasing their political visibility or funding, that cause their goals to diverge from our goals. In both cases, we think this cost will probably be small for three reasons. First, we will be able to identify inappropriate recommendations during

the petition review process because they will be inconsistent with the proposed principles. Second, we do not intend to accept statements about consumer beliefs or expectations for the purposes of defining the basic nature of a food without data or evidence supporting such statements. Third, we will publish proposed rules for any prospective changes to the standards regulations. Other interested parties will be able to comment on those changes and help us identify any inappropriate recommendations that we may have overlooked during our initial review of the petition.

Another potential cost of establishing a system that relies primarily on petitions submitted by external parties is that some standards that ought to be revised, eliminated, or established may be difficult for interested external parties to identify as such. This is most likely to be a problem for standards that contain requirements that do not reflect what most consumers believe is the basic nature of those foods, but that also do not generate significant costs for industry. Such standards may increase consumer search costs, inhibit the introduction of new products, and indirectly adversely affect consumer health. However, the typical consumer may have insufficient knowledge of the existing standard or the effects of that standard and thus not know to submit a petition requesting changes to the standard. A similar situation exists with products that do not currently have a standard, but for which a standard would generate potential benefits for consumers. Again, the typical consumer may have insufficient information or resources to submit a petition that establishes the case for such a standard. We expect these costs to be small for the following two reasons: (1) Consumer groups may have sufficient resources and interest to investigate and submit petitions that include information on consumer expectations and beliefs in cases in which individual consumers would not, and (2) although we envision that petitions will be the driving force behind most changes in the standards regulations, we may, in some cases, continue to propose changes to the standards regulations on our own initiative. Finally, involving external parties in the standards review process would generate social costs if: (1) Those parties would not have prepared petitions in the absence of the proposed action, (2) we would have assessed the need for those changes on our own initiative in the absence of the proposed action, and (3) the costs of the external parties are above and beyond the costs we would have faced. Under these conditions, this rule would cause additional social resources to be expended on making changes to the standards regulations. These costs are probably small because we have no information suggesting that external parties' costs of submitting petitions is significantly different from our costs of investigating the need for comparable changes in the regulations.

Based on the preceding discussion of why we expect the social costs associated with this rule to be small and the benefits to be relatively substantial, we believe that the benefits of establishing the proposed principles outweigh the costs.

c. *Description of the affected industry.* FSIS regulations contain approximately 80 standards for meat and poultry products. Most of these standards are for heat-treated products; however, some are for raw products (such as ground beef, hamburger, and cuts of raw poultry). Therefore, all processing plants may produce at least one type of standardized product. According to the 1999 Report of the Secretary of Agriculture to the U.S. Congress, there are 1,067 meat processing plants, 168 poultry processing plants, and 3,130 meat and poultry processing plants (4,347 total processing plants). Most standards are for heat-treated products. Based on the 1997 Census of Manufacturers information, there are 1,630 establishments producing ready-to-eat and partially heat-treated meat and poultry products; FSIS used this estimate in the proposed rule entitled "Production of Processed Meat and Poultry Products" (66 FR 12611). These plants would produce heat-treated, standardized meat and poultry products.

FDA regulations contain over 280 food standards covering a variety of different foods. Determining the exact number of affected firms would be time consuming and would not be justified by the significance of that information for this analysis. A significant proportion of the 26,361 establishments identified under the North American Industry Classification System (NAICS) classification "food manufacturing" in the 1997 Economic Census probably produce at least some products that are governed by FDA food standards.

3. Option Three: Eliminate All Food Standards

Another option would be to eliminate or significantly reduce the number of food standards. The benefit of eliminating all food standards is that it would also eliminate all of the social costs potentially generated by those standards. One such cost is our expenditures, and the expenditures of external parties, that are currently devoted to analyzing, developing, promulgating, modifying, and enforcing standards. Other social costs that would be eliminated include compliance costs, indirect inhibition of new technologies, and limitations on competition. Finally, this option would eliminate the ability of standards to perpetuate consumer beliefs or expectations that may lead some consumers to make product choices that are less healthful than they might otherwise make (a potential effect that is significantly reduced by nutrient content claim regulations).

The cost of eliminating all standards is that many consumers would face increased search costs because they would lose the assurances provided by standards that standardized products exhibit the basic nature that those consumers expect those products to have. Although we could continue to pursue the objective of maintaining the accuracy of the information conveyed by product names through regulations against adulteration and misbranding, enforcing those regulations would require more agency resources, and would generally be a less effective method of pursuing that objective. Another cost of eliminating Federal standards is that the Federal Government would no longer have a reference point for negotiating international food standards for the purpose of facilitating international trade with countries and organizations of countries that maintain such standards.

We have insufficient information to quantify the costs and benefits of this option or to compare them to those of the proposed option. However, the benefits of this option would be quite similar to those of the proposed option because the proposed principles will eliminate or significantly reduce the social costs associated with standards regulation. However, as explained previously, the expenditure, social, search, and loss of reference point costs of this option would probably be greater than the same costs of the proposed option. Therefore, this option would probably lead to lower net benefits than the proposed option.

4. Option Four: Establish Principles for Assessing Standards (Only)

We could also establish the proposed principles for assessing standards but rely solely on our own resources to develop proposals for changing the standards regulations. The costs and benefits of this option would be generated solely by the establishment of

the proposed principles, and would correspond in type to the costs and benefits we discussed for Option Two. However, we believe this option would have lower net benefits than Option Two because it would result in fewer petitions to establish, revise, or eliminate food standards. If we do not specify that we are relying on petitions to initiate changes to food standards regulations, some external parties may wait for us to act on our own initiative. Acting on our own initiative would eliminate the benefit of transferring cost to external parties because we would have to allocate our limited resources toward revising, eliminating, and establishing new standards without the aid of information from petitions.

5. Option Five: Establish Principles for Assessing Standards, but Allow External Parties to Administer Those Principles

A final option would be for us to allow external parties to revise, eliminate, and establish food standards using the proposed principles. The benefits and costs of the first component of this option, establishing the proposed principles, would be essentially the same as the corresponding benefits and costs discussed under Option Two.

The benefit of the second component of this option, allowing external parties to administer mandatory standards, is that it would allow us to reallocate resources to areas that may have greater public health significance than standards. This reallocation, and its potential public health consequences, would be greater than that discussed under Option Two because under this option we would not devote resources to reviewing petitions, writing proposed rules, reviewing public comments, writing final rules, or enforcing final rules.

One of the primary costs of allowing external parties to administer standards is that their objectives may diverge from ours. This cost would be greater than the similar cost discussed under Option Two because under Option Five we would transfer additional responsibilities to external parties. For example, although the proposed principles provide general directions for decisionmaking, they do not set forth in detail all potentially relevant considerations that might need to be dealt with. Although we could produce additional and more detailed principles, we would probably not be able to provide principles that are sufficiently detailed to cover all potentially relevant considerations and situations. Among the issues on which we might need to provide additional information to external parties would be the following: (1) Evaluating data on consumer perceptions and beliefs, or on scientific or technical issues, (2) soliciting and analyzing comments from consumers and other interested parties, (3) adjudicating conflicts between interest groups, (4) analyzing the costs and benefits of proposed changes, (5) addressing the impact of changes on small entities, and (6) assessing the impact of changes on international trade. Providing this type of additional and more detailed information would also generate costs, which would reduce the benefits of this option. In addition, if we administer the standards, then there may be situations in which it would be apparent to us that we need to revise the principles. External parties may not have a sufficient appreciation of the overall objectives of standards to recognize such situations.

It should also be noted that this option is not legally feasible at this time: legislative action would be needed to amend the act, FMIA, and PPIA in order for external parties to develop standards having the force of law. Without such changes, standards established by external parties would be voluntary.

Allowing external parties to administer voluntary standards could lead to benefits similar to those of allowing them to administer mandatory standards if the voluntary standards were combined with a voluntary labeling system under which firms that produce products meeting the voluntary standard could communicate that fact to consumers. Setting aside the issue of the benefits of the proposed principles, which we have already discussed, the benefit of establishing a system in which external parties would administer voluntary standards is that such a system would essentially eliminate compliance costs for industry because firms would not participate in the voluntary system unless doing so generated net profits. Although a system in which external parties would administer voluntary standards would ensure that any activity that firms take to comply with such standards would not generate net social costs (assuming no market failures), it would not eliminate the private costs associated with that activity. In addition, voluntary standards might eliminate some of the potential social costs of mandatory standards in that they would accommodate at least some degree of consumer variability by allowing standards to be used by those consumers who share the same beliefs about the basic nature of the relevant products as expressed in the standards, and ignored by those who do not.

The social cost generated by establishing a system by which external parties would administer voluntary standards would be the loss of some of the benefits currently generated by mandatory standards. The benefits of voluntary standards are likely to be lower than the benefits of mandatory standards for the following four reasons: (1) Consumers who find the voluntary standards useful would need to spend at least some time distinguishing standardized products from nonstandardized products, so any reduction in search costs from voluntary standards would be less than that generated by mandatory standards; (2) external groups would probably not be able to enforce voluntary standards to the same degree that we can enforce mandatory standards, so standardized designations may become unreliable; (3) voluntary standards would not provide a useful reference point for negotiating international food standards for the purposes of facilitating international trade with countries and organizations of countries that maintain such standards; and (4) in order for consumers to know whether the information conveyed via voluntary standards is valuable for them, they would need to develop some understanding of the standards. The costs associated with this activity might be quite high for some consumers.

We do not have sufficient information to quantify the costs and benefits of this option or to compare them to those of the proposed option. However, based on the preceding discussion, this option is unlikely to lead to higher net benefits than the proposed option.

6. Summary

For the reasons discussed previously, we believe that taking the proposed action will generate net social benefits, and also that the social costs of taking the proposed action are likely to be small. We found that most of the other options were likely to have lower net benefits because they had lower benefits, higher costs, or both.

V. Regulatory Flexibility Analysis

We have examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires us to analyze regulatory options that would lessen the economic effect of the rule on small entities. We have made an initial determination that this proposed rule will not have a significant impact on a substantial number of small entities.

Under the proposed rule, small entities would only incur direct compliance costs when they decide to voluntarily submit a petition using the general principles. These entities would only submit a petition when it is clear that the benefits generated from submitting the petition outweigh the costs of developing and submitting one. However, this proposed rule could generate costs other than direct compliance costs to the extent that it encouraged external parties to submit petitions, and thereby increased the number of proposed changes to standards that small entities may wish to analyze.

Although this decision would also be voluntary, the competitive position of small entities could be impaired if they did not undertake this activity and other external parties attempted to use standards reform to gain a competitive advantage. However, this impact would probably be minimal because: (1) It would be difficult or impossible for external parties to misuse standards reform because requested changes would need to conform to the principles set forth in this proposed rule, (2) we intend to consider evidence of consensus within affected industries, including small businesses when making our decisions in regard to requested changes, (3) we do not intend to accept statements about consumer beliefs or expectations about the basic nature of a food without data or evidence supporting such statements, and (4) we intend to analyze the impacts on small entities of any proposed changes to the standards regulations.

With respect to the number of affected firms that are small entities, the 1999 Report of the Secretary of Agriculture to the U.S. Congress identifies 1,067 meat processing plants, 168 poultry processing plants, and 3,130 meat and poultry processing plants (4,347 total). The majority of these establishments would qualify as small businesses under the Small Business Administration definition of a small business. All of these plants may produce at least one type of standardized product because there are both raw and heattreated standardized products. However, most of the standards are for heattreated products. FSIS estimates that there are approximately 1,485 small establishments producing ready-to-eat or heat-treated products, and many of these products are standardized products. This number is based on data from the 1997 Census of Manufacturers. FSIS used this data to estimate the number of small businesses that would be affected by the proposed rule on performance standards for the production of processed meat and poultry products, published in the **Federal Register** of February 27, 2001 (66 FR 12590). In addition, there are approximately 26,361 establishments identified in the 1997 Economic Census as belonging to the NAICS classification "food manufacturing." All of these establishments may produce at least some products that are governed by FDA food standards. The vast majority of these establishments would qualify as small businesses under the Small Business Administration definition of a small business.

VI. Executive Order 12988: Civil Justice Reform

FSIS: This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. States and local jurisdictions are pre-empted by the FMIA and the PPIA from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA or the PPIA. However, States and local jurisdictions may exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States.

The proposed rule is not intended to have retroactive effect. If this proposed rule is adopted, administrative proceedings will not be required before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted before there is any judicial challenge of the application of the proposed rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA and PPIA. 65

VII. Executive Order 13132: Federalism

FSIS: Executive Order 13132, "Federalism," requires that agencies assess the federalism implications of their policy statements and actions, i.e., the effects of those statements and actions on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The FMIA and the PPIA pre-empt State and local laws in regard to the manufacture and distribution of meat and poultry products in interstate or foreign commerce. Therefore, FSIS policy statements and actions affect federalism within the context of these statutory pre-emptions.

States and local jurisdictions are pre-empted by the FMIA and PPIA from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA and the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are within their jurisdiction and outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA and PPIA, or, in the case of imported articles, that are not at such an establishment, after their entry into the United States.

However, under section 301 of the FMIA and section 5 of the PPIA, a State may administer a State meat and poultry inspection program provided that it has developed and is effectively enforcing State meat and poultry inspection requirements at least equal to those imposed under titles I and IV of the FMIA and sections 1 to 4, 6 to 10, and 12 to 22 of the PPIA. These titles contemplate continuous ongoing programs. When a State can no longer effectively enforce meat and poultry inspection requirements at least equal to Federal requirements, it must be "designated" by the Secretary of Agriculture and all plants within that State must operate under Federal inspection. When FSIS revises its meat and poultry inspection requirements, States that administer their own inspection programs may be affected, since they must continue to enforce requirements at least equal to those of FSIS. To minimize any additional costs States must incur to modify their inspection programs, FSIS grants the States significant flexibility under the 'equal to' provisions of the FMIA and PPIA. Further, States are eligible to receive up to 50 percent Federal matching funds to cover the costs of their inspection program.

FDA: FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has concluded that this proposed rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required. FDA is interested in comments from elected State and local government officials and others on: (1) The need for the proposed guiding

principles rule to modernize food standards; (2) the proposed guiding principles' provisions; and (3) any other issues raised by this proposed rule that possibly affect State laws and authorities.

VIII. Environmental Impact

FSIS: FSIS has been granted a categorical exclusion from the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) requirements by USDA regulations (7 CFR 1b. 4) unless the Administrator of FSIS determines that such an action may have a significant environmental effect. FSIS has determined that this rule would not have a significant environmental effect.

FDA: FDA has determined under 21 CFR 25.30(h) that its part of 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.

IX. Paperwork Reduction Act of 1995

FSIS:

Title: General Principles and Food Standards Modernization.

Type of Collection: New.

Abstract: FSIS is proposing to establish a set of general principles for food standards. The proposed general principles will specify the criteria that the agencies will use in considering whether a petition to establish, revise, or eliminate a food standard will be the basis for a proposed rule. Under this rule, petitions to establish, revise, or eliminate a standard should include a comprehensive statement that explains how the proposed new or revised standard conforms to the general principles or how the standard proposed to be eliminated does not conform to the general principles.

Estimate of burden: FSIS estimates that developing a petition to establish, revise, or eliminate a food standard that conforms to the general principles and developing the comprehensive statement that explains how the new or revised standard conforms to the general principles or how the standard proposed to be eliminated does not conform to the general principles will take an average of 40 hours.

Respondents: Manufacturers of meat and poultry products, trade organizations, consumer organizations, or unaffiliated individuals.

Estimated number of respondents: 6.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 240 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 112 Annex, 300 12th St. SW., Washington, DC 20250. Comments are invited on: (1) 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) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to John O'Connell, see address above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253. Comments are requested by July 19, 2005. To be most effective, comments should be sent to the Office of Management and Budget (OMB) within 30 days of the publication date.

FSIS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

FDA:

This proposed rule contains information provisions that are subject to review by OMB under the Paperwork Reduction act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on the following topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Food Standards; General Principles and Food Standards Modernization

Description: This proposed rule would amend 21 CFR 130.5 to establish a list of 13 general principles that we would use when establishing, revising, or eliminating standards of identity. We wish to establish these principles to ensure that we apply consistent criteria when evaluating petitions relating to standards and to communicate these criteria to potential petitioners. Under this proposed rule, parties who petition us to establish a new standard or to revise an existing standard would need to provide a comprehensive statement explaining how the requested new standard or the requested revision is consistent with each of the relevant general principles, while parties who petition us to eliminate a standard would need to provide a comprehensive statement explaining how the standard to be eliminated is inconsistent with any one of the first four principles. In addition, we encourage but do not require parties who petition us to revise a standard in any way to analyze the entire existing standard with respect to all of the general principles and to petition us to make all of the revisions that such an analysis might suggest.

Description of Respondents: Individual businesses and industry trade groups will probably generate most of the petitions. In addition, consumer advocacy groups might submit petitions, and we might also receive petitions from private individuals.

Burden:

Hour Burden Estimate

In table 1 of this document, we present an estimate of the total annual hourly burden for the proposed information collection requirements for petitions that seek to establish new standards or revise existing standards. The time and cost will vary considerably depending on the nature of the suggested changes in food standards, the nature and complexity of the standards involved, and the existing information that can be brought to bear on the relevant issues. The burden hours in table 1 of this document include only that portion of the compliance burden that goes beyond the burden associated with the general requirements that apply to all citizen

petitions under 21 CFR 10.30, because only that portion represents a new information collection. The burden would be lower for petitions that seek to eliminate existing standards. However, the comments that we received on the ANPRM suggest that most petitions would involve revising existing standards or creating new standards. Therefore, we have based our burden estimates on those types of petitions. We received 10 petitions from 2000 through 2004, or approximately three petitions per year. The proposed rule might either increase or decrease the number of petitions. However, we do not have sufficient information to estimate a change in the expected number of petitions. Therefore, we assume that we will continue to receive three petitions per year. In addition, we assume that each respondent will probably only submit one petition per year. Therefore, we estimate three respondents per year with an annual frequency of one response per year.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
130.5(b)	3	1	3	136	408

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In table 2 of this document, we list the various information collection activities and burden hours that we used to estimate the total hours per response that we present in table 1 of this document. In some cases, we present our burden estimate in terms of a range and average. The range reflects the fact that large firms probably do much of the required activity as a normal part of product development. These firms would simply need to compile existing information for the comprehensive statement that shows consistency with the relevant general principles. However, smaller firms, industry and consumer groups, and private individuals may not otherwise undertake the activity required for the comprehensive statement. Therefore, the burden for these entities could be significantly higher. We expect large firms will probably submit most petitions. Therefore, we have assumed average burdens near the low end of the estimated ranges. We estimate that the total annual hourly burden associated with this information collection would be 264 to 1,512 hours. Within this range, we estimate that the average total annual hourly burden would be 408 hours.

TABLE 2.—AVERAGE HOURLY BURDEN OF INFORMATION COLLECTION ACTIVITIES PER PETITION

Information Collection Activity	Average Hours
(1) Legal, technical, and scientific interpretation of new information collection requirements (all principles): 8 hours.	8
(2) Social scientific analysis of consumer surveys, focus groups, or market data, or scientific and technical analysis of restaurant menus or food formulary compilations to demonstrate or infer consumer expectations and beliefs relating to product identity, the relationship of observable and non-observable product attributes to product identity, the relationship of product uniformity to product identity, the significance of the order of terms in the name of the food (if the new or revised standard involves a newly standardized product name containing more than one term), and consumer valuation of observable and non-observable product attributes and product uniformity (Principles 1 to 4, 6, 7, and 12): 8 to 320 hours, average 40 hours.	40
(3) Plain English editorial review to produce language that is clear, easily understood, simple, and easy to use (Principles 5 and 8): 4 hours.	4
(4) Technical and scientific evaluation of whether the new or revised standard permits the maximum level of flexibility in terms of food technology subject to considerations of consumer expectations, nutritional quality, and safety, including an analysis of other suitable alternative manufacturing processes. We estimate the cost of generating or compiling of some of the necessary information on consumer expectations under another activity. The new elements for this activity include the safety and nutritional quality review and the investigation of the impact of flexibility in terms of food technology on product attributes that are related to consumer expectations. Burden: 16 to 120 hours, average 32 hours.	32
(5) Legal and scientific analysis of whether petitioners have described any ingredients featuring in the new standard or revised standard as broadly and generically as possible (Principle 6): 8 hours.	8
(6) Legal, scientific, and technical analysis of relevant Codex standards and preparation of a rationale for any differences between Codex standards and the new or revised standards (Principle 7). In general, the rationale for any differences will probably involve referencing consumer expectations and beliefs. We estimate the burden of compiling or generating that information under Activity 2. Burden: 8 hours.	8
(7) Legal, scientific, and technical review of other food standards to establish that the new or revised standard is consistent with existing FDA food standards (Principles 8 and 11): 8 hours.	8
(8) Legal, scientific, and technical analysis of ingredient technology, manufacturing processes, and food composition to eliminate unnecessary details (Principle 8): 8 hours.	8

TABLE 2.—AVERAGE HOURLY BURDEN OF INFORMATION COLLECTION ACTIVITIES PER PETITION—Continued

Information Collection Activity	Average Hours
(9) Scientific and technical review to demonstrate that the new or revised standard allows for variation in the physical attributes of the food (Principle 9): 8 hours.	8
(10) Legal and scientific review of existing labeling and ingredient regulations to establish that the new or revised standard is consistent with those regulations (Principle 11): 8 hours.	8
(11) Scientific review of existing food standards and current scientific nomenclature reference works to establish if the names of ingredients and functional use categories in new and revised standards are consistent with those used in other food standards and with current scientific nomenclature (Principle 13). Petitioners could review of ingredient names and functional use categories in other food standards as part of the general review of those standards under Activity 8. However, the review of nomenclature reference works would be an additional activity. Burden: 4 hours	4
Total Time Burden	136

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to fax comments regarding information collection by June 20, 2005 to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer, FDA, Fax 202–395–6974.

X. Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this proposed rule, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/2005_Proposed_Rules_Index/index.asp.*

The Regulations.gov Web site is the central online rulemaking portal of the U.S. Government. It is being offered as a public service to increase participation in the Federal Government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or department or agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at *http://www.regulations.gov/.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

XI. Comments

FSIS: See information under **DATES**, and **ADDRESSES**, and section X of this document.

FDA: Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

XII. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. CFSAN/FSIS, Memo on standards focus groups, May 30, 2001.

2. Cates, S.C., Consumer Attitudes Toward Potential Changes in Food Standards of Identity, volume 1: Final Report to the FDA, September 2000.

List of Subjects

9 CFR Part 410

Food grades and standards, Food labeling, Frozen foods, Meat inspection, Oils and fats, Poultry and poultry products.

21 CFR Part 130

Food additives, Food grades and standards.

DEPARTMENT OF AGRICULTURE
Food Safety and Inspection Service
9 CFR Chapter III
Authority and Issuance

■ For the reasons discussed in the preamble, FSIS is proposing to amend chapter III of title 9 of the Code of Federal Regulations by adding new part 410 to subchapter E to read as follows:

PART 410—PRODUCT COMPOSITION

Authority: 21 U.S.C. 601–695; 21 U.S.C 451–472; 7 CFR 2.18, 2.53; 7 U.S.C. 2219(a).

§ 410.1 Procedure for establishing, revising, or eliminating a food standard.

(a) A food standard proposed in a petition to establish a new food standard in part 319 or part 381, subpart P, of this chapter must be consistent with all of the following general principles that apply to the new standard. Any revision to a food standard proposed in a petition to revise an existing food standard in part 319 or part 381, subpart P, of this chapter must be consistent with all of the following general principles that apply to the proposed revision to the existing

standard. The agency will consider a petition that proposes eliminating a food standard if it is demonstrated that the current food standard is not consistent with any one of the general principles in paragraphs (a)(1) through (a)(4) of this section.

(1) The food standard should protect the public.

(2) The food standard should describe the basic nature of the food to ensure that consumers are not misled by the name of the food and to meet consumers' expectations of product characteristics and uniformity.

(3) The food standard should reflect the essential characteristics of the food. The essential characteristics of a food are those that define or distinguish a food or describe the distinctive properties of a food. The essential characteristics of a food may contribute to achieving the food's basic nature or may reflect relevant consumer expectations of a food product. For example, foods may be defined or distinguished by their ingredients, compositional characteristics, physical characteristics, nutrient levels, or the manner in which they are produced.

(4) The food standard should ensure that the food does not appear to be better or of a greater value than it is. The food standard may be used as a vehicle to improve the overall nutritional quality of the food supply.

(5) The food standard should contain clear and easily understood requirements to facilitate compliance by food manufacturers.

(6) The food standard should permit maximum flexibility in the food technology used to prepare the standardized food so long as that technology does not alter the basic nature or essential characteristics, or adversely affect the nutritional quality or safety, of the food. The food standard should provide for any suitable, alternative manufacturing process that accomplishes the desired effect, and should describe ingredients as broadly and generically as feasible.

(7) The food standard should be harmonized with international food standards to the extent feasible. If the food standard is different from the requirements in a Codex standard for the same food, the petition should specify the reasons for these differences.

(8) The food standard provisions should be simple, easy to use, and consistent among all standards. Food standards should include only those elements that are necessary to define the basic nature and essential characteristics of a particular food, and any unnecessary details should be eliminated.

(9) The food standard should allow for variations in the physical attributes of the food. Where necessary to provide for specific variations in the physical attributes of a food within the food standard, the variations should be consolidated into a single food standard.

(10) Whenever possible, general requirements that pertain to multiple food standards of a commodity group should be incorporated into general regulatory provisions that address the commodity group.

(11) Any proposed new or revised food standard should take into account whether there are labeling or ingredient regulations in this chapter that are affected by, or that cover, the new or revised food standard, so that any requirements in the standard are consistent with labeling or ingredient regulations.

(12) The food standard should provide the terms that can be used to name a food and should allow such terms to be used in any order that is not misleading to consumers.

(13) Names of ingredients and functional use categories in a food standard should be consistent with other food standards in part 319 or part 381, subpart P, of this chapter, and relevant regulations in § 424.21 of this chapter, and, when appropriate, incorporate current scientific nomenclature.

(14) The food standard should be based on the finished product.

(15) The food standard should identify whether the product is ready-to-eat or not ready-to-eat.

(b) A petition to establish a new food standard should include a comprehensive statement that explains how the proposed new standard conforms to the general principles that apply to the new standard. A petition to revise an existing food standard should include a comprehensive statement that explains how the proposed revision to the existing standard conforms to the general principles that apply to the proposed revision. A petition to eliminate a food standard should include a comprehensive statement that explains how the standard proposed to be eliminated does not conform to any one of the general principles in paragraphs (a)(1) through (a)(4) of this section.

(c) A petition that proposes the establishment or revision of a food standard in part 319 or part 381, subpart P, of this chapter, that is not consistent with the applicable general principles listed under paragraph (a) of this section will be denied, and the petitioner will be notified as to the reason for the denial. A petition that proposes the elimination of a food standard in part 319 or part 381, subpart P, of this chapter that does not demonstrate that the food standard is inconsistent with any one of the general principles listed under paragraphs (a)(1) through (a)(4) of this section will be denied, and the petitioner will be notified as to the reason for the denial.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Food and Drug Administration
21 CFR Chapter I
Authority and Issuance

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that part 130 of chapter I of title 21 of the Code of Federal Regulations be amended as follows:

PART 130—FOOD STANDARDS: GENERAL

■ 1. The authority citation for 21 CFR part 130 continues to read as follows:

Authority: 21 U.S.C. 321, 336, 341, 343, 371.

■ 2. Section 130.5 is amended by revising the section head and paragraph (b), redesignating paragraphs (c) and (d) as paragraphs (e) and (f), respectively, and adding new paragraphs (c) and (d) to read as follows:

§ 130.5 Procedure for establishing, revising, or eliminating a food standard.

* * * * *

(b) A food standard proposed in a petition to establish a new food standard in parts 130 to 169 of this chapter must be consistent with all of the following general principles that apply to the new standard. Any revision to a food standard proposed in a petition to revise an existing food standard in parts 130 to 169 of this chapter must be consistent with all of the following general principles that apply to the proposed revision to the existing standard. The Food and Drug Administration will consider a petition that proposes eliminating a food standard if it is demonstrated that the current food standard is not consistent with any one of the general principles in paragraphs (b)(1) through (b)(4) of this section.

(1) The food standard should promote honesty and fair dealing in the interest of consumers.

(2) The food standard should describe the basic nature of the food to ensure that consumers are not misled by the name of the food and to meet consumers' expectations of product characteristics and uniformity.

(3) The food standard should reflect the essential characteristics of the food. The essential characteristics of a food are those that define or distinguish a food or describe the distinctive properties of a food. The essential characteristics of a food may contribute to achieving the food's basic nature or may reflect relevant consumer expectations of a food product. For example, foods may be defined or distinguished by their ingredients, compositional characteristics, physical characteristics, nutrient levels, or the manner in which they are produced.

(4) The food standard should ensure that the food does not appear to be better or of a greater value than it is. The food standard may be used as a vehicle to improve the overall nutritional quality of the food supply.

(5) The food standard should contain clear and easily understood requirements to facilitate compliance by food manufacturers.

(6) The food standard should permit maximum flexibility in the technology used to prepare the standardized food so long as that technology does not alter the basic nature or essential characteristics, or adversely affect the nutritional quality or safety, of the food. The food standard should provide for any suitable, alternative manufacturing process that accomplishes the desired effect, and should describe ingredients as broadly and generically as feasible.

(7) Consistent with § 130.6 of this chapter, the food standard should be harmonized with international food standards to the extent feasible. If the food standard is different from the requirements in a Codex standard for the same food, the petition should specify the reasons for these differences.

(8) The food standard provisions should be simple, easy to use, and consistent among all food standards. Food standards should include only those elements that are necessary to define the basic nature and essential characteristics of a particular food, and any unnecessary details should be eliminated.

(9) The food standard should allow for variations in the physical attributes of the food. Where necessary to provide for specific variations in the physical attributes of a food within the food standard, the variations should be consolidated into a single food standard.

(10) Whenever possible, general requirements that pertain to multiple food standards of a commodity group should be incorporated into general regulatory provisions that address the commodity group.

(11) The food standard should take into account any other relevant regulations in this chapter. For example, a proposed new or revised food standard should be consistent with common or usual name regulations for related commodities or products. Further, any specific requirements for foods intended for further manufacturing should be incorporated within the reference food standard rather than being provided as a separate food standard.

(12) The food standard should provide the terms that can be used to name a food and should allow such terms to be used in any order that is not misleading to consumers.

(13) Names of ingredients and functional use categories in a food standard should be consistent with other food standards and relevant regulations in this chapter, and, when appropriate, incorporate current scientific nomenclature.

(c) As part of the Statement of Grounds required by section § 10.30 of this chapter, a petition to establish a new food standard should include a comprehensive statement that explains how the proposed new standard conforms to the general principles that apply to the new standard. A petition to revise an existing food standard should include a comprehensive statement that explains how the proposed revision to the existing standard conforms to the general principles that apply to the proposed revision. A petition to eliminate a food standard should include a comprehensive statement that explains how the standard proposed to be eliminated does not conform to any one of the general principles in paragraphs (b)(1) through (b)(4) of this section.

(d) A petition that proposes the establishment or revision of a food standard that is not consistent with the applicable general principles listed under paragraph (b) of this section will be denied, and the petitioner will be notified as to the reason for the denial. A petition that proposes the elimination of a food standard that does not demonstrate that the food standard is inconsistent with any one of the general principles listed under paragraphs (b)(1) through (b)(4) of this section will be denied, and the petitioner will be notified as to the reason for the denial.

* * * * *

Dated: April 14, 2005.

Barbara J. Masters,

Acting Administrator, FSIS.

Dated: April 8, 2005.

Lester M. Crawford,

Acting Commissioner of Food and Drugs.

[FR Doc. 05–9958 Filed 5–17–05; 11:25 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–05–010]

RIN 1625–AA00

Safety Zone; Waters of Milwaukee Harbor, Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to implement a temporary safety zone for the TCF Bank Milwaukee Air Expo. This safety zone is necessary to safeguard the public from the hazards associated with air shows. This proposed rule would restrict vessel traffic from a portion of Lake Michigan near Milwaukee Harbor unless authorized by the Captain of the Port Milwaukee or designated representative.

DATES: Comments and related material must reach the Coast Guard on or before June 20, 2005.

ADDRESSES: You may mail comments and related material to Commanding Officer, U.S. Coast Guard Marine Safety Office Milwaukee (CGD09–05–010), 2420 South Lincoln Memorial Drive, Milwaukee, Wisconsin 53207. Marine Safety Office (MSO) Milwaukee maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at MSO Milwaukee between 7 a.m. and 3:30 p.m.(local), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Chief Millsap, U.S. Coast Guard MSO Milwaukee, at (414) 747–7155.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you

do so, please include your name and address, identify the docket number for this rulemaking (CGD09–05–010), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to MSO Milwaukee at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

This safety zone is necessary to protect the public from the hazards associated with air shows. Due to the high profile nature and extensive publicity associated with this event, the Captain of the Port (COTP) expects a large number of spectators in confined areas adjacent to and on Lake Michigan. As such, the COTP is proposing to establish a safety zone in Milwaukee Harbor from July 14 through July 17, 2005. The safety zone would be enforced from 1 p.m. until 4:30 p.m. each day and would ensure the safety of both participants and spectators in these areas.

The combination of large numbers of inexperienced recreational boaters, congested waterways, boaters crossing commercially transited waterways, and low flying aircraft could easily result in serious injuries or fatalities.

This notice of proposed rulemaking comment period allows the public an opportunity to comment on the proposed safety zone, allowing the Coast Guard to evaluate the proposed zone's affects and consider modifications.

Discussion of Proposed Rule

The Coast Guard is proposing a safety zone in Milwaukee Harbor, Milwaukee, Wisconsin from July 14 through July 17, 2005. The safety zone would be enforced from 1 p.m. until 4:30 p.m. each day and would ensure the safety of both participants and spectators in these areas.

The Coast Guard will notify the public in advance by way of the Ninth Coast Guard District Local Notice to Mariners, the Broadcast Notice to Mariners, and, for those who request it, from MSO Milwaukee, by facsimile (fax).

Regulatory Evaluation

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

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

This determination is based upon the size and location of the safety zone within the waterway. Recreational vessels may transit through the safety zone with permission from the COTP Milwaukee or his designated on-scene patrol commander.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone would be enforced for only a few hours per day on each day of the event and vessel traffic can safely pass outside of the proposed safety zone during the event. Before the effective period, we would issue maritime advisories widely available to users of the lake.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact MSO Milwaukee (*see* **ADDRESSES**). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of

Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal government, even if that impact may not constitute a "tribal implication" under that Order.

Energy Effects

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

Technical Standards

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

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A preliminary "Environmental Analysis Check List" is available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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.

2. From 1 p.m. on July 14, 2005, through 4:30 p.m. on July 17, 2005, add temporary § 165.T09–010 to read as follows:

§ 165.T09–010 Safety Zone; Waters of Milwaukee Harbor, Milwaukee, Wisconsin.

(a) *Location.* The safety zone includes all waters encompassed by the following coordinates: starting at 43°01.606′ N, 087°53.041′ W; then northeast to 43°03.335′ N, 087°51.679′ W; then northwest to 43°03.583′ N, 087°52.265′ W; then going southwest to 43°01.856′ N, 087°53.632′ W; then returning back to point of origin, located in Milwaukee Harbor. These coordinates are based upon North American Datum 1983.

(b) *Enforcement period.* This safety zone will be enforced from 1 p.m. to 4:30 p.m. each day from July 14, 2005, through July 17, 2005. The Captain of the Port Milwaukee or the on scene Patrol Commander may terminate this event at anytime.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, entry into this zone is subject to the following requirements:

(1) This safety zone is closed to all marine traffic, except as may be permitted by the Captain of the Port or his duly appointed representative.

(2) The "duly appointed representative" of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Milwaukee, Wisconsin to act on his behalf. The representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(3) Vessel operators desiring to enter or operate within the Safety Zone must contact the Captain of the Port or his representative to obtain permission to do so. Vessel operators given permission to enter or operate in the Safety Zone must comply with all directions given to them by the Captain of the Port or his representative.

(4) The Captain of the Port may be contacted by telephone via the Command Duty Officer at (414) 747–7155 during working hours. Vessels assisting in the enforcement of the Safety Zone may be contacted on VHF-FM channels 16 or 23A. Vessel operators may determine the restrictions in effect for the safety zone by coming alongside a vessel patrolling the perimeter of the Safety Zone.

(5) Coast Guard Group Milwaukee will issue a Marine Safety Information Broadcast Notice to Mariners to notify the maritime community of the Safety Zone and restriction imposed.

Dated: May 12, 2005.

H.M. Hamilton,

Commander, U.S. Coast Guard, Captain of the Port Milwaukee.

[FR Doc. 05–10143 Filed 5–19–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2004–MI–0004; FRL–7915–9]

Approval and Promulgation of Maintenance Plans; Michigan; Southeast Michigan Ozone Maintenance Plan Update to the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to approve a December 19, 2003, request from Michigan to revise the ground level ozone State Implementation Plan (SIP) for the Southeast Michigan area. EPA originally approved the Southeast Michigan ozone maintenance plan on April 6, 1995. This action proposes to approve an update to the plan prepared by Michigan to maintain the 1-hour national ambient air quality standard (NAAQS) for ozone in the Southeast Michigan maintenance area through the year 2015. This update is required by the Clean Air Act (CAA). In the final rules section of this **Federal Register**, EPA is approving the SIP revision as a direct final rule without prior proposal, because EPA views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we do not receive any adverse comments in response to this proposed rule, we do not contemplate taking any further action in relation to this proposed rule. If EPA receives adverse comments, we will withdraw the direct final rule and all public comments in a subsequent final rulemaking. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before June 20, 2005.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R05–OAR–2004–MI–0004 by one of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

Agency Web site: *http://docket.epa.gov/rmepub/index.jsp*. RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

E-mail: *mooney.john@epa.gov*.

Fax: (312) 886–5824.

Mail: You may send written comments to: John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: John M. Mooney, Chief, Criteria Pollutant Section (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05–OAR–2004–MI–0004. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the federal regulations.gov Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.epa.gov/rmepub/index.jsp*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Anthony Maietta at (312) 353–8777 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Life Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777. *maietta.anthony@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information
A. Does this action apply to me?
B. What should I consider as I prepare my comments for EPA?
II. What Action Is EPA Taking Today?
III. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

I. General Information

A. Does This Action Apply to Me?

This action is non-regulatory in nature. It updates an earlier plan which is intended to maintain the 1-hour ozone NAAQS in Southeast Michigan.

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

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

Tips for Preparing Your Comments. When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. What Action Is EPA Taking Today?

EPA is proposing to approve a revision to the Southeast Michigan ozone maintenance plan and the transportation conformity budgets for the Southeast Michigan 1-hour ozone maintenance area. In a separate action in today's **Federal Register**, we are approving in a direct final rule these revisions to the Michigan SIP.

III. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information, see the Direct Final Rule which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available electronically at RME or in hard copy at the above address. (Please telephone Anthony Maietta at (312) 353–8777 before visiting the Region 5 Office.)

Dated: May 11, 2005.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. 05–10151 Filed 5–19–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R10–OAR–2005–0004; FRL–7915–6]

Approval and Promulgation of Implementation Plans; Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA invites public comment on its proposal to approve revisions to the State of Washington Implementation Plan (SIP). The Director of the Washington State Department of Ecology (Ecology) submitted a request to EPA dated March 1, 2004 to revise the Washington SIP to include revisions to WAC Ch. 173–434, Solid Waste Incinerator Facilities. The revisions were submitted in accordance with the requirements of section 110 of the Clean Air Act (hereinafter the Act). EPA proposes to approve the revisions to WAC Ch. 173–434 as part of the SIP, with the exception of a couple of submitted rule provisions which are inappropriate for EPA approval because they are unrelated to the purposes of the implementation plan.

DATES: Written comments must be received on or before June 20, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. R10–OAR–2005–0004, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

3. E-mail: *r10.aircom@epa.gov.*

4. Mail: Roylene A. Cunningham, EPA, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101.

5. Hand Delivery: EPA, Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. Attention: Roylene A. Cunningham, Office of Air, Waste, and Toxics (AWT–107). Such deliveries are only accepted during EPA's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. R10–OAR–2005–0004. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The EPA EDOCKET and the Federal *http://www.regulations.gov* Web site are an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information may not be publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at EPA, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101, from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. Please contact the individual listed in the "For Further Information Contact" section to schedule your inspection.

FOR FURTHER INFORMATION CONTACT: Roylene A. Cunningham, EPA, Office of Air, Waste, and Toxics (AWT–107), Seattle, Washington 98101, (206) 553–0513, or e-mail address: *cunningham.roylene@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background of Submittal

On March 1, 2004, the Director of Ecology submitted a request to EPA to revise the Washington SIP to include

revisions to WAC Ch. 173–434, Solid Waste Incinerator Facilities. These changes became effective as a matter of State law on January 22, 2004. EPA last approved WAC Ch. 173–434 into the SIP on January 15, 1993 [58 FR 4578].

II. Requested Sections To Be Incorporated by Reference Into the SIP

A. Description of Submittal

Ecology has revised the requirements of WAC Ch. 173–434 by making minor changes to the existing requirements for solid waste incineration facilities and adding two new, narrow exemptions to existing requirements for the burning of creosote treated wood and the burning of certain materials at cement plant kilns. Revised WAC Ch. 173–434 refers to this set of rules and changes as the "primary compliance scheme." The requirements of the primary compliance scheme are contained WAC 173–434–090, –130, –160, –170, –190, and –200.

At the same time, Ecology has revised WAC Ch. 173–434 to impose more stringent requirements on newly constructed and newly modified solid waste incineration facilities by making such facilities subject to the more stringent requirements of 40 CFR part 60, subpart Eb if they burn 12 tons per day of solid waste (as opposed to 250 tons per day as provided in subpart Eb). The revisions also allow an existing solid waste incineration facility to "opt in" to the more stringent provisions of subpart Eb in lieu of the "primary compliance scheme." Revised WAC Ch. 173–434 refers to the provisions applying the requirements of subpart Eb to new or modified facilities and facilities that opt in as an "an alternative compliance scheme." The requirements of the alternative compliance scheme are contained in the new subsection WAC 173–434–110 and WAC 173–434–130(4)(c).

Ecology has determined that, prior to the 2004 revisions to WAC Ch. 173–434, there were five facilities subject to the requirements of that chapter (although several of the sources disputed that WAC Ch. 173–434 applied to them). Ecology's submittal includes a demonstration of the effect of these changes on those five sources. Ecology's demonstration shows that the revisions as applied to these five existing sources are not less stringent than the version of WAC Ch. 173–434 that is currently approved into the SIP, or that, to the extent the revisions are less stringent, the revisions do not interfere with any applicable requirement concerning attainment and reasonable further progress or any other requirement of the Act, as required by section 110(l) of the Act.

B. Key Changes to WAC Ch. 173–434

The docket includes a technical support document which describes in more detail the substantive changes to Ecology's rules that have been submitted by Washington as revisions to the SIP, EPA's evaluation of the changes, and the basis for EPA's action. A summary of key changes to Ecology's rules and EPA's proposed action follows:

Definition of Solid Waste

Subsection (3) of the definition of "solid waste" has been revised to, among other things, clarify that Ecology's definition of solid waste includes all materials included in EPA's definitions of "municipal solid waste" (MSW) in 40 CFR part 60, subparts Cb, Ea, Eb, AAAA, and BBBB, and "commercial and industrial solid waste" (CISW) in 40 CFR part 60, subparts CCCC and DDDD), except for the four categories of waste that are specifically excluded from Ecology's definition even if they are considered MSW or CISW under EPA's definitions. Two of these exceptions, wood waste and sludge from waste water treatment plants, were previously excluded from Ecology's definition of solid waste. Two of these exceptions are new. First, WAC 173–434–030(3)(a) now excludes certain creosote-treated wood from the definition of "solid waste." This new exception is intended to prevent creosote-treated wood from being included in the amount of solid waste that would trigger applicability of WAC Ch. 173–434, provided the facility obtains an order of approval or Prevention of Significant Deterioration (PSD) permit issued on or after December 1, 2003, that authorizes the burning of such wood. Second, WAC 173–434–030(3)(b) also now excludes from the definition of "solid waste" tires or nonhazardous waste oil burned in cement plant kilns. The potential impact on air quality of these two new exceptions to the definition of solid waste with respect to existing sources is discussed below.

WAC 173–434–110, Standards of Performance

Ecology has revised this section in its entirety. First, Ecology repealed the previous language stating that all WAC Ch. 173–434 sources must comply with "any applicable provisions of WAC 173–400–115," which incorporates by reference EPA's New Source Performance Standards, 40 CFR part 60. This is already required by WAC 173–400–115, which incorporates by reference as a matter of State law the New Source Performance Standards, 40 CFR part 60, including subpart Eb. Therefore, deleting the original language of subsection (1) does not change any existing requirements. Ecology has made clear in its submittal that it did not intend in any way, through the recent amendments to WAC Ch. 173–434, to trump or supersede the direct applicability of subpart Eb through WAC 173–400–115.

In lieu of the previous language in subsection (1), Ecology has made the emission control and other requirements of subpart Eb applicable to new and modified sources in Washington that burn more than 12 tons per day of solid waste, rather than only those that burn more than 250 tons per day of solid waste, as provided in subpart Eb itself. WAC 173–434–110(1)(a) and (b) incorporate subpart Eb by reference. This is done in two separate subsections to distinguish between those parts of subpart Eb that relate to criteria pollutants and are appropriate for inclusion in the SIP under section 110 of the Act and those parts of subpart Eb that relate to noncriteria pollutants and thus are not appropriate for inclusion in the SIP under section 110 of the Act.

Revised WAC 173–434–110(2) identifies the exceptions to Washington's incorporation by reference of subpart Eb as applied to sources subject to WAC Ch. 173–434. Most importantly, subsection (2)(a) contains the expanded applicability criteria, reducing the 250 tons/day threshold in subpart Eb downward to 12 tons per day, the current threshold in WAC Ch. 173–434. As discussed above, the terms "municipal solid waste," "municipal type solid waste," and "MSW" in subpart Eb are adjusted to include all materials that fit the definition of solid waste in chapter 434. Subsection (2)(c) eliminates the exception for 30% municipal solid waste co-fire in 40 CFR 60.50b(j). Thus, new and modified facilities that would be exempt from subpart Eb as provided in 40 CFR 60.50b(j) will be subject to the substantive requirements of subpart Eb. Finally, in subsection (2)(d) and (4), Ecology has changed the applicability dates in subpart Eb so that those sources that will be subject to the substantive requirements of subpart Eb by virtue of these amendments to WAC Ch. 173–434 will have time to transition to the new requirements. Again, the changes in the applicability dates in no way changes the applicability dates for sources that are subject to subpart Eb by its terms or as provided in WAC 173–400–115.

In subsection 3(a), Ecology has provided that, except for WAC 173–434–130(4)(c), WAC 173–434–090, –130, –160, –170, –190, and –200 do not apply to an incinerator facility that becomes subject to the federal rule in 40 CFR part 60, subpart Eb through WAC 173–434–110 (*i.e.*, the alternate compliance scheme). Subsection(3)(b) contains an "opt in" provision that would allow a facility to choose to be subject to the alternative compliance scheme (subpart Eb as modified by WAC 173–434–110) rather than subject to most of the remaining requirements of chapter 434. In other words, even if existing facilities (such as Spokane Waste to Energy Plant or Tacoma Steam Plant) do not become subject to the expanded applicability of subpart Eb, as provided in revised WAC 173–434–110 (*i.e.*, construct/reconstruct/modify after such applicable date), they can "opt in" to the alternative compliance scheme as provided in WAC 173–434–110(3)(b).

C. Air Quality Impact of Ecology's Changes

Section 110(l) of the Act states that EPA shall not approve a revision to the SIP if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress or with any other applicable requirement of the Clean Air Act. Ecology's submission shows that, with respect to new and modified sources, the revised rule is a strengthening of the existing SIP requirements. These amendments prospectively strengthen controls for incinerators from existing WAC Ch. 173–434 to those of the EPA's more stringent waste incinerator rules at 40 CFR part 60, subpart Eb.

Ecology's submission also includes a demonstration regarding the impact of the changes on emissions from sources currently subject to WAC Ch. 173–434. Ecology is aware of five facilities that it believes were subject to WAC Ch. 173–434 before the changes. In each case, Ecology has demonstrated that the revisions are at least as stringent as the version of WAC Ch. 173–434 currently approved as part of the SIP or that the revision will not interfere with attainment of the NAAQS and reasonable further progress or any other requirement of the Act.

Spokane Incinerator

The Spokane Incinerator has been operating as an electric utility steam generating unit subject to 40 CFR part 60, subpart Cb, which is less stringent than subpart Eb. The Spokane Incinerator has also been subject to WAC Ch. 173–434 and will continue to be subject. None of the recently adopted exemptions to the definition of solid waste would change the applicability of WAC Ch. 173–434 to the Spokane Incinerator, nor have the applicable emission limits changed. The Spokane Incinerator would be subject to the more stringent provisions of WAC 173–434–110 (which largely incorporates subpart Eb) if it "opts in" to these provisions in lieu of the substantive requirements of WAC 173–434–090, –130, –160, –170, –190, and –200.

Tacoma Steam Plant

The Tacoma Steam Plant (TSP) has been operating as an electric utility steam generating unit subject to 40 CFR part 60, subpart Da. In 2002, the Washington Pollution Control Hearings Board determined that TSP was subject to WAC Ch. 173–434. The inherent nature of the TSP combustion chambers rendered it physically impossible for TSP to burn MSW in compliance with the time and temperature requirements of WAC 173–400–160 while also meeting the emission limits. TSP therefore ceased burning MSW. With the revisions to WAC Ch. 173–434, TSP has the option of continuing to burn MSW by "opting in" to the more stringent provisions of WAC 173–434–110 (which largely incorporate subpart Eb) in lieu of the substantive requirements of WAC 173–434–090, –130, –160, –170, –190, and –200. None of the recently adopted exemptions to the definition of solid waste would change the applicability of WAC Ch. 173–434 to TSP. If TSP elects to resume combusting MSW, it will be subject to more stringent emission limits than under the current SIP.

Kimberly-Clark

Kimberly-Clark was subject to the terms of the previous version of WAC Ch. 173–434, but has been operating under a variance issued by Ecology, which allowed it to burn more than 12 tons per day of creosote-treated wood without meeting the requirements of WAC Ch. 1173–434. The variance was not submitted to EPA for approval as a SIP revision. The recently adopted exemption to the definition of solid waste for creosote-treated wood was intended to allow Kimberly-Clark to burn more than 12 tons per day of creosote-treated wood without being subject to the emission limits in WAC Ch. 173–434. As such the creosote-treated wood exemption narrows the scope of WAC Ch. 173–434 and could allow an increase in emissions from Kimberly-Clark as compared to the requirements of the existing SIP (although Kimberly-Clark would not be emitting more than it is emitting under the variance, which is not in the SIP). Ecology has submitted source test data from Kimberly-Clark showing that burning creosote-treated wood at Kimberly-Clark did not significantly increase emissions. In addition. in order for the burning of creosote-treated wood to be exempt from WAC Ch. 173–434, Kimberly-Clark must apply for and obtain an order of approval or a PSD permit (whichever, is applicable) allowing it to burn creosote-treated wood. In issuing the order of approval/PSD permit, Ecology will be required to determine the amount of creosote-treated wood that the company can burn and still assure attainment and maintenance of the NAAQS and PSD increments and include a limit at such amount. Therefore, to the extent the exemption for creosote-treated wood does allow an increase in emissions over the current SIP, Ecology has demonstrated that the SIP revision meets the requirements of section 110(l) of the Act.

Ashgrove Cement Company and Lafarge North America, Inc.

Ecology has maintained that Ashgrove Cement Company and Lafarge North America, Inc. were subject to the original version of WAC Ch. 173–434, although the companies questioned the applicability of WAC Ch. 173–434 to their industry. WAC Ch. 173–434 was not identified as a requirement in the existing permits for these companies. The revisions to WAC Ch. 173–434 specifically exempt from the definition of solid waste the combustion of tires and nonhazardous waste oil at cement plant kilns, thus clarifying the applicability of WAC Ch. 173–434 to these facilities by specifically exempting these facilities as they currently operate. Only if these facilities expand the substances they incinerate to include more than 12 tons per day of "solid waste" would these facilities be subject to WAC Ch. 173–434. To the extent that these companies were subject to WAC Ch. 173–434 prior to the adoption of the exemption for the combustion of certain waste in cement kilns, the recent amendments to this chapter constitute a relaxation. Ecology has included in its SIP submittal a demonstration, consistent with the requirements of section 110(l), showing that exempting these facilities from WAC Ch. 173–434 will not have a deleterious effect on any NAAQS, PSD increment or visibility in Class I areas and will not interfere with any other Act requirements.

D. Summary of Action

1. Provisions Approved by EPA and Incorporated by Reference

EPA has determined that the following sections are consistent with the requirements of title I of the Act and is proposing to approve them as part of the SIP and incorporate them by reference into Federal law:

WAC 173–434–020, Applicability and Compliance; –030, Definitions; –110, Standards of Performance [except (1)(a)]; –130, Emission Standards [except (2)]; –160, Design and Operation; –170, Monitoring and Reporting; –190, Changes in Operation; and –200, Emission Inventory, State effective January 22, 2004.

2. Provisions Not Approved by EPA

EPA is proposing not to approve certain provisions, which EPA believes are inconsistent with the requirements of the Act or not appropriate for inclusion in a SIP under section 110 of the Act.

WAC 173–434–110(1)(a), Standards of Performance. This subsection contains emission standards for cadmium, mercury, hydrogen chloride, and dioxin/furans. These types of provisions are inappropriate for SIP approval because they are not related to the criteria pollutants regulated under section 110 of the Act.

WAC 173–434–130(2), Emission Standards. This section contains emission standards for hydrogen chloride. These types of provisions are inappropriate for SIP approval because they are not related to the criteria pollutants regulated under section 110 of the Act.

III. Requested Sections To Be Removed From the SIP

A. Description of Submittal

Ecology has requested that EPA remove certain provisions from the SIP because they have been previously repealed by the State.

WAC 173–434–050, New Source Review (NSR); –070, Prevention of Significant Deterioration (PSD); and –100, Requirement of BACT, State effective October 18, 1990.

B. Summary of Action

EPA proposes to take the following action on the provisions which Ecology has requested be removed from the SIP.

WAC 173–434–050, New Source Review (NSR) (State Effective October 18, 1990)

This section is being repealed. It stated that WAC 173–400–110, Ecology's new source review rule, applies to each new source or emissions unit subject to WAC Ch. 173–434. Sources subject to WAC Ch. 173–434 are subject to WAC 173–400–110 even without this provision. Therefore, deleting this section does not change any requirements of the SIP.

WAC 173–434–070, Prevention of Significant Deterioration (PSD) (State Effective October 18, 1990)

This section is being repealed. It stated that WAC 173–400–141, Ecology's PSD rule, applies to each new source or emissions unit subject to WAC Ch. 173–434. Sources subject to WAC Ch. 173–434 are subject to Ecology's PSD rule (now codified at WAC 173–400–700 through 750) even without this provision. Therefore, deleting this section does not change any requirements of the SIP.

WAC 173–434–100, Requirement of BACT (State Effective October 18, 1990)

This section is being repealed. It stated that all sources required to file a notice of construction application are required to use Best Available Control Technology (BACT). This is already required by WAC 173–400–112(2)(b) and 113(2). Therefore, deleting this section does not change any requirements of the SIP.

IV. Geographic Scope of SIP Approval

This SIP approval does not extend to sources or activities located in Indian Country, as defined in 18 U.S.C. 1151. Consistent with previous Federal program approvals or delegations, EPA will continue to implement the Act in Indian Country in Washington because PS Clean Air did not adequately demonstrate authority over sources and activities located within the exterior boundaries of Indian reservations and other areas of Indian Country. The one exception is within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided State and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area. Therefore, EPA's SIP approval applies to sources and activities on non-trust lands within the 1873 Survey Area.

V. Statutory and Executive Order Reviews

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

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

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National

Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 11, 2005.

Julie M. Hagensen,

Acting Regional Administrator, Region 10.

[FR Doc. 05–10148 Filed 5–19–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R10–OAR–2005–ID–0001; FRL–7915–7]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: Portneuf Valley, Idaho, Area

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA, Agency, or we) proposes to approve revisions to the Idaho State Implementation Plan (SIP) for particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers (PM–10) for the Portneuf Valley nonattainment area. The revisions include a nonattainment area plan that brought the area into attainment by the applicable attainment date of December 31, 1996, a maintenance plan that will provide for maintaining the PM–10 national ambient air quality standards (NAAQS) ten years into the future, and a request to redesignate the Portneuf Valley nonattainment area to attainment for PM–10. We are proposing to approve these revisions because we believe the State adequately demonstrates that the control measures being implemented in the Portneuf Valley result in attainment and maintenance of the PM–10 National Ambient Air Quality Standards and that all other requirements of the Clean Air Act for redesignation to attainment are met.

DATES: Comments must be received on or before June 20, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. R10–OAR–2005–ID–0001, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

2. Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

3. E-mail: *r10.aircom@epa.gov*.

4. Mail: Office of Air, Waste and Toxics, Environmental Protection Agency, Attn: Steve Body, Mailcode: AWT–107, 1200 Sixth Avenue, Seattle, WA 98101.

5. Hand Delivery: Environmental Protection Agency Region 10, Attn: Steve Body (AWT–107), 1200 Sixth Ave., Seattle, WA 98101, 9th floor mail room. Such deliveries are only accepted during EPA's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. R10–OAR–2005–ID–0001. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The EPA EDOCKET and the Federal regulations.gov website are an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information may not be publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at EPA Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington, from 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your review of these records.

FOR FURTHER INFORMATION CONTACT: Steve Body, Office of Air, Waste and Toxics, Region 10, AWT–107, Environmental Protection Agency, 1200 Sixth Ave., Seattle, WA 98101; phone: (206) 553–0782; fax number: (206) 553–0110; e-mail address: *body.steve@epa.gov*.

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I. General Overview

A. What Action Are We Taking?

We are proposing to approve the State Implementation Plan (SIP) revision for PM–10 submitted on June 30, 2004, by the State of Idaho Division of Environmental Quality (IDEQ) for the Portneuf Valley PM–10 nonattainment area. The revision includes a nonattainment area plan, maintenance plan, and a request to redesignate the Portneuf Valley nonattainment area to attainment for PM–10. We are proposing to approve these two plans and the request for redesignation because we believe the State adequately demonstrates that the control measures being implemented in the Portneuf Valley result in attainment and maintenance of the PM–10 National Ambient Air Quality Standards (NAAQS) and that all other requirements of the Clean Air Act (the Act) for redesignation to attainment are met.

B. What Is the Background for This Action?

1. Description of Area

The Portneuf Valley, Idaho PM–10 nonattainment area is located in southeastern Idaho and includes the Cities of Pocatello and Chubbuck. For a legal description of the boundaries, see 40 CFR 81.313. The nonattainment area covers 96.6 square miles and the combined population of the two cities is approximately 76,000.

The topography of the Portneuf Valley area is complex. The City of Pocatello lies in the Portneuf Valley at an elevation of approximately 4500 feet. The Pocatello Mountain Range, with elevations reaching 9000 feet above mean sea level (MSL), forms the east side of the Valley and the Bannock Mountain Range, reaching 7500 feet above MSL, lies to the west. The Portneuf Valley empties into the Snake River plain.

The Portneuf Valley is arid with significant variation in temperature between winter and summer seasons. Winter average temperature is 24.4 degrees Fahrenheit. Winter and spring are characterized by brisk southwest winds of 20 to 30 miles per hour (mph) which often persist for days. Migratory weather disturbances are greatly influenced by the complex terrain, making prediction of wind flow patterns difficult. Periodically, stagnate air conditions are established for a period of several days that can lead to elevated PM–10 levels. July is the warmest month with an average temperature of 69.2 degrees Fahrenheit. Annual rainfall of 12.5 inches is distributed throughout the year with a maximum in the spring. Average snow fall is 41.7 inches.

2. Description of Air Quality Problem

The highest PM–10 levels in the Portneuf Valley nonattainment area occur in the winter. Cold temperature, high relative humidity, and fog are conducive to sulfur dioxide (SO2) rapidly reacting with ammonia in the atmosphere to create ammonium sulfate. Also during these conditions, oxides of nitrogen (NO_X) react with ammonia to create ammonium nitrate. These winter conditions are also often associated with stagnation episodes. Very little ventilation occurs through vertical mixing or by horizontal transport out of the valley. Without a means of ventilation, PM–10 levels increase day-to-day from both primary and secondary formation, and tend to peak by the third day of a stagnation episode. Sources of primary PM–10 are J.R. Simplot, re-entrained dust from paved roads, agricultural activity, residential/commercial construction, non-agricultural windblown dust, and to a lesser extent, residential combustion and motor vehicles. Sources of precursor emissions resulting in secondary PM–10 formation are from one stationary source and to a limited extent, motor vehicles (cars, trucks, and locomotives).

Secondary PM–10 in the Portneuf Valley has been measured during these winter stagnation events at more than 50 percent of the total PM–10 mass. In extreme events, snow cover is present for an extended period which increases radiative cooling and maintains temperature near or below the freezing point, heightens the strength and depth of the deep stable layer, and promotes the formation of valley fog. The breakup of the stagnation episode is usually accompanied by precipitation.

3. Designation History of the Nonattainment Area

On July 1, 1987, (52 FR 24634), the Environmental Protection Agency revised the NAAQS for particulate matter with a new indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). *See* 40 CFR 50.6. The 24-hour primary PM–10 standard is 150 micrograms per cubic meter ($\mu g/m^3$), with no more than one expected exceedance per year over a three year period. The annual primary PM–10 standard is 50 $\mu g/m^3$ expected annual arithmetic mean over a three year period. The secondary PM–10 standards are identical to the primary standards.

On August 7, 1987, (52 FR 29383), EPA identified a number of areas across the country as PM–10 "Group I" areas of concern, *i.e.*, areas with a 95% or greater likelihood of violating the PM–10 NAAQS and requiring substantial SIP revisions. What is now known as the Portneuf Valley nonattainment area was originally part of a Group I area called "Power-Bannock Counties (Pocatello)," an area subsequently designated as a moderate PM–10 nonattainment area by the Act. See also 56 FR 11101. This original nonattainment area has gone through two boundary changes. First, on June 12, 1995, EPA corrected the "Power-Bannock Counties (Pocatello)" boundaries to more closely represent the air shed in which the City of Pocatello is located. 61 FR 29667. Second, on November 5, 1998, EPA granted a request from the State to divide the nonattainment area (as corrected) into two areas separated by the Fort Hall Indian Reservation boundary. 63 FR 59722. The area consisting of land under State jurisdiction is now identified as the Portneuf Valley nonattainment area, and the area consisting of land within the exterior boundary of the Fort Hall Indian Reservation is now identified as the Fort Hall nonattainment area. *See* 40 CFR 81.313. Today's proposed approval of the nonattainment area plan, maintenance plan, and redesignation request applies only to the Portneuf Valley nonattainment area.

4. SIP Submittal History of the Nonattainment Area

Under the Act, the State of Idaho was required to submit a PM–10 SIP (or "nonattainment area plan") for the Power-Bannock Counties (Pocatello) nonattainment area for meeting the PM–10 NAAQS. In March 1993, Idaho submitted a PM–10 SIP (1993 SIP) to

meet this requirement. Among other things the 1993 SIP submittal addressed primary particulate and made a finding that PM–10 precursors were an insignificant contributor to violations of the PM–10 standard. Under the Act, control requirements for major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors, except where such sources do not contribute significantly to PM–10 levels which exceed the standards in the area. However, because PM–10 precursors were not insignificant in the area and the 1993 SIP submittal did not address them, the State was required to submit a revised plan.

On February 26, 1999, the State submitted the "Portneuf Valley Particulate Matter (PM–10) Air Quality Improvement Plan, 1998–1999" (1999 SIP). In June 2000, EPA informed the State that although the 1999 SIP submittal addressed PM–10 precursors, the 1999 SIP submittal was inadequate, specifically with respect to transportation conformity and the motor vehicle emissions budget. The State was required to submit a revised plan.

On June 30, 2004, the State submitted the "Portneuf Valley PM–10 Nonattainment Area State Implementation Plan, Maintenance Plan, and Redesignation Request" (June 30, 2004 SIP submittal). This submittal contains a nonattainment area plan (replacing the State's 1993 and 1999 SIP submittals), a maintenance plan, and a request for redesignation to attainment. We are proposing to approve both plans and the request for designation to attainment based on our evaluation below. See the Technical Support Document (TSD) accompanying this notice for further supporting documentation.

C. What Impact Does This Action Have on the Portneuf Valley Community?

EPA's approval of the State's June 30, 2004, SIP submittal (that is, approval of the nonattainment area plan, maintenance plan, and redesignation request) would result in redesignation of Portneuf Valley to a PM–10 attainment area. A redesignation to attainment would relieve the Portneuf Valley area of certain obligations currently in place because of its nonattainment status. In the event of new sources in the area, minor New Source Review (NSR) and Prevention of Significant Deterioration (PSD) requirements would apply.

Although the SIP revision contains emissions reduction control measures that impact residential wood combustion, roadways, and industrial facilities, these control measures are already in place and are enforceable by the State. Therefore, our approval of these measures now has little or no additional regulatory impact on the Portneuf Valley community.

II. Review of Nonattainment Area Plan

A. What Criteria Did EPA Use To Review the Nonattainment Area Plan?

The air quality planning requirements for moderate PM–10 nonattainment areas are set out in subparts 1 and 4 of Part D, Title I of the Act. The EPA has issued a "General Preamble" describing EPA's preliminary views on the how EPA intends to review SIP's and SIP revisions submitted under Title I of the Act, including those State submittals containing provisions to implement the moderate PM–10 nonattainment area SIP requirements. *See* generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).

Under section 189(a) of the Act, States containing initial moderate PM–10 nonattainment areas are required to submit an implementation plan that includes the following elements:

1. An approved permit program for construction of new or modified major stationary sources of PM–10.

2. A demonstration that the plan provides for attainment by the applicable attainment date or that attainment by such date is impracticable.

3. Provisions to assure that reasonably available control technology (RACT) is implemented.

Below is a discussion of how the Portneuf Valley nonattainment area plan meets the requirements of section 189(a) and associated requirements in section 172(c)(1) and (5). We also discuss how the nonattainment area plan meets certain other provisions of section 189 and Part D (specifically the PM–10 precursor control provision in section 189(e), the emissions inventory requirement in section 172(c)(3) and the requirement for enforceable control measures in section 110(a)(2)(A)). For discussion of how other requirements in section 189, Part D, and section 110(a)(2) are met, see the TSD accompanying this document.

1. New Source Review Permit Program

Section 189(a)(1)(A) of the Act requires, "For the purpose of meeting the requirements of section 172(c)(5), a permit program providing that permits meeting the requirements of section 173 are required for construction and operation of new and modified major sources of PM–10."

Section 189(a) and section 172(c)(5) require each nonattainment area plan to provide for permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area. The Act requires a permit program for the construction and operation of new and modified major stationary sources of PM–10 located in moderate nonattainment areas (known as "nonattainment area NSR"). EPA approved nonattainment NSR rules for PM–10 nonattainment areas in Idaho on July 23, 1993 (58 FR 39445), and amended provisions were approved by EPA on January 16, 2003 (68 FR 2217). *See* 60 FR 28726 (June 2, 1995). Therefore, the State has met this permit program requirement.

2. Demonstration of Attainment

Section 189(a)(1)(B) of the Act requires either a demonstration (including air quality modeling) that the plan will provide for attainment by the applicable attainment date or a demonstration that attainment by such date is impracticable.

The initial attainment date for the Power-Bannock Counties (Pocatello) nonattainment area (and therefore the Portneuf Valley nonattainment area) was established by operation of law as no later than December 31, 1994. *See* section 189(c)(1) of the Act. Section 189(d) of the Act provides criteria by which the Administrator may grant two, 1-year extensions to the attainment date. The State met the requirements for extending the attainment date and EPA granted two 1-year extensions. 61 FR 20730 and 61 FR 66602. Consequently, the attainment date for the Portneuf Valley nonattainment area is December 31, 1996.

To demonstrate attainment, the State relies on a combination of supporting evidence. First it points to ambient air quality monitoring data showing the area attained both the 24-hour and annual PM–10 NAAQS as of December 31, 1996. We published an official finding of attainment by this date in a **Federal Register** notice on July 5, 2002, 67 FR 48552. Subsequent air monitoring data shows that the area has continued to meet both NAAQS for every three year period since the attainment date. Thus, monitoring data as of and since the attainment date demonstrates attainment of the NAAQS.

Second, the State relies on emissions reduction measures from sources impacting the nonattainment area to bring the area into attainment. These measures include stationary source controls, residential wood burning controls, outdoor burning controls, and road sanding emissions reduction measures. With these measures in place, there have been no further violations of the 24-hour or annual PM–10 NAAQS

in the nonattainment area, thus, providing further support of a demonstration of attainment. Each specific control measure is discussed in more detail in the TSD.

Finally, the State relies on speciated linear rollback modeling. The rollback model uses filter analyses, emissions inventories, and chemical source profiles to assess the impacts of sources and source groups on PM–10 concentrations. For the Portneuf Valley nonattainment area, the model predicts a 24-hour PM–10 level of 146 $\mu g/m^3$ in 2000, then a decrease to 103 $\mu g/m^3$ by 2005 followed by a gradual increase up to 111 $\mu g/m^3$ in 2020. These predicted levels also demonstrate attainment of the NAAQS.

Based on air quality data for the area since the attainment date, control measures that have been implemented without further violation of the NAAQS and speciated linear rollback modeling showing attainment in the year 2000, we conclude that the state has adequately demonstrated attainment of the PM–10 NAAQS.

3. Reasonably Available Control Measures (RACM) Including Reasonably Available Control Technology (RACT)

Section 189(a)(1)(C) of the Act requires that moderate area SIPs contain "reasonably available control measures" (RACM) for the control of PM–10 emissions. Section 172(c)(1) of the Act, in turn, provides that RACM for nonattainment areas shall include "such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology* * *". Read together, these provisions require that moderate area PM–10 SIPs include RACM and RACT for existing sources of PM–10 emissions.

The General Preamble provides further guidance on interpretation of the requirement for RACM and RACT. Congress, in enacting the amended Act, did not use the word "all" in conjunction with RACT. Thus, it is possible that a State could demonstrate that an existing source in an area should not be subject to a control technology especially where such a control is unreasonable in light of the specific area's individual attainment needs or is infeasible. EPA recommends that available control technology be applied to those existing sources in the nonattainment area that are reasonable to control in light of the feasibility of such controls and the individual attainment needs of the specific area.

The nonattainment area plan contains a description of available control measures that the State determined to be reasonable. For agricultural area sources, control measures qualifying as RACM include best management practices and land conservation practices for agricultural activities under the Federal Food Security Act of 1985 (FSA), as amended in 1996 and 2002, (*see* 16 U.S.C. 3801–3862). Control measures for other area sources include a certified wood stove ordinance, a mandatory residential wood combustion curtailment program, tax and other incentives for non-certified wood stove replacements, an air pollution emergency rule (open burning ban) and city, county and state written agreements to reduce road sanding emissions. These measures are consistent with measures identified as RACM in Appendix C to the General Preamble. 57 FR 18070 (April 28, 1992). Federal area source requirements that were relied on by the State and qualify as RACM include Tier 2 Federal Motor Vehicle Emissions requirements. (65 FR 6698, February 10, 2000, as amended on April 13, 2001, June 3, 2002, and December 6, 2002). The State did not rely on emissions reductions from the Federal non-road motor vehicle rule (69 FR 38958, June 29, 2004) or requirements limiting the sulfur content in diesel fuel (66 FR 5002, January 18, 2001). These measures provide additional reductions.

For industrial sources, the nonattainment area plan contains an analysis of RACT for the J.R. Simplot, Don Plant (J.R. Simplot), the single largest industrial source of both primary particulate and precursor emissions in the area. This is the only industrial source for which Idaho assessed RACT because it is the only major stationary source in the nonattainment area. Based on its evaluation, the State determined that construction and installation of additional control technology is not required to implement RACT. However, for some emission units at J.R. Simplot, the State established more restrictive emission limits. These new emission limits are reasonable because the source has already demonstrated that it is meeting these limits and require no additional cost to the source. The State included the new limits in a Tier II operating permit #077–00006 and has submitted the permit as part of the June 30, 2004 SIP revision. See the TSD accompanying this notice for additional discussion of the permit limits.

The State also relies on emissions reductions from Astaris (FMC), an elemental phosphorus facility located in the adjacent Fort Hall nonattainment area. Astaris (FMC) was a major source of PM–10 and PM–10 precursors until it permanently ceased manufacturing operations in 2001.

Based on Appendix C in the General Preamble, the State's evaluation of RACT and RACM for sources contributing to PM–10 concentrations in the nonattainment area, and the individual attainment needs of this specific area, we conclude that the State has met the requirements for implementing RACM and RACT on sources of PM–10 and precursor emissions in the non-attainment area.

4. Major Stationary Sources of PM–10 Precursors

Section 189(e) of the Clean Air Act provides that control requirements for major stationary sources of PM–10 shall also apply to major stationary sources of PM–10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the standards in the area. Secondary ammonium sulfate and ammonium nitrate are a significant fraction of the highest PM–10 concentrations reported for the Portneuf Valley nonattainment area. J.R. Simplot is the only major stationary source of these precursor emissions in the area. Therefore, RACT (discussed above) has been established for J.R. Simplot. In light of the control requirements established for this major stationary source of PM–10 precursors, we conclude that the requirements of Section 189(e) are met.

5. Emissions Inventory Requirements

Section 172(c)(3) requires each plan to include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutants in such area. From this inventory, emissions can be compared to measured air quality to estimate emissions reductions needed to attain the standard if violations of the standard are reported. Where measured air quality is below the standard, the comparison can be used to estimate how much emissions may be allowed to increase and still protect the ambient air quality standard. Emissions estimates are also a key component to predicting future air quality through use of dispersion modeling. The inventory should be consistent with EPA's most recent guidance on emissions inventories for nonattainment areas available at the time and should include the emissions during the time period associated with the monitoring data showing attainment.

Idaho selected calendar year 2000 for the emissions inventory because it represents the most recent year for which valid ambient air quality data

was available. The emissions inventory covers all sources within the boundaries of the nonattainment area, and also includes sources outside the boundaries of the nonattainment area for purposes of dispersion modeling. The inventory includes direct sources of PM–10 as well as sources of the following precursors to PM–10: ammonia, nitrogen oxides, sulfur oxides, and volatile organic compounds. The sources covered by the inventory fall into four major source categories: Point sources, area sources, on-road mobile sources, and non-road mobile sources.

The largest contributors of primary PM–10 and precursor emissions within the nonattainment area for 2000 are as follows:

PM–10: J.R. Simplot, re-entrained dust from paved roads, agricultural activity, residential/commercial construction, non-agricultural windblown dust
NO_X: J.R. Simplot, On-road and non-road mobile sources (including locomotives)
SOx: J.R. Simplot
NH_3: J.R. Simplot
VOC: J.R. Simplot, solvent usage, gasoline marketing, biogenic, residential/commercial construction, on-road and non-road mobile

We have reviewed the emissions inventory and have found the methods used to develop it are consistent with EPA guidelines. In addition, the assumptions and calculations were checked and found to be thorough and comprehensive.

In summary, the State has adequately developed an emissions inventory for 2000 that identifies the levels of emissions of PM–10 in the nonattainment area as sufficient to attain the NAAQS. Thus, we conclude the inventory meets the inventory requirements for a nonattainment area plan.

6. Enforceable Emission Limitations and Other Control Measures

Section 110(a)(2)(A) requires the plan to include enforceable emission limitations and other control measures as may be necessary or appropriate to meet the applicable requirements of this Act. As discussed above, the area is using agricultural best management practices, motor vehicle fuel emissions standards, residential wood combustion ordinances, road sanding agreements, and an operating permit for J.R. Simplot to meet RACT/RACM requirements. Agricultural best management practices and motor vehicle fuel emissions standards are called for through Federal legislation or regulations. The wood stove curtailment programs is implemented through enforceable city ordinances in coordination with IDEQ. The stationary source emission limits are included in permits issued under a Federally-approved and enforceable operating permit program. Although the winter road sanding and de-icing agreements with county and municipal governments are not enforceable, they have been consistently followed in the 10 years since the agreements were first made in 1993 because of economic advantages. In light of the regulations, ordinances, and agreements and other things in place to ensure these control measures are implemented, we conclude that the requirements of section 110(a)(2)(A) have been met.

7. Additional Requirements for Nonattainment Area Plans

In addition to the core requirements of section 189(a)(1) discussed above, other provisions of the Act in section 172(c) and 110(a) need to be met in order to approve the nonattainment area plan. The additional requirements and how the Portneuf Valley nonattainment area plan meets these requirements is discussed in the TSD accompanying this document.

B. What Do We Conclude About the Nonattainment Area Plan?

Based on our review of the Portneuf Valley nonattainment area plan submitted by the State on June 30, 2004, we conclude that the requirements for an approvable nonattainment area plan under the Act have been met. Therefore, we are proposing approval of the nonattainment area plan submitted for the Portneuf Valley PM–10 nonattainment area.

III. Review of Maintenance Plan

A. What Criteria Did EPA Use To Review the Maintenance Plan?

Section 107(d)(3)(E) of the Act stipulates that for an area to be redesignated to attainment, EPA must fully approve a maintenance plan which meets the requirements of section 175A. Section 175A defines the general framework of a maintenance plan, which must provide for maintenance, *i.e.*, continued attainment, of the relevant NAAQS in the area for at least ten years after redesignation. The following is a list of core provisions required in an approvable maintenance plan.

1. The State must develop an attainment emissions inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS.

2. The State must demonstrate maintenance of the NAAQS.

3. The State must verify continued attainment through operation of an appropriate air quality monitoring network.

4. The maintenance plan must include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of the area.

As explained below, Idaho has complied with each of these requirements in the PM–10 maintenance plan for the Portneuf Valley nonattainment area.

1. Attainment Emissions Inventory

The State should develop an attainment emissions inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS. Where the State has made an adequate demonstration that air quality has improved as a result of the control measures in the SIP, the attainment inventory will generally be an inventory of actual emissions at the time the area attained the standards. This inventory should be consistent with EPA's most recent guidance on emissions inventories for nonattainment areas available at the time and should include the emissions during the time period associated with the monitoring data showing attainment.

The emissions inventory submitted for the Portneuf Valley nonattainment area plan also meets the attainment inventory requirements for a maintenance plan. See our evaluation of the emissions inventory for the nonattainment area plan in section II. The emissions inventory is for the year 2000, a time period associated with the monitoring data showing attainment. (Attainment is associated with all three periods: 1998–2000, 1999–2001, and 2000–2002). We have reviewed this inventory and found the methodology used to develop it is consistent with EPA guidelines. In addition, the assumptions and calculations were checked and found to be thorough and comprehensive.

In summary, the State has adequately developed an attainment emissions inventory for 2000 that identifies the levels of emissions of PM–10 in the nonattainment area as sufficient to attain the NAAQS. Thus, we conclude the State has met the attainment emissions inventory requirements for the Portneuf Valley PM–10 maintenance plan.

2. Maintenance Demonstration

A State may generally demonstrate maintenance of the NAAQS by either

showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS. Under the Act, many areas were required to submit modeled attainment demonstrations to show that the proposed reduction in emissions will be sufficient to attain the applicable NAAQS. For these areas, the maintenance demonstration should be based upon the same level of modeling. In areas where no such modeling was required, the state should be able to rely on the attainment inventory approach. In both instances, the demonstration should be for a period of 10 years following the redesignation.

Idaho uses several analytical tools to demonstrate maintenance for the Portneuf Valley PM–10 nonattainment area. These tools include dispersion modeling, trend analysis, chemical mass balance source apportionment and linear speciated roll forward modeling. Several tools are used because no single analytical approach was determined to be appropriate for this area. As discussed earlier, the air quality problem and atmospheric processes in the Portneuf Valley area are complex. The highest PM–10 levels in the area occur in the winter, when cold temperatures, high relative humidity, and fog are conducive to the formation of secondary aerosols. The sources contributing to the PM–10 levels are primary PM–10 and precursor emissions. Sources of primary PM–10 are J.R. Simplot, re-entrained dust from paved roads, agricultural activity, residential/commercial construction, non-agricultural windblown dust, and to a lesser extent, residential combustion and motor vehicles. Precursor emissions are from primarily stationary sources and to a limited extent, motor vehicles (cars, trucks, and locomotives). The topography of the Portneuf Valley area greatly influences migratory weather disturbances, making prediction of wind flow patterns difficult. Periodically, stagnate air conditions are established for a period of several days, which lead to build-up in PM–10 emissions and elevated PM–10 concentrations. Pollutant dispersion during stagnation conditions are difficult to model.

In light of the complexity of the area, the State's reliance on multiple analytical techniques—dispersion modeling, trend analysis, chemical mass balance source apportionment and linear speciated roll forward modeling—is appropriate. When viewed together, the combined results provide an adequate showing that the area will maintain the NAAQS in the future. Our evaluation of each analytical tool and overall conclusion is summarized below.

Dispersion Modeling

Dispersion modeling in the Portneuf Valley area is a challenge due to the complex terrain, meteorology, and the large number and variety of sources emitting primary particulate and precursor emissions. In selecting a model, the State appropriately considered, among other things, whether the model could simulate ambient levels of PM–10 from emissions of primary particulate, atmospheric chemical reactions that form secondary aerosols, complex wind regimes and local scale dispersion and transport. Because of its known capabilities in addressing these and other relevant factors, CALPUFF, an EPA-preferred model listed in appendix W of 40 CFR part 51, was selected.

To assess performance of the model, the State ran CALPUFF to estimate PM–10 levels during worst case meteorological episodes in 1995 and 1999 and compared the predictions to actual measurements. Model performance was mixed. On one hand, estimated PM–10 levels were reasonable given the uncertainties in the meteorological data, the emissions estimates, source characterization and the model's characterization of atmospheric phenomena. On the other hand, certain estimates raised questions and indicated a need for alternative analytical techniques to determine whether maintenance for the area was demonstrated. PM–10 levels were overestimated in the early morning and at night when the inversion was established. In addition, the highest predicted values occurred on days different from the days they were observed. Lastly, questionable levels above the NAAQS in two small areas could not be verified by monitoring data. There was extensive refinement of model inputs to reduce discrepancies but discrepancies still remained.

Because the dispersion model overall provided invaluable information in assessing air quality in the area (*i.e.*, by providing better understanding of sources, transport and fate of PM–10 and hot spot locations), the State still used the model to predict PM–10 concentrations for future years. In these runs, the model showed maintenance of the NAAQS in all areas except the same two questionable areas identified during the performance evaluation. Therefore, alternative analytic tools were used to more fully understand the modeling results and to demonstrate maintenance for the entire nonattainment area.

Ambient Air Quality Data

PM–10 levels have been monitored at several sites across the Portneuf Valley nonattainment area since the mid-1980s. Data from these sites show that the last violation of the 24 hour PM–10 standard was reported in 1995.

Annual PM–10 trends at all sites in the nonattainment area show a continuous improvement in PM–10 air quality since monitoring was initiated. There has been a dramatic decrease in PM–10 levels near the industrial complex of Astaris (FMC) and J.R. Simplot with the addition of controls and the shutdown of the Astaris (FMC) manufacturing operations. Annual average PM–10 concentrations at a site near the industrial complex have dropped from 54 $\mu g/m^3$ in the late 1980's to 27 $\mu g/m^3$ in 2001. Air quality has shown continued improvement at the other monitoring sites decreasing from approximately 30 $\mu g/m^3$ in the late 1980's to 20 $\mu g/m^3$ in the last few years.

Average 24 hour PM–10 concentrations have shown similar dramatic reductions. Peak PM–10 levels reached 259 $\mu g/m^3$ at the sewage treatment plant (STP) site and 232 $\mu g/m^3$ at the Idaho State University (ISU) site in the early 1990's. Peak concentrations are 74 $\mu g/m^3$ in 2001 at the STP site and 74 $\mu g/m^3$ in 1999 at the ISU site. The G&G site reported a peak concentration of 204 $\mu g/m^3$ in 1993 and 79 $\mu g/m^3$ in 2002.

Ambient data confirms that the control strategies that have been implemented in the Portneuf Valley nonattainment area are effective in reducing PM–10 levels. It is anticipated that additional emissions reductions from State and Federal motor vehicle control programs will continue to result in declining PM–10 levels in the valley. In light of ambient air quality improvement, we conclude that the ambient air quality data supports a demonstration of maintenance.

Meteorological Data

Meteorology analysis shows that improvement in ambient air quality is not due to favorable meteorology. The state analyzed days with meteorology characterized as having poor dispersion conditions. These conditions are characterized by a cold high pressure system with low pressure gradients, low wind speeds, shallow inversions, and little or no precipitation. Although

meteorological data show no discernible annual trend since 1984, the greatest number of days that met poor dispersion conditions criteria occurred in 2001 and 2002. Since there were no exceedances of the NAAQS in 2001 and 2002, this indicates that meteorology has not been a factor in air quality improvement. In light of no discernible trend in meteorology while air quality has improved, we conclude meteorology data provides further support of a demonstration of maintenance for the area.

Emissions Data

An inventory of actual annual emissions was prepared for the base year of 2000 and projected for future years 2010, 2015, and 2020. Calendar year 2000 represents the base year, 2010 represents an intermediary year, 2015 represents the required ten year maintenance year, and 2020 represents the last year of the area's 20 year transportation plan for use in long-term planning.

Historically the highest levels of PM–10 in the Portneuf Valley nonattainment area occur in winter, and are dominated by secondary ammonium sulfate and ammonium nitrate. Therefore, an episodic inventory was prepared for winter conditions. Idaho DEQ selected December 20 through December 26, 1999, which corresponds to an actual air stagnation episode during which three exceedences of the standard were recorded. The 1999 episodic emissions inventory was projected out to future year week-long episodic inventories for 2010, 2015, and 2020. In addition, for each episodic inventory, weekday and weekend day inventories were prepared to account for different levels of activity depending on the day of the week.

When compared to the 2000 base and 1999 episodic inventories, the State predicts the emissions of primary particulate and precursor pollutants will drop in future years 2010, 2015, and 2020. This decrease in emissions is due in large part to the permanent closure of the Astaris (FMC) manufacturing operations that occurred in 2001. In light of this projected decline in overall emissions and our expectation that the Federal non-road motor vehicle rule and requirements limiting the sulfur content in diesel fuel not accounted for by the State will result in further reductions, we conclude that the expected decrease in emissions supports a demonstration of maintenance out to 2015.

Chemical Mass Balance (CMB) Source Apportionment

CMB analysis is a method used to apportion the contribution of different sources to measured PM–10 levels. CMB analysis of PM–10 filters shows that in the base year, over 50% of the PM–10 mass during high episode days in Portneuf Valley was ammonium sulfate. The SO_2 emissions, precursors to ammonium sulfate, have since been reduced by more than half with the closure of the FMC manufacturing operations. In addition, Federal rules regulating sulfur content in diesel fuel will dramatically reduce future SO_2 emissions from mobile sources.

Future PM–10 concentrations can be estimated using the highest measured PM–10 concentration since 1989 of 177 $\mu g/m^3$, applying the fraction apportioned to industry and non-industry, and adjusting for emissions reduction or growth. By 2015, industry emissions will decrease by an estimated 60% (compared with base year levels). Emissions from all other sources are anticipated to increase 18%. Predictions using CMB show the projected maximum PM–10 level will be 133 $\mu g/m^3$ in the year 2020. This level is below the 24-hour PM–10 NAAQS, demonstrating maintenance for the area.

CMB analysis was also used to better understand the discrepancies identified during evaluation of the dispersion model. The source contributions predicted by CMB analysis were compared to the source contributions predicted by the dispersion model. The results suggest that the levels predicted above the NAAQS are due to over-estimation of the contribution of vehicle suspended dust. This over-estimation of motor vehicle emissions may be due to under-prediction of wind speeds in meteorological simulations, thus artificially enhancing the influence of the urban (mobile) sources. It is also plausible that over-predicted concentrations are due to inadequate characterization of coarse particulate matter removal mechanisms which may over-estimate the impact of re-entrained road dust.

Linear Speciated Rollback Modeling

Linear speciated rollback modeling is a simple, spatially averaged mathematical model that assumes a linear relationship between ambient constituents of PM–10 and the area wide emissions of the corresponding constituents. The model dis-aggregates the major airborne particulate components into chemically distinct groups that are emitted by different source types. The model assumes that ambient PM–10 levels are directly proportional to emissions.

Anticipated emissions reductions of primary PM–10, SO_2 and NO_X result in predicted PM–10 levels below the level of both the annual and 24 hour standards for all future years out to 2020. The maximum 24 hour PM–10 level of 146 $\mu g/m^3$ occurs in the base year, drops to 106 $\mu g/m^3$ in 2005 and gradually increases to 111 $\mu g/m^3$ in 2020. Annual PM–10 levels remain essentially constant at approximately 26 $\mu g/m^3$ in the base year and 27 $\mu g/m^3$ in 2020. Because these projected levels are below the PM–10 NAAQS, these results demonstrate maintenance of the area.

In conclusion, dispersion modeling shows that overall the area will meet the PM–10 NAAQS at least 10 years into the future, but that further evaluation is warranted in light of questionable levels predicted in two areas. This further evaluation using trend analysis, chemical mass balance, and linear speciated rollback modeling demonstrates maintenance throughout the nonattainment area. In light of the dispersion modeling results and plausible reasons for the higher levels in two areas, the difficulty of modeling due to the complex conditions of the area, the results from other analytic tools demonstrating maintenance, the anticipated reductions from Federal rules not relied on by the plan, and contingency measures, as discussed below, to be implemented in the event PM–10 levels increase, EPA concludes that the demonstration by the State shows that the Portneuf Valley nonattainment area will maintain the PM–10 NAAQS at least through the maintenance year of 2015.

3. State Monitoring of Air Quality To Verify Continued Attainment

Once an area has been redesignated, the State must continue to operate an appropriate air quality monitoring network in accordance with 40 CFR part 58 to verify the attainment status of the area. The maintenance plan should contain provisions for continued operation of air quality monitors that will provide such verification. In its submittal, the State commits to continue to operate and maintain the network of PM–10 monitoring stations necessary to verify ongoing compliance with the PM–10 NAAQS in the Portneuf Valley nonattainment area.

4. Contingency Measures

Section 175A(d) of the Act requires that a maintenance plan include contingency provisions, as necessary, to correct promptly any violation of the NAAQS that occurs after redesignation. These contingency provisions are distinguished from those generally required for nonattainment areas under section 172(c)(9), which are discussed above. At a minimum, the contingency

provisions must include a commitment that the State will implement all measures contained in the nonattainment area plan prior to redesignation.

The maintenance plan contains three contingency provisions. The first would revise the permit to operate a boiler at the Idaho State University to require a switch of fuel from coal to natural gas during a burn ban. This measure will reduce SO_2 emissions and thus reduce ammonium sulfate levels during periods of high PM–10.

The second provision addresses wood smoke emissions. Wood smoke from residential wood stoves has historically been a significant contributor to wintertime PM–10 levels in the Portneuf Valley non-attainment area. The State commits to work with the Cities of Pocatello and Chubbuck to lower the trigger point for implementing a residential wood combustion curtailment program. The current level is 100 $\mu g/m^3$ PM–10.

Lastly, the State commits to conducting additional analyses of the causes of future reported violations of the standard. Based on the results of that analysis the State will consider the following control measures to resolve the problem:

- Cover all truck loads that have potential to emit PM–10.
- Prevent track-out onto paved roads.
- More restrictions on outdoor burning.
- Institute a vehicle inspection and maintenance program.
- Expand the residential wood combustion curtailment programs to include "clean burn" wood stoves.
- Prohibit construction of unpaved private roads, driveways, or parking lots.
- Implement transportation control measures.
- Implement dust control and prevention programs including paving dirt roads and alley ways.

Since the maintenance plan is to cover the 10 year period after Federal approval, it is difficult to completely predict how emissions characteristics will change. This change in the character of the potential PM–10 problem is especially significant toward the "out-years" when the ability to predict the future is difficult. The approach used in the maintenance plan is appropriate since the contingency measures address sources expected to cause problems in the near term and include a commitment to evaluate conditions in the long term.

In light of the control measures relied on by the nonattainment area plan, the identification of additional contingency measures above, and the permanent reductions resulting from the closure of the Astaris (FMC) manufacturing operations, we believe the contingency measure requirements in the Portneuf Valley maintenance plan meet the requirements of Section 175A(d) of the Act.

5. Transportation Conformity

Under section 176(c) of the Act, transportation plans, programs, and projects in nonattainment or maintenance areas, that are developed, funded or approved under title 23 U.S.C. or the Federal Transit Laws, must conform to the applicable SIPs. In short, a transportation plan is deemed to conform to the applicable SIP if the emissions resulting from implementation of that transportation plan are less than, or equal to the motor vehicle emission budget established in the SIP.

In this maintenance plan, procedures for estimating motor vehicle emissions are well documented. Furthermore, the maintenance demonstration modeling results indicated that the estimated motor vehicle emissions for base and future years will not cause or contribute to an exceedance of the NAAQS. Accordingly, we propose to approve the following motor vehicle emissions budgets (MVEB) for PM–10 and its precursors for use in conformity determinations for PM–10 on future Transportation Improvement Programs and Regional Transportation Plans. These mobile source emissions represent a combination of vehicle exhaust, tire wear, brake wear, and road dust.

PORTNEUF VALLEY, IDAHO PM–10 MOTOR VEHICLE EMISSIONS BUDGET

Year	PM–10 (t/yr)	NO_x (t/yr)	VOC (t/yr)
2005	897	1,575	983
2010	1,120	1,085	716
2020	1,364	514	585

The MVEB was found to be adequate for conformity purposes on August 31, 2004. (69 FR 56052, September 17, 2004.) The Plan provides for reductions in residential wood combustion, road sanding, and industrial emissions. Control measures required by the maintenance plan do not directly include transportation measures as they are not required for the maintenance demonstration.

6. Additional Requirements for Maintenance Plans

In addition to the core requirements of section 175(A) discussed above, other provisions of the Act need to be met in order to approve the maintenance plan. The additional requirements and how the Portneuf Valley maintenance plan meets these requirements is discussed in the TSD accompanying this notice.

B. What Do We Conclude About the Maintenance Plan?

Based on our review of the Portneuf Valley PM–10 maintenance plan submitted by the State on June 30, 2004, we conclude that the requirements for an approvable maintenance plan under the Act have been met. Therefore, we are proposing approval of the maintenance plan submitted for the Portneuf Valley PM–10 nonattainment area.

IV. Review of Redesignation Request

A. What Criteria Did EPA Use To Review the Request for Redesignation?

The criteria used to review the maintenance plan and redesignation request are derived from the Act, the General Preamble, and a policy and guidance memorandum from John Calcagni, September 4, 1992, *Procedures for Processing Requests to Redesignate Areas to Attainment.* Section 107(d)(3)(E) of the Act states that the EPA can be redesignate an area to attainment if the following conditions are met:

1. The Administrator has determined the area has attained the NAAQS.
2. The Administrator has fully approved the applicable implementation plan under section 110(k).
3. The Administrator has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions.
4. The State has met all applicable requirements for the area under section 110 and Part D.
5. The Administrator has fully approved a maintenance plan, including a contingency plan, for the area under section 175A.

1. Attainment Determination

As discussed earlier, an area has attained the 24-hour PM–10 NAAQS when the average number of expected exceedances per year is less than or equal to one, when averaged over a three year period. To make this determination, three consecutive years of complete ambient air quality data must be collected in accordance with Federal requirements (40 CFR part 58, including appendices). On July 5, 2002, EPA published a finding that the Portneuf Valley PM–10 nonattainment area attained the PM–10 NAAQS by the

applicable attainment date. Subsequent air monitoring data shows that the area has continued to meet both NAAQS for every three year period since the attainment date.

2. Fully Approved Nonattainment Area Plan

States containing initial moderate PM–10 nonattainment areas were required to submit a SIP revision which implements reasonably available control measures (RACM) and demonstrates attainment of the PM–10 NAAQS by the attainment date. The SIP for the area must be fully approved under section 110(k) of the Act, and must satisfy all requirements that apply to the area. In this notice we are proposing to fully approve the nonattainment area plan submitted by the State for the Portneuf Valley PM–10 nonattainment area.

3. Permanent and Enforceable Improvements in Air Quality

The State must be able to reasonably attribute the improvement in air quality to permanent and enforceable reduction in emissions. The State provides a historical analysis of meteorology in the Pocatello area to show that trends in improving air quality are not the result of meteorological conditions. As discussed above, there has been no discernible trend in meteorology while air quality has continued to improve. Therefore we conclude that the improvements in air quality are the result of emissions reductions from the shut down of the Astaris (FMC) manufacturing operations, controls related to road sanding, and the area's wood stove program and not from a change in meteorological conditions.

Based on the State's analysis, and our earlier conclusion that the control measures in place in the nonattainment area are permanent and enforceable, we believe that Idaho has demonstrated air quality improvements are the result of permanent enforceable emissions reductions.

4. Other Planning Requirements

The September 1992 Calcagni memorandum directs states to meet all of the applicable section 110 and Part D planning requirements for redesignation purposes. Thus, EPA interprets the Act to require state adoption and EPA approval of the applicable programs under section 110 and Part D that were due prior to the submission of a redesignation request, before EPA may approve a redesignation request. How the State has met these requirements is discussed below.

5. Section 110 Requirements

Section 110(a)(2) of the Act contains general requirements for implementation plans. These requirements include, but are not limited to, submission of a SIP that has been adopted by the State after reasonable notice and public hearing; provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality; implementation of a permit program; provisions for Part C—Prevention of Significant Deterioration (PSD) and Part D—New Source Review (NSR) permit programs; criteria for stationary source emissions control measures, monitoring and reporting, provisions for modeling; and provisions for public and local agency participation. *See* the General Preamble for further explanation of these requirements. 57 FR 13498 (April 16, 1992).

For purposes of redesignation, review of the Idaho SIP shows that the State has satisfied all requirements under the Act. Further, in 40 CFR 52.673, EPA has approved Idaho's SIP for the attainment and maintenance of the national standards under Section 110.

6. Part D Requirements

Part D consists of general requirements applicable to all areas which are designated nonattainment based on a violation of the NAAQS. The general requirements are followed by a series of subparts specific to each pollutant. All PM–10 nonattainment areas must meet the applicable general provisions of subpart 1 and the specific PM–10 provisions in subpart 4, "Additional Provisions for Particulate Matter Nonattainment Areas." The following paragraphs discuss these requirements as they apply to the Portneuf Valley nonattainment area.

7. Section 172(c) Plan Provisions Requirements

Subpart 1, section 172(c) contains general requirements for nonattainment area plans. A thorough discussion of these requirements may be found in the General Preamble. 57 FR 13538 (April 16, 1992). The requirements for reasonable further progress, identification of certain emissions increases, and other measures needed for attainment are satisfied in our proposed approval in this notice of the nonattainment area plan for the Portneuf Valley PM–10 nonattainment area. The requirement for an emissions inventory is satisfied by the completion of inventories for the nonattainment area plan and maintenance plan. The requirements of the Part D New Source Review (NSR) program will be replaced by the Part C Prevention of Significant Deterioration (PSD) program for PM–10 upon the effective date of this redesignation action. The Federally-approved PSD regulations for Idaho can be found at IDAPA 16.01.01.07, as incorporated by reference by EPA on July 28, 1982 (47 FR 32531), and most recently amended on January 16, 2003 (68 FR 2217).

8. Subpart 4 Requirements

Part D, subpart 4, section 189(a), (c) and (e) requirements apply to any moderate nonattainment area before the area can be redesignated to attainment. The requirements which were applicable prior to the submission of the request to redesignate the area must be fully approved into the SIP before redesignating the area to attainment. These requirements are discussed below:

(a) Provisions to assure that RACM was implemented by December 10, 1993;

(b) Either a demonstration that the plan provided for attainment as expeditiously as practicable but not later than December 31, 1994, or a demonstration that attainment by that date was impracticable;

(c) Quantitative milestones which were achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

(d) Provisions to assure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors, except where the Administrator determined that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area.

In this document EPA is proposing to approve the nonattainment area plan for the Portneuf Valley PM–10 nonattainment area containing the elements meeting requirements (a) through (d) above.

States with PM–10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM–10 by June 30, 1992. States also were to submit contingency measures by November 15, 1993, which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM–10 NAAQS by the applicable statutory deadline. See sections

172(c)(9) and 189(a) and 57 FR 13543–13544.

Idaho has presented an adequate demonstration that it has met the requirements applicable to the area under section 110 and Part D. The Part D NSR rules for PM–10 nonattainment areas in Idaho were approved by EPA on July 23, 1993 (58 FR 39445) and amended provisions were approved by EPA on January 16, 2003 (68 FR 2217). The Clean Air Act requires that contingency measures take effect if the area fails to meet reasonable further progress requirements or fails to attain the NAAQS by the applicable attainment date. The Portneuf Valley PM–10 nonattainment area attained the NAAQS for PM–10 by the applicable attainment date of December 31, 1996. Therefore, contingency measures no longer are required under section 172(c)(9) of the Act. Contingency measures are also required for maintenance plans under section 175A(d). Idaho has provided contingency measures in the maintenance plan for the Portneuf Valley PM–10 nonattainment area. The contingency measures in the maintenance plan are discussed in section III above.

B. What Do We Conclude About the Request for Redesignation?

Based on our review of the nonattainment area plan, the maintenance plan, and the request for redesignation request submitted for the Portneuf Valley PM–10 nonattainment area on June 30, 2004, we conclude that all the requirements for redesignation in section 107(d)(3)(E) have been met. Therefore, we are proposing to redesignate the Portneuf Valley PM–10 nonattainment area to attainment.

V. Statutory and Executive Order Reviews

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

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

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: May 10, 2005.

Julie M. Hagensen,

Acting Regional Administrator, Region 10.

[FR Doc. 05–10149 Filed 5–19–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 05–181; FCC 05–92]

Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 To Amend Section 338 of the Communications Act

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of proposed rulemaking summary that was published in the **Federal Register** at 70 FR 24350, May 9, 2005. In this document, the Commission corrects the **DATES** section of the preamble to reflect correct comment due dates.

DATES: Comments for this proceeding are due on or before June 6, 2005; reply comments are due on or before June 20, 2005. Written comments on the proposed information collection requirements contained in this document must be submitted by the public, the Office of Management and Budget (OMB), and other interested parties on or before July 8, 2005.

ADDRESSES: You may submit comments, identified by MB Docket No. 05–181, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters,

CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Eloise Gore, *Eloise.Gore@fcc.gov* of the Media Bureau, Policy Division, (202) 418–2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this *NPRM*, contact Cathy Williams, Federal Communications Commission, 445 12th St., SW., Room 1–C823, Washington, DC 20554, or via the Internet to *Cathy.Williams@fcc.gov*. If you would like to obtain or view a copy of this revised information collection, OMB Control Number 3060–0980, you may do so by visiting the FCC PRA web page at: *http://www.fcc.gov/omd/pra*.

SUPPLEMENTARY INFORMATION: In FR Doc. 05–9290 on page 24350 published in the **Federal Register** on Monday, May 9, 2005 make the following corrections: On page 24350 in the second column, in the **DATES** section, the first sentence is corrected to read as follows: Comments for this proceeding are due on or before June 6, 2005; reply comments are due on or before June 20, 2005.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–10227 Filed 5–19–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Pygmy Rabbit as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the pygmy rabbit (*Brachylagus idahoensis*) as threatened or endangered under the Endangered Species Act of 1973, as amended. We find the petition does not provide substantial information indicating that listing the pygmy rabbit may be warranted. Therefore, we will not be initiating a further status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of the species or threats to it.

DATES: The finding announced in this document was made May 20, 2005. You may submit new information concerning this species for our consideration at any time.

ADDRESSES: The complete file for this finding is available for public inspection, by appointment, during normal business hours at the Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1340 Financial Boulevard, Suite 234, Reno, NV 89502. Submit new information, materials, comments, or questions concerning this species to us at the above address.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office (see **ADDRESSES**) (telephone 775/861–6300; facsimile 775/861–6301).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on information provided in the petition. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species, if one has not already been initiated under our internal candidate assessment process.

In making this finding, we relied on information provided by the petitioners and evaluated that information in accordance with 50 CFR 424.14(b). Our process of coming to a 90-day finding under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the "substantial information" threshold.

On April 21, 2003, we received a formal petition, dated April 1, 2003, from the Committee for the High Desert, Western Watersheds Project, American Lands Alliance, Oregon Natural Desert Association, Biodiversity Conservation Alliance, Center for Native Ecosystems, and Mr. Craig Criddle, requesting that the pygmy rabbit (*Brachylagus idahoensis*) found in California, Idaho, Montana, Nevada, Oregon, Utah, and Wyoming be listed as threatened or endangered in accordance with section 4 of the Act.

Action on this petition was precluded by court orders and settlement agreements for other listing actions that required nearly all of our listing funds for fiscal year 2003. On May 3, 2004, we received a 60-day notice of intent to sue, and on September 1, 2004, we received a complaint regarding our failure to carry out the 90-day and 12-month findings on the status of the pygmy rabbit. On March 2, 2005, we reached an agreement with the plaintiffs to submit to the **Federal Register** a completed 90-day finding by May 16, 2005, and to complete, if applicable, a 12-month finding by February 15, 2006 (*Western Watersheds Project et al.* v. *U.S. Fish and Wildlife Service* (CV–04–0440–N–BLW)).

This finding does not address our prior listing of the Columbia Basin distinct population segment (DPS) of the pygmy rabbit. On November 30, 2001, we published an emergency listing and concurrent proposed rule to list this DPS of the pygmy rabbit as endangered (66 FR 59734 and 66 FR 59769, respectively). We listed the Columbia Basin DPS of the pygmy rabbit as endangered in our final rule dated March 5, 2003 (68 FR 10388).

Species Information

The pygmy rabbit is a member of the family Leporidae, which includes rabbits and hares. This species has been placed in various genera since its type specimen was described in 1891 by Merriam (1891), who classified the "Idaho pygmy rabbit" as *Lepus idahoensis*. Currently, the pygmy rabbit is generally placed within the monotypic genus *Brachylagus* and classified as *B. idahoensis* (Green and Flinders 1980a; WDFW 1995); this is the taxonomy accepted by the Service. The analysis of blood proteins (Johnson 1968, cited in Washington Department of Fish and Wildlife (WDFW) 1995) suggests that the pygmy rabbit differs greatly from species within both the *Lepus* or *Sylvilagus* genera. Halanych and Robinson (1997) supported the

separate generic status as *Brachylagus* for the pygmy rabbit based on phylogenetic position and sequence divergence values. The pygmy rabbit has no recognized subspecies (Grinnell *et al.* 1930; Davis 1939; Larrison 1967; Green and Flinders 1980a; Janson 2002).

The pygmy rabbit is the smallest North American rabbit. Adult weights range from 0.54 to 1.2 pounds (245 to 553 grams); adult lengths range from 9.1 to 12.1 inches (in) (23.1 to 30.7 centimeters) (Dice 1926; Grinnell *et al.* 1930; Bailey 1936; Orr 1940; Janson 1946; Durrant 1952; Ingles 1965; Bradfield 1974; Holt 1975; Campbell *et al.* 1982). Adult females are generally larger than adult males. The species can be distinguished from other rabbits by its small size, gray color, short rounded ears, small hind legs, and the absence of white on the tail (66 FR 59734).

Pygmy rabbits typically occur in areas of tall, dense sagebrush (*Artemisia* spp.) cover, and are highly dependent on sagebrush to provide both food and shelter throughout the year (Dice 1926, Grinnell *et al.* 1930; Orr 1940; Green and Flinders 1980a, b; Janson 1946; Wilde 1978; Katzner *et al.* 1997). The winter diet of pygmy rabbits is comprised of up to 99 percent sagebrush (Wilde 1978; Green and Flinders 1980b), which is unique among rabbits (White *et al.* 1982). During spring and summer in Idaho, their diet consists of roughly 51 percent sagebrush, 39 percent grasses (particularly native bunch-grasses, such as *Agropyron* spp. and *Poa* spp.), and 10 percent forbs (Green and Flinders 1980b). There is evidence that pygmy rabbits preferentially select native grasses as forage over other available foods during this period. In addition, total grass cover relative to forbs and shrubs may be reduced within the immediate areas occupied by pygmy rabbits as a result of its use during spring and summer (Green and Flinders 1980b). The specific diets of pygmy rabbit likely vary by region (68 FR 10388).

The pygmy rabbit is one of only two rabbits in North America that digs its own burrows (Nelson 1909; Bailey 1936; Janson 1946; Bradfield 1974; Wilde 1978). Pygmy rabbit burrows are typically found in relatively deep, loose soils of wind-borne or water-borne (*e.g.*, alluvial fan) origin. Pygmy rabbits, especially juveniles, likely use their burrows as protection from predators and inclement weather (Bailey 1936; Bradfield 1974). The burrows frequently have multiple entrances, some of which are concealed at the base of larger sagebrush plants (Dice 1926). Burrows are relatively simple and shallow, often no more than 6.6 feet (ft) (2 meters (m)) in length and usually less than 3.3 ft (1 m) deep with no distinct chambers (Bailey 1936; Bradfield 1974; Green and Flinders 1980a; Gahr 1993). Burrows are typically dug into gentle slopes or mound/inter-mound areas of more level or dissected topography (Wilde 1978; Gahr 1993). In general, the number of active burrows in a colony increases over the summer as the number of juveniles increases. However, the number of active burrows may not be directly related to the number of individuals in a given area because some individual pygmy rabbits appear to maintain multiple burrows, while some individual burrows are used by multiple individuals (Janson 1946; Gahr 1993; Heady 1998).

Pygmy rabbits occasionally make use of burrows abandoned by other species, such as the yellow-bellied marmot (*Marmota flaviventris*) or badger (*Taxida taxus*) (Borell and Ellis 1934; Bradfield 1974; Wilde 1978; Green and Flinders 1980a). As a result, they may occur in areas of shallower or more compact soils that support sufficient shrub cover (Bradfield 1974). Natural cavities (such as holes in volcanic rock), rock piles, stone walls and around abandoned buildings may also be used (Janson 1946). During winter pygmy rabbits make extensive use of snow burrows, possibly as access to sagebrush forage (Bradfield 1974; Katzner and Parker 1997), as travel corridors among their underground burrows, for protection from predators, and/or as thermal cover (Katzner and Parker 1997).

Pygmy rabbits begin breeding their second year (Wilde 1978; Fisher 1979). In some parts of the species' range, females may have up to three litters per year and average six young per litter (Davis 1939; Janson 1946; Green 1978; Wilde 1978). Breeding appears to be highly synchronous in a given area and juveniles are often identifiable to cohorts (Wilde 1978). No evidence of nests, nesting material, or lactating females with young has been found in burrows (Janson 1946; Bradfield 1974; Gahr 1993). Individual juveniles have been found under clumps of sagebrush, although it is not known precisely where the young are born in the wild, nor is it known if they may be routinely hidden at the bases of scattered shrubs or within burrows (Wilde 1978). Current information on captive pygmy rabbits indicates females may excavate specialized natal burrows for their litters in the vicinity of their regular burrows (68 FR 10388).

Pygmy rabbits may be active at any time of the day or night, and appear to be most active during mid-morning (Bradfield 1974; Green and Flinders 1980a; Gahr 1993). Pygmy rabbits maintain a low stance, have a deliberate gait, and are relatively slow and vulnerable in more open areas. They can evade predators by maneuvering through the dense shrub cover of their preferred habitats, often along established trails, or by escaping among their burrows (Bailey 1936; Severaid 1950; Bradfield 1974).

Pygmy rabbits tend to have relatively small home ranges during winter, remaining within 98 ft (30 m) of their burrows (Janson 1946). Bradfield (1974), Katzner and Parker (1997), and Flath and Rauscher (1995) found pygmy rabbit tracks in snow indicating movements of 262 to 328 ft (80 to 100 m) or more from their burrows. They have larger home ranges during spring and summer (Janson 1946; Gahr 1993). During the breeding season in Washington, females tend to make relatively short movements within a small core area and have home ranges covering roughly 6.7 acres (ac) (2.7 hectares (ha)). Males tend to make longer movements, traveling among a number of females, resulting in home ranges covering roughly 49.9 ac (20.2 ha) (Gahr 1993). These home range estimates in Washington are considerably larger than for pygmy rabbit populations in other areas of their historic range (Katzner and Parker 1997). Pygmy rabbits are known to travel up to 0.75 mile (mi) (1.2 kilometers (km)) from their burrows (Gahr 1993), and there are a few records of individuals moving up to 2.2 mi (3.5 km) (Green and Flinders 1979; Katzner and Parker 1998).

A wide range of pygmy rabbit population densities has been reported. Janson (1946) reported an estimated pygmy rabbit density of 0.75 to 1.75 per ac (1.9 and 4.3 per ha) in Utah. In another area in Utah, he estimated 3.5 pygmy rabbits per ac (8.6 per ha). Green (1978) reported an estimate of 18.2 pygmy rabbits per ac (45 per ha) in Idaho. Gahr (1993) estimated 0.09 pygmy rabbits per ac (0.22 per ha) in a grazed area and 0.11 per ac (0.27 per ha) in an ungrazed area in Sagebrush Flat, Washington. In Montana, Rauscher (1997) estimated pygmy rabbit density as 1.2 per ac (3.0 per ha).

The annual mortality rate of adult pygmy rabbits may be as high as 88 percent, and more than 50 percent of juveniles can die within roughly 5 weeks of their emergence (Wilde 1978). However, the mortality rates of adult and juvenile pygmy rabbits can vary considerably between years, and even between juvenile cohorts within years (Wilde 1978). Predation is the main cause of pygmy rabbit mortality (Green

1979). Predators of the pygmy rabbit include badgers, long-tailed weasels (*Mustela frenata*), coyotes (*Canis latrans*), bobcats (*Felis rufus*), great horned owls (*Bubo virginianus*), long-eared owls (*Asio otus*), ferruginous hawks (*Buteo regalis*), northern harriers (*Circus cyaneus*), and common ravens (*Corvus corax*) (Borell and Ellis 1934; Janson 1946; Gashwiler *et al.* 1960; Green 1978; Wilde 1978; Johnson and Hanson 1979; WDFW 1995).

Population cycles are not known in pygmy rabbits, although local, relatively rapid population declines have been noted in some States (Janson 1946; Bradfield 1974; Weiss and Verts 1984). After initial declines, pygmy rabbit populations may not have the same capacity for rapid increases in numbers in response to favorable environmental conditions as compared to other rabbit species. This may be due to their close association with specific components of sagebrush ecosystems, and the relatively limited availability of their preferred habitats (Wilde 1978; Green and Flinders 1980b; WDFW 1995). No study has documented rapid increases in pygmy rabbit numbers in response to environmental conditions (Gabler 1997).

The pygmy rabbit's current geographic range, excluding the Columbia Basin DPS, includes most of the Great Basin and some of the adjacent intermountain areas of the western United States (Green and Flinders 1980a). The northern boundary extends into southeastern Oregon and southern Idaho. The eastern boundary extends into southwestern Montana and southwestern Wyoming. The southeastern boundary extends into southwestern Utah. Central Nevada and eastern California provide the southern and western boundaries (Merriam 1891; Nelson 1909; Grinnell *et al.* 1930; Bailey 1936; Janson 1946; Campbell *et al.* 1982; WDFW 1995).

Literature indicates that pygmy rabbits were never evenly distributed across their range. Rather, they are found in areas within their broader distribution where sagebrush cover is sufficiently tall and dense, and where soils are sufficiently deep and loose to allow burrowing (Bailey 1936; Green and Flinders 1980a; Weiss and Verts 1984; WDFW 1995). In the past, dense vegetation along permanent and intermittent stream corridors, alluvial fans, and sagebrush plains probably provided travel corridors and dispersal habitat for pygmy rabbits between appropriate use areas (Green and Flinders 1980a; Weiss and Verts 1984; WDFW 1995). Since European settlement of the western United States, dense vegetation associated with human activities (*e.g.*, fence rows, roadway shoulders, crop margins, abandoned fields) may have also acted as avenues of dispersal between local populations of pygmy rabbits (Green and Flinders 1980a; Pritchett *et al.* 1987).

Previous Federal Action

We added the pygmy rabbit to our list of candidate species on November 21, 1991, as a category 2 candidate species (56 FR 58804). A category 2 candidate species was a species for which we had information indicating that a proposal to list it as threatened or endangered under the Act may be appropriate, but for which additional information was needed to support the preparation of a proposed rule. In the February 28, 1996, Notice of Review (61 FR 7595), we discontinued the use of multiple candidate categories and considered the former category 1 candidates as simply "candidates" for listing purposes. The pygmy rabbit was removed from the candidate list at that time. This species has no Federal regulatory status.

As stated above, this finding does not address our prior listing with regard to the Columbia Basin DPS of the pygmy rabbit that was listed as endangered on March 5, 2003 (68 FR 10388).

Threats Analysis

Pursuant to section (4) of the Act, we may list a species, subspecies, or DPS of vertebrate taxa on the basis of any of the following five factors: (A) present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this finding, we evaluated whether threats to the pygmy rabbit presented in the petition and other information may pose a concern with respect to its survival. The Act identifies the five factors to be considered, either singly or in combination, to determine whether a species may be threatened or endangered. Our evaluation of these threats, based on information provided in the petition and available in our files, is presented below.

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Geographic Range

The petition estimates that the historic range of the pygmy rabbit encompassed 100 million ac (40 million ha) or more of sagebrush habitat in the Great Basin and Intermountain West, and that populations may currently exist in portions of 7 to 8 million ac (2.8 to 3.2 million ha) (Committee for the High Desert *et al.* 2003). It appears these estimates were determined by visually comparing the historic geographic range map presented in previous Service **Federal Register** documents (66 FR 59734, 68 FR 10388), and a current range map presented in White and Bartels (2002). However beyond apparently making a visual comparison of these two maps to reach their conclusion the petitioners did not provide any data to substantiate this supposed reduction in pygmy rabbit range. We are unaware of any estimates from the scientific literature in our files regarding a reduction in range for the species. Therefore, we conclude that this map comparison is not substantial information demonstrating a significant reduction in the range of the pygmy rabbit.

The petition states that there have been rangewide declines in pygmy rabbit populations and provides the following State-by-State information to support this claim.

Idaho. According to the petition, Bradfield (1974) speculated that the pygmy rabbit population was declining in his study area in Bingham County, Idaho, because of the number of abandoned burrows, number of skulls indicating death by predation or other means, and fewer observed rabbits. In her Idaho study area, Gabler (1997) found 101 burrow sites, of which 26 were active. Gabler also revisited Wilde's (1978) three study areas, and found two collapsed burrows with no sign of occupancy, four active burrows that were abandoned 10 months later, and 34 abandoned burrows, respectively. Roberts (2001) covered 583,600 ac (236,175 ha) in three main river drainages during his 1997–98 survey in Idaho and found pygmy rabbits widely scattered in all three of these areas. Occupied habitat areas were interrupted by cultivation and burn areas. He classified habitat value in his study area as being high (2,000 ac (809 ha)), medium (365,200 ac (147,792 ha)), low (175,400 ac (70,982 ha)), and nonuse (41,000 ac (16,592 ha)) for pygmy rabbits. All of the high-value habitat was located in one of the drainages.

As included in the petition, Austin (2002) reported that all nine of his study areas in Idaho showed past presence of pygmy rabbit use. Recent or current signs of occupancy were found at five individual sites within three of the nine study areas in 2001 and 2002. Austin (2002) states that though it is recognized

that pygmy rabbits occur in widely scattered and/or isolated clumps across the landscape, the large unoccupied areas of lands historically used by pygmy rabbits within research areas of Idaho appear to indicate a decline in populations and numbers. He reported some level of current land use and disturbance in all of his study areas from the following: grazing, fire, crested wheatgrass (*Agropyron cristatum*) seedings, weed infestation, residential construction, communication sites, agriculture and pasture conversion, fragmentation, gas pipelines, water impoundments, off-highway-vehicle (OHV)/off-road vehicle (ORV) use, trails, hunting, gravel pit, utility lines, dumping activities, and other human influences.

The petition states that White and Bartels (2002) attempted to check 31 historic locations for pygmy rabbits in Cassia, Minidoka, Blaine, Power, and Oneida Counties, Idaho. Eighteen sites were too vague to relocate, eight were disturbed due to agriculture, urban development, wildfire and reseeding efforts, and five were potentially suitable habitat. No active pygmy rabbit burrows were found on any of the 13 sites visited. Roberts (2003) investigated 42,000 square mi (108,800 square km) of southern Idaho, including lands drained by the Snake River (southern Idaho) and Bear River (southeastern Idaho). He found only nine currently active pygmy rabbit burrow systems. Roberts (2003) states that the pygmy rabbit in Idaho are slowly declining based solely on the annual loss of habitat.

Montana. The petition states that in Montana, Rauscher (1997) reported that several previously occupied sites west of Dillon (near Dutchman, Montana; Frying Pan Basin) were now vacant. He stated that there was no evidence to indicate a significant range decrease had occurred. Janson (2002) wrote that the historical range in Montana continues to support pygmy rabbits, with some exceptions based on limited observations in Beaverhead County, Montana, in 2001.

Oregon. The petitioners cite Olterman and Verts (1972) as stating that pygmy rabbits appeared to occur over the same area in Oregon as they did in past collections. However, Weiss and Verts (1984) found that of 211 sites suspected of supporting pygmy rabbits in eastern Oregon based on records, aerial photographs, soil maps, and interviews, only 51 sites showed evidence of occupancy in 1982. In 1983, only 5 of 15 sites showed recent pygmy rabbit activity. Of 51 burrows found at 5 sites in 1982, 19 burrows were found open in 1983 and only 8 had fresh signs of occupancy (Weiss and Verts 1984). Bradfield (1974) also spent time at Ironside, in Malheur County, Oregon. He found evidence of previous pygmy rabbit use, but no fresh signs of use or rabbits, supporting his belief that they were in decline on a larger geographic scale. Bartels (2003) visited 54 previously known pygmy rabbit sites in 2000 and 2001 in Harney, Malheur, Lake, and Deschutes Counties, Oregon. Results from these visits were: Pygmy rabbit occupancy at 12 sites, no occupancy at 34 sites, and undetermined presence at 8 sites (Bartels 2003). Impacts to unoccupied sites included fire, grazing, flooding, agriculture, development, and seeding. Of the 69,945 ac (28,306 ha) surveyed, 57,485 ac (23,263 ha) were classified as unoccupied. A total of 9,589 ac (3,881 ha) were classified as occupied and 2,871 ac (1,162 ha) were classified as undetermined presence (Bartels 2003). Some of these sites included those visited by Weiss and Verts (1984).

Utah. Janson (1946) reported that in the winter of 1946, pygmy rabbits appeared more scarce than in 1941 based on two study areas in Utah (near Cedar City, Iron County; near Tremonton, Box Elder County). Areas where he considered pygmy rabbits common in Utah in 1941 were found to have no pygmy rabbits occupying them in 1946. Based on the two previous study areas in Utah between 1938 and 1946, and limited observations in Utah (near Clarkston, Cache County; near Snowville and Grouse Creek, Box Elder County) in 2001, Janson (2002) wrote that recent information indicated pygmy rabbit populations had declined in some areas where they were previously more abundant, mostly as a result of human actions. He states that residential and commercial development, farming, and range improvements for grazing, especially near Cedar City, had impacted the sagebrush habitat. He found no recent sign of occupancy near Cedar City, Utah. Pritchett *et al.* (1987) were unable to locate a population studied by Holt (1975) near Otter Creek Reservoir.

Other States. The petition does not provide specific information on population declines for pygmy rabbits in California, Nevada, or Wyoming.

Evaluation of Information in the Petition

The data and information presented in the petition has limited use in determining rangewide distribution and abundance of the species. Little detail is available from records prior to 1950. These records may not accurately reflect the species' historic distribution because they were not collected in a systematic, comprehensive manner with the goal of determining species distribution and abundance. They represent a collection of sightings documented through various methods by different individuals over time. Recent surveys (post-1950) have not been comprehensive in any State within the pygmy rabbit's range. Consistent methodologies were not used for those previous surveys. Definitions for historic sites versus previously known sites, methods for determining occupancy, and definitions that would clearly distinguish occupied from unoccupied areas, unoccupied suitable habitat, and the extent of occupied or formerly occupied population sites, are inconsistent.

Surveys identified in the petition have reported occupancy at different landscape scales, ranging from the individual burrow to the broader population level. In many cases, survey areas were not clearly identified, and there is a lack of information on the distances between adjacent populations, and therefore, on what defines a population. The petition does not provide substantial scientific information to document the historic or current range of pygmy rabbits within sagebrush ecosystems. Although limited data are provided on local population declines, particularly in Idaho, the petition does not present substantial scientific information that there is a downward trend in geographic range or abundance to a level that threatens the survival of the pygmy rabbit across all or a significant portion of its range. Nor does the petition present substantial information to correlate the changes in geographic range and abundance of the species to the actual threats to the survival of the species.

The Service has worked with the States, other Federal agencies, and research institutions involved with pygmy rabbit work to create a rangewide communication network to coordinate information and activities relating to this species. We are aware of continuing survey efforts to improve the current knowledge of pygmy rabbit distribution across its range, as well as the development of draft survey guidelines (Ulmschneider 2004). However, we are unaware of any accurate, comprehensive inventories of currently occupied pygmy rabbit habitat for any State within the range of the species. Such information is critical to any analysis of range and/or population reductions. Consequently, we conclude that the petitioners do not present substantial information indicating that a reduction in the species' numbers or range warrants a status review.

Habitat

The petition claims the pygmy rabbit has been subject to population losses and declines due to various land management practices such as conversion of sagebrush habitat to agricultural purposes, sagebrush eradication to increase forage for livestock, livestock grazing, weed invasions, prescribed burns and wildfires, urban and rural development, mining and energy exploration and development, power lines, fences and roads, military facilities, and recreational activities. The petition states that sagebrush once covered approximately 270 million ac (109 million ha) in western North America. Today, because of various land uses, about 150 million ac (61 million ha) of sagebrush habitat remain (American Lands Alliance 2001). However, pygmy rabbits do not occur in Arizona, Colorado, North or South Dakota, or New Mexico, and only in the southwest portions of Montana and Wyoming. So the amount of suitable sagebrush habitat for pygmy rabbits is considerably less than the 150 million ac (61 million ha) of sagebrush currently distributed across western North America. The petitioners claim that pygmy rabbit populations may occur over 7 to 8 million acres within the sagebrush ecosystem but do not present substantial information to substantiate this estimate, nor are we aware of any such estimates in the scientific literature.

Agriculture

The petition cites the following general information on threats of agriculture to sagebrush habitat. Large-scale conversions of western rangelands to agricultural lands began under the Homestead Acts of the 1800s (Todd and Elmore 1997, cited in Braun 1998). More than 70 percent of the sagebrush shrub-steppe habitat has been converted to agricultural crops in some States (Braun 1998). Across the Interior Columbia Basin of southern Idaho, northern Utah, northern Nevada, eastern Oregon and Washington, about 15 million ac (6 million ha) of shrub-steppe habitat has been converted to agricultural cropland (Quigley and Arbelbide 1997, cited in Committee for the High Desert *et al.* 2003). Development of irrigation projects to support agricultural production also resulted in sagebrush habitat loss (Braun 1998). Reservoirs have been constructed to facilitate these irrigation projects, impacting native shrub-steppe habitat adjacent to rivers, as well as supporting the conversion of more upland shrub-steppe to agriculture. As irrigation techniques have improved, additional land has been irrigated, and more big sagebrush (*Artemisia tridentata*) cleared. Shrub-steppe habitat continues to be converted to dry land and irrigated cropland but at a much lower rate (Braun 1998).

Pritchett *et al.* (1987) reported that a portion of the Sevier River Valley between Kingston and Otter Creek, Utah, containing one of the last large patches of sagebrush, had been plowed. The authors speculated this may have been a dispersal route for pygmy rabbits from Iron County to Wayne County, Utah. Rauscher (1997) thought conversion of sagebrush to agriculture was minimal in southwest Montana because of the large expanses of public land. He documented that the suspected location for one historic record had been converted to irrigated farmland. Williams (1986) indicated that loss of sagebrush habitat in California to agriculture was less of a concern than loss of habitat from overgrazing. Bartels and Hays (2001) indicated that large portions of the pygmy rabbit range in Oregon and Idaho had been converted to agricultural use; they found that burning, plowing, and other undetermined causes continue to result in loss of pygmy rabbit habitat. White and Bartels (2002) believe that the pygmy rabbit historically was impacted by sagebrush removal for agricultural purposes in Idaho; they found that 8 of 13 locatable historic pygmy rabbit sites in Twin Falls and Cassio Counties, Idaho, were disturbed due to agriculture, urban development, wildfire, and seeding efforts. Of the 583,600 ac (236,175 ha) Roberts (1998) inventoried in Idaho for pygmy rabbit occupancy, 122,300 ac (49,493 ha) had been permanently removed due to agriculture conversion.

Evaluation of Information in the Petition

The information in the petition suggests that agricultural production has been responsible for a loss of sagebrush habitat, including some used by pygmy rabbits, particularly in certain areas and in Idaho. However pygmy rabbits are not distributed uniformly across the full range of the sagebrush ecosystem in western North America. In large areas of the sagebrush ecosystem, the pygmy rabbit does not occur at all, and in those areas where it does occur it is patchily distributed (Green and Flinders 1980a; Weiss and Verts 1984). The species only occurs in areas of the sagebrush ecosystem where, at a minimum, the habitat has sufficiently dense sagebrush and deep, loose soils (Green and Flinders 1980a; Weiss and Verts 1984). The petitioners only provide general characterizations of sagebrush habitat loss, or cite specific examples of losses in specific areas, particularly in Idaho and Oregon. However, they do not provide substantial information that clearly documents that the areas where these habitat losses have occurred are also the areas where pygmy rabbits are found. Also, the petition does not present substantial information on the magnitude and the extent of degradation and loss of habitat to agriculture such that we can conclude that the continued existence of the pygmy rabbit throughout all or a significant portion of its range may be threatened.

Conversion of Sagebrush

The petition identifies the conversion of sagebrush by mechanical and chemical methods (herbicide) primarily for rangeland improvement and grazing management as a negative impact to pygmy rabbit habitat, and cites the following information to support this claim. Large expanses of sagebrush have been removed and seeded with nonnative grasses, such as crested wheatgrass, to increase forage production for domestic and wild ungulates. This practice results in the elimination of many native grasses and forbs that were present before the seedings. Olterman and Verts (1972) and Wilde (1978) cautioned that the practice of sagebrush removal from some livestock ranges in Oregon and Idaho, respectively, could be a threat to the pygmy rabbit in the future. They note that land changes should be closely monitored and adequate "safeguards" implemented to reduce excessive clearing of large areas.

Roberts (1998) calculated that of the 583,600 ac (236,175 ha) he inventoried for pygmy rabbit occupancy in Idaho, 49,000 ac (19,830 ha) were lost due to sagebrush eradication. Rauscher (1997) reported that sagebrush removal was a "popular" rangeland improvement practice in southwestern Montana. Sagebrush in the Coyote Creek area of the Big Sheep Creek basin has been extensively treated, and only one active burrow was located. In lower Badger Gulch, Bureau of Land Management (BLM) lands border private lands. Pygmy rabbits are found on public lands but absent on private lands where sagebrush had been removed.

Evaluation of Information in the Petition

Information in the petition indicates that some pygmy rabbit habitat has been lost to sagebrush eradication for rangeland and grazing management. However, as mentioned under agriculture in the previous section, the pygmy rabbit is not distributed uniformly across the full range of the

sagebrush ecosystem in western North America. It is absent from large areas of the sagebrush ecosystem, and in those areas of the sagebrush ecosystem where it does occur it is patchily distributed (Green and Flinders 1980a; Weiss and Verts 1984), in areas where, at a minimum, there is sufficiently dense sagebrush and deep, loose soils. The petitioners only provide general characterizations of sagebrush habitat loss due to conversion, or cite examples of losses in specific areas. They do not provide substantial information that clearly documents that the areas where these habitat losses have occurred are also the areas where pygmy rabbits are found. Also, the petition does not present substantial information on the magnitude and the extent of loss of habitat due to sagebrush conversion such that we can conclude that the continued existence of the pygmy rabbit throughout all or a significant portion of its range may be threatened.

Livestock Grazing

The petition identifies livestock grazing as an important factor in sagebrush habitat destruction and alteration in pygmy rabbit habitat. The petition mentions not only the direct loss of vegetation, but habitat degradation due to associated facilities or actions such as the construction of fences, wells, water tanks, and pipelines which can concentrate livestock or redistribute livestock and predators; seeding of crested wheatgrass to increase livestock forage; and weed infestations. The petition also claims that grazing disturbs pygmy rabbits, increases their vulnerability to predation, and increases stress during winter or harsh weather periods. In addition, the petition claims trampling of burrows may cause injury or death of pygmy rabbits. The petition cites the following information to support these claims.

The pygmy rabbit likely did not evolve with intensive grazing by large native herbivores such as bison (*Bison bison*), elk (*Cervus canadensis*), pronghorn (*Antilocapra americana*), and mule deer (*Odocoileus hemionus*) (Mack and Thompson 1982, cited in Connelly *et al.* 2000; Belsky and Gelbard 2000). Belsky and Gelbard (2000) and Paige and Ritter (1999) discuss impacts of livestock grazing on the arid west. These impacts can include selective grazing for native species, trampling of plants and soil, damage to soil crusts, reduction of mycorrhizal fungi, increases in soil nitrogen, increases in fire frequency, and contribution to nonnative plant introductions. When the sagebrush-grass vegetation is overgrazed, native perennial grasses can be eliminated, and shrubs, such as big sagebrush, tend to form dense monotypic (single species) stands when the sagebrush-grass vegetation is overgrazed (Blaisdell 1949, cited in Yensen 1982; Tisdale and Hironaka 1981, cited in Paige and Ritter 1999). In addition, the understory becomes sparse with unpalatable perennials (Tisdale and Hironaka 1981, cited in Paige and Ritter 1999), and invasions of annual species like cheatgrass (*Bromus tectorum*) can occur (Gabler 1997; Rauscher 1997).

The magnitude of grazing effects is determined by season, timing, duration, and intensity of the event, in addition to other factors. Overgrazing can break down individual sagebrush plants, which opens up interstitial (small, narrow) spaces, allowing invasion of annual grasses and forbs (Daubenmire 1970, cited in Rauscher 1997). Livestock grazing can result in sagebrush seedling trampling and mortality (Connelly *et al.* 2000). Water developments also influence livestock distribution in sagebrush habitat that would otherwise not be used. While water developments may provide a more uniform livestock distribution over the landscape, they may also distribute habitat impacts over a larger area. The associated facilities (tanks, pipelines, roads) may also allow predators (Braun 1998), OHV/ORV users, and hunters to access new terrain.

Livestock can physically damage sagebrush by rubbing, battering, breaking, and trampling seedlings. Katzner and Parker (1997) state that the apparent dependence of pygmy rabbits on a dense understory, provided in part by dead shrubs and extensive canopies, may explain population declines in the pygmy rabbit in grazed sagebrush-steppe habitat in the western United States. Lands grazed intensively by domestic herbivores often have relatively low plant structural complexity and may not support pygmy rabbit populations adequately. For a species that eludes predators in sagebrush habitat, a reduction in canopy cover would increase the vulnerability of pygmy rabbits to predation (Bailey 1936; Orr 1940; Wilde 1978; Katzner 1994; Siegel 2002).

The physical destruction of dense, structurally-diverse patches of sagebrush, and the corridors that connect them, result in fragmented, unsuitable big sagebrush habitat for pygmy rabbits (Katzner and Parker 1997). Siegel (2002) found more active burrows in ungrazed areas than grazed areas. Gahr (1993) found male pygmy rabbits had longer movements in a grazed area in Washington during the breeding season compared with an ungrazed area. Rauscher (1997) and Janson (2002) found that areas of tall, dense sagebrush inhabited by pygmy rabbits were typically located along streams. Livestock can impact these areas disproportionately by concentrating in riparian areas where trampling and vegetation removal can occur (Austin 2002).

Trampling of burrows by livestock has been reported in Montana by Rauscher (1997), in Idaho by Austin (2002), and in Washington by Siegel (2002) and Herman (2002). This could cause the death of young rabbits in natal burrows or injury or mortality of adults. Austin (2002) reported a burrow system in Idaho that was subjected to cattle trailing on at least two separate occasions within a period of 2 months or less. After the initial event, only 2 of 10 active burrows were still open. A second visit showed additional trailing activities, and no open burrows or recent sign were found, indicating "that domestic livestock can have an immediate and detrimental effect upon burrow systems" (Austin 2002).

Evaluation of Information in the Petition

The petition describes various impacts associated with livestock and grazing management that could affect pygmy rabbits, and cite specific cases in isolated areas where impacts to the species have resulted from these practices. However, the petitioners did not provide substantial information that clearly documents that areas impacted by grazing management practices are regularly also the areas where pygmy rabbits are found. Also, the petition does not present substantial information on the magnitude and the extent of degradation and loss of habitat to livestock grazing such that we could conclude that the continued existence of the pygmy rabbit throughout all or a significant portion of its range may be threatened.

Invasive Plants

The petition claims weed invasions pose a threat to pygmy rabbits throughout their range and provides the following information to support this claim. The spread of weeds by several factors (recreationists, ORV/OHV users, trucks, logging, road construction, wildfire, wild animals, wind, and floods, livestock and associated facilities, among others) (Belsky and Gelbard 2000) across the range of the pygmy rabbit results in nonnative plants replacing native grasses and shrubs used by pygmy rabbits. Weed infestations can also hinder pygmy rabbit movement and increase predator detection. Quigley and

Arbelbide (1997, cited in Committee for the High Desert *et al.* 2003) describe the effects of weeds in the Interior Columbia River Basin as able to alter ecosystem processes, including productivity, nutrient cycling, decomposition, and natural disturbance patterns such as frequency and intensity of wild fires. Altering these processes can result in the displacement of native plant species, eventually impacting wildlife and native plant habitats.

Paige and Ritter (1999) suggest that the most harmful change to sagebrush shrub lands has been the invasion of the nonnative grasses and forbs, especially cheatgrass. Cheatgrass is a rapid colonizer of disturbed areas and persistent in replacing native species (Mack 1981, Yensen 1981, and Whisenant 1990, cited in Paige and Ritter 1999). Cheatgrass alters fire and vegetation patterns in sagebrush habitats as it creates a continuous fine fuel that easily carries fire (Paige and Ritter 1999). Where it dominates, it can carry fires over large distances, and burns more frequently than native vegetation (Paige and Ritter 1999). It also matures and dries earlier than native vegetation, increasing the likelihood of a fire earlier in the season (Young and Evans 1978, Whisenant 1990, and Knick and Rotenberry 1997, cited in Paige and Ritter 1999). Pellant and Hall (1994) reported on the 1992 distribution of cheatgrass and medusahead wild rye (*Taeniatherum asperum*), the primary alien grass invaders of disturbed and fire-altered rangelands in the Intermountain area of the western United States. Data indicated that 3.3 million ac (1.3 million ha) of rangeland administered by the BLM in Nevada, Oregon, Utah, Washington, and Idaho were dominated by these two species. Another 76.1 million ac (30.8 million ha) of public rangeland were classified as infested or susceptible to infestation by these two species. The petition states that this distribution corresponds to areas of the pygmy rabbit's range.

The petition provides the following specific information on the threat of invasive weeds to pygmy rabbits and their habitat. In Oregon, 2 of 51 sites occupied by pygmy rabbits in 1982 contained appreciable stands of cheatgrass (Weiss and Verts 1984). This led the authors to suspect that pygmy rabbits avoid areas containing annual grasses because it can restrict their movements or vision, especially when they are attempting to escape predators. Weeds were reported for all nine study areas investigated by Austin (2002) in Idaho. Gabler (1997) predicted 10 sites on Idaho National Environmental Engineering Laboratory (INEEL) lands would be used by pygmy rabbits, but later found large patches of invasive cheatgrass on 8 of those sites, and that the species did not use these sites. Other factors, such as large amounts of dead sagebrush, and/or sparse, short sagebrush, and thick grass cover, may have contributed to their nonuse.

Evaluation of Information in the Petition

The petitioners provide information about weed invasions within the sagebrush ecosystem in general, and provide a few specific cases where the presence of weeds may have been the reason why pygmy rabbits were absent from an area. However, petitioners did not provide substantial information that clearly documents that areas impacted by invasive species are regularly also the areas where pygmy rabbits are found. Furthermore, the petitioners do not provide substantial information on the magnitude and the extent of habitat impacts by invasive weeds such that we might conclude that they may threaten the continued existence of the pygmy rabbit throughout all or a significant portion of its range.

Fire

The petition contends that fire, either wild or prescribed, can result in long-term habitat loss and fragmentation of pygmy rabbit habitat across its range. Fire can result in death, increased predation, or home range abandonment. The petition cites the following information to support this claim.

Fire intervals during presettlement times have been estimated at 20 to 25 years in wetter regions, where fuels (vegetation) are more abundant. In the arid sagebrush steppe of Idaho, intervals have been estimated at 60 to 110 years because fuels are less abundant (Tisdale and Hironaka 1981 and Whisenant 1990, cited in Paige and Ritter 1999). Burning typically kills big sagebrush (*Artemisia tridentata tridentata, A. t. vaseyana, A. t. wyomingensis*) (Pechanec *et al.* 1954, cited in Yensen 1982), fire it and does not resprout after burning (Wright *et al.* 1979, cited in Braun 1998; Paige and Ritter 1999). As a result, big sagebrush habitat takes a long time to recover following burns. Depending on the species, sagebrush can reestablish itself within 5 years of a burn, but it may take 15 to 30 years to return to preburn densities (Bunting 1984; Britton and Clark 1984, cited in Paige and Ritter 1999). Billings (1994) documented slow shrub succession following a burn in western Nevada, with little sagebrush recovery after 45 years.

Burning can also damage perennial grasses, allowing cheatgrass to increase (Stewart and Hull 1949; Wright and Britton 1976, cited in Yensen 1982). The presence of cheatgrass extends the fire season and can carry a fire into areas where burning would not normally occur (Yensen 1982; Billings 1994). Though it is not known when cheatgrass became so abundant in the sagebrush ecosystem as to allow extensive fires in the western Great Basin, these fires were common as early as the mid-1930s (Billings 1994). Range fire intervals on the Snake River Plain in Idaho may have been 50 to 100 years (Whisenant 1990, cited in Gabler 1997). Whisenant (1990, cited in Gabler 1997) indicates this interval currently occurs at 3 to 5 years, and that the burns are more extensive and leave fewer patches of unburned habitat within the burned areas. With cheatgrass cover, fire frequency increases and sagebrush are unable to reestablish (Whisenant 1990, cited in Gabler 1997).

The petition states that numerous and extensive fires have occurred in States where pygmy rabbits occur. Wildfires have reduced more than 50 percent of sagebrush acreage in some areas in Idaho and Nevada (BLM 2000). In Idaho a number of fires have occurred during the last decade that have exceeded 100,000 ac (40,469 ha) (Roberts 2003). In Nevada, 1,277 fires in 2001, impacted 654,253 ac (264,768 ha) on public and private lands (BLM 2001a). In 2002, BLM reported 771 fires that impacted 77,551 ac (31,384 ha) on public and private lands in Nevada (BLM 2002).

According to Gabler (1997), range fires may be a more serious threat to pygmy rabbit populations now than in the past. Roberts (1998) stated that of the 583,600 ac (236,175 ha) he inventoried in Idaho, about 2,500 ac (1,012 ha) had been temporarily removed due to fire (a loss of 0.4 percent). White and Bartels (2002) indicated that of the 133,067 ac (53,851 ha) surveyed, 23,660 ac (9,575 ha) had been affected by wildfire within the last 15 years. Gabler (1997) mentions that 12.5 percent of her predicted pygmy rabbit habitat in Idaho was destroyed by fires during 1994–1996.

The petition cites several instances of fire impacting pygmy rabbit populations locally across its range. In Idaho, Austin (2002) indicated a burrow system was no longer occupied by pygmy rabbits following an escaped BLM controlled burn. White and Bartels (2002) discuss that wildfires in the 1990s at INEEL severely affected the pygmy rabbit population, though some individuals remained. Gates and Eng (1984, cited in Tesky 1994) reported that 2 months following a fire in big sagebrush-grassland community in Idaho, only 3 of

11 located radio-collared pygmy rabbits were alive. Of the eight lost, seven were due to predation. They speculated that the loss of big sagebrush from their home ranges probably increased vulnerability to predation. Some of the surviving pygmy rabbits abandoned their home ranges and moved to new home ranges in adjacent unburned sites. Of the six rabbits remaining on the burn site, only one survived the winter. Pygmy rabbit habitat in Benton County, Washington, was destroyed by fire soon after its discovery in 1979 (WDFW 1995). The population at the Coyote Canyon site in Washington showed a dramatic decline in 1999 following a fire (WDFW 2001).

Roberts (2003) suggests that sagebrush habitat can be regenerated within 30 to 50 years but how long it takes for pygmy rabbits to recolonize is unknown. Roberts (2001) mentions a 1966 burn near Gilmore Summit, Idaho that has not regenerated to suitable habitat and which pygmy rabbits have not recolonized. White and Bartels (2002) state that after the removal of sagebrush habitat along the Snake River Plain, the area from Jerome to Idaho Falls, Idaho, became important pygmy rabbit habitat. This area was recently burned and reseeded with crested wheatgrass. Rauscher (1997) reported that a prescribed burn in 1980 near Badger Pass, Montana, had been recolonized by pygmy rabbits. He did not know how long this process had taken or if pygmy rabbit densities had reached pre-burn levels. White and Bartels (2002) suggest that the current low abundance and populations of the species is likely due to recent wildfires and slow rate of habitat recovery.

Evaluation of Information in the Petition

The information in the petition indicates that fire has impacted sagebrush ecosystems, that there have been increased numbers of fires in this system, and that pygmy rabbits have been negatively affected in some local areas within their range due to fire. But pygmy rabbits are not distributed uniformly across the full range of the sagebrush ecosystem in the western United States, and only occur in areas where, at a minimum, dense sagebrush and deep, loose soils are found (Green and Flinders 1980a; Weiss and Verts 1984). The petitioners did not provide substantial information that demonstrates that the areas of the sagebrush ecosystem impacted by fires, and those subject to increased fire frequency, are also the areas occupied by pygmy rabbits, with the exception of a limited number of cases, mostly from Idaho. Also, the petition does not provide substantial information to document how much of the sagebrush ecosystem where pygmy rabbits occur has been impacted by fire. Therefore, we conclude that the petition has not presented substantial information that fire in the sagebrush ecosystem is a factor that may threaten the continued existence of the pygmy rabbit throughout all or a significant portion of its range.

Urban and Suburban Development

The petition identifies habitat loss from rural and urban development as a negative impact to pygmy rabbits and their habitat. This includes the infrastructure that accompanies such development. (*i.e.*, roads, powerlines, pipelines). Historic destruction of sagebrush habitat for urban development has occurred (Braun 1998). More recent expansion into rural areas is resulting in additional sagebrush habitat loss (Braun 1998), as well as introducing nonnative predators such as domestic pets to these areas (Connelly *et al.* 2000). Janson (2002) discovered that one of his 1940s pygmy rabbit study areas was impacted by residential and commercial development near Cedar City, Utah, when revisited in 2001. White and Bartels (2002) also found that urban development had impacted historic pygmy rabbit locations in Idaho.

Evaluation of Information in the Petition

The petition indicates that some sagebrush habitat has been lost due to development, and that in some specific instances pygmy rabbits have been impacted locally. With the exception of these few local examples, the petitioners do not provide substantial information to document that the areas impacted by development are the same as those where the pygmy rabbit occurs, nor do they provide any documentation that indicates how much pygmy rabbit habitat has been lost to urban and suburban development across its range. Therefore, we conclude that the petition has not presented substantial information that urban and suburban development in the sagebrush ecosystem is a factor that may threaten the continued existence of the pygmy rabbit throughout all or a significant portion of its range.

Mining

The petition contends that mining and associated facilities threaten sagebrush habitats, thereby negatively impacting pygmy rabbits. The petition provides the following information to support this claim. Sagebrush habitat throughout the west has been impacted by gold, coal, and uranium mining (Braun 1998). Immediate impacts include direct loss from mining and construction of associated facilities, roads, and power lines (Braun 1998). In western North America, development of mines and energy resources began before 1900 (Robbins and Wolf 1994, cited in Braun 1998). Mining occurs across large areas in northern Nevada where pygmy rabbits are known to occur (Nevada Natural Heritage Program 2002). In California, pygmy rabbits have been observed in the area around Bodie, a mining town that was abandoned in the mid-1930s (Severaid 1950).

Evaluation of Information in the Petition

Though the petition provides general information on mining activities where pygmy rabbit habitat may occur, it does not present substantial information that correlates mining activities with the direct loss of pygmy rabbits or their habitat, nor does it quantify the extent of this effect across the range of the species.

Energy Development

The petition contends that energy development and associated facilities threaten sagebrush habitats thereby negatively impacting pygmy rabbits. The petition identifies habitat loss from energy development (*i.e.*, oil, gas, and geothermal energy) as a negative impact to the pygmy rabbit. Millions of acres of western lands are in production for oil and gas energy. Other western lands have been developed for geothermal energy, but the number of acres is much lower than for oil and gas. Energy development involves construction of well pads, roads, pipelines, and other associated facilities. The petitioners specifically mention concerns with oil, gas, and coal bed methane development in Wyoming and they cite proposals for energy production in sagebrush habitats in this State. The Jack Morrow Hills Supplemental Draft Environmental Impact Statement (DEIS) (2002, cited in Committee for the High Desert *et al.* 2003) proposes oil, gas, and coalbed methane production in sagebrush habitats north of Rock Springs, Wyoming. The scoping notice for the South Piney Natural Gas Development Project (2002, cited in Committee for the High Desert *et al.* 2003) proposes the possible development of 210 new natural gas wells on 31,000 ac (12,545 ha) in southwestern Wyoming. The Pinedale Anticline DEIS (2002, cited in Committee for the High Desert *et al.* 2003) indicates that large areas of Lincoln, Uinta, Sublette and Sweetwater Counties with existing and potential oil and gas development are planned. The Upper Green River Valley Coalition

(2003, cited in Committee for the High Desert *et al.* 2003) predicts that the Green River Valley will be a major natural gas production region in the United States. In addition, BLM's Kemmerer Field Office contains a log of 100 oil, gas, and other energy related actions, and the Rock Springs Field Office contains a register of over 70 oil, gas, coal, and other energy related actions (Committee for the High Desert *et al.* 2003).

The petition contends that wind energy and geothermal energy development threaten sagebrush habitats and, therefore, pygmy rabbits in Idaho and Nevada. The petition cites a proposed wind power project to be located west of Salmon Falls Reservoir, Idaho (Jarbidge BLM Environmental Assessment (EA) 2003, cited in Committee for the High Desert *et al.* 2003). On adjacent BLM lands, along the Nevada/Idaho border, meteorological towers have been installed to determine the feasibility of these areas for wind energy development. Both White and Bartels (2002) and Roberts (2003) found pygmy rabbit populations in this region. The petition cites a Battle Mountain Geothermal environmental assessment (2002, cited in Committee for the High Desert *et al.* 2003) which could authorize geothermal leasing and exploration on 4.3 million (1.7 million ha) of BLM lands in Nevada, including areas of occupied pygmy rabbit habitat. Nielsen *et al.* (2002) indicates geothermal development sites located in big sagebrush habitats in all western states in portions of pygmy rabbit habitat except in Wyoming.

Evaluation of Information in the Petition

While the petition provides some information regarding oil, gas, and coal bed methane production in Wyoming, it does not present substantial information that this development has resulted in losses of large amounts of pygmy rabbit habitat. Much of the information in the petition identifies potential impacts rather than actual impacts. And while information in the petition indicates that wind power and geothermal energy development projects are occurring or planned in areas of pygmy rabbit habitat, the petition does not present substantial information to correlate this development with reductions in pygmy rabbit habitat that may affect their reproduction and survival throughout all or a significant portion of their range. Therefore, we conclude that the petition has not presented substantial information that habitat degradation and loss due to energy development may threaten the continued existence of the pygmy rabbit throughout all or a significant portion of the range.

Power Lines, Fences, and Roads

The petition contends that the construction of power lines, fences, and roads results in direct sagebrush habitat loss, provides raptor perches that facilitate predation, facilitates the spread of weeds, disrupts pygmy rabbit dispersal corridors, and increases human access for recreational activities, all of which impact pygmy rabbits and their habitat. Sagebrush habitat contains power lines, fences, and roads associated with urban and rural development, grazing, mining and energy development, and recreation. Power poles and fences can provide hunting and roosting perches, and nesting support, for many raptor species that can prey upon pygmy rabbits. These power lines and fences are often accompanied by maintenance roads that may serve as travel corridors for predators, spread weeds, and offer access for hunters and recreationists. Power lines occur throughout occupied pygmy rabbit habitat, such as through the Big Lost Valley and INEEL lands in Idaho (Committee for the High Desert *et al.* 2003).

The petition also contends roads disrupt the dispersal capabilities of pygmy rabbits, and it provides the following information to support this claim. Bradfield (1974) suggested that pygmy rabbits were reluctant to cross open areas based on the lack of highway mortality (Gordon 1932, Sperry 1933, Smith 1943, cited in Bradfield 1974). Others (Weiss and Verts 1984; Roberts 2001) have reiterated this comment. Rauscher (1997) reported use of a subnivian (layer between snow and soil surface) tunnel that extended across a back country road near Badger Pass, Montana. Jones (1957) mentions a pygmy rabbit winter road kill in California north of Crowley Lake, Mono County. Rauscher (1997) found pygmy rabbits crossed relatively small open areas (1,500 ft (457 m)) to reach suitable habitat in Montana. Katzner and Parker (1998) report a pygmy rabbit traveling long distance (2.2 mi (3.5 km)) through open habitat likely unsuitable for long-term habitation. This suggests that fragmented populations may not be as isolated as previously suggested and has implications for recolonization of nearby areas.

Evaluation of Information in the Petition

The petition does not provide substantial information that directly relates the actual and potential impacts of power lines, fences, and roads to the significant loss of pygmy rabbits or their habitat. The information in the petition does not directly implicate that activities related to power lines, fences, and roads are threatening pygmy rabbits; the information provided is "anecdotal" and/or speculative in nature, and not comprehensive. Therefore, we conclude that the petition has not presented substantial information that power lines, fences, and roads in the sagebrush ecosystem are factors that may threaten the continued existence of the pygmy rabbit throughout all or a significant portion of their range.

Activities on Military Facilities

Military facilities occur within the range of the pygmy rabbit. The petition claims that impacts of military operations could involve direct mortality to pygmy rabbits and cause loss and degradation of sagebrush habitats. The U.S Air Force (USAF) has constructed roads and an electronic training range site and other facilities in Owyhee County, Idaho (USAF 1998, cited in Committee for the High Desert *et al.* 2003). According to the petition, one emitter site and access road is located less than 2.0 mi (3.2 km) from occupied pygmy rabbit habitat reported by Roberts (2003). These facilities increase pygmy rabbit habitat degradation and fragmentation by facilitating weed invasion and increased fire potential. Noise levels due to training exercises may also impact pygmy rabbits.

Evaluation of Information in the Petition

The petition does not provide substantial information that documents the actual loss of pygmy rabbits and their habitat by military activities, and how this may threaten the survival of the species across its range.

Recreational Activities

The petition contends that recreation, especially ORV/OHV and snowmobile use, threatens pygmy rabbit and sagebrush habitats by disturbing individuals, damaging sagebrush, damaging burrows or subnivian tunnels, increasing the spread of weeds, and increasing human presence and pets in the area. Much of the sagebrush habitat occupied by pygmy rabbits is open to recreational use. Bradfield (1974) suggested that the pygmy rabbit depends on its hearing for predator detection. and may be less active during windy periods when predator detection may be reduced. Thus, passing vehicle noise may make the pygmy rabbit more vulnerable to predation. The petition cites a BLM document indicating that a proposed OHV/ORV race in Idaho could

damage pygmy rabbit burrows (Jarbidge Field Office BLM 2003, cited in Committee for the High Desert *et al.* 2003). Austin (2002) found weed infestation highest in areas of greatest disturbance, which included ORV use areas in his Idaho study areas.

Evaluation of Information in the Petition

As presented in the petition, the information on recreational impacts is speculative. We conclude that the petition does not provide substantial information that describes how recreation activities threaten pygmy rabbits and their habitats.

Habitat Manipulations for Other Species

Connelly *et al.* (2000) recommend managing sagebrush canopy cover for sage grouse habitat at 10 to 25 percent for brood-rearing, 15 to 25 percent for breeding habitat and 10 to 30 percent for winter habitat. Pygmy rabbits, in general, prefer taller, denser sagebrush cover relative to the surrounding landscape, which can be greater than the 10 to 30 percent range (Green and Flinders 1980b; Weiss and Verts 1984) suggested for various sage grouse habitats. Reducing dense sagebrush cover to benefit sage grouse may be in conflict with the needs of pygmy rabbits.

Evaluation of Information in the Petition

While we share a concern that large scale vegetation manipulations to benefit sage grouse may negatively impact pygmy rabbit habitat, the petition does not provide substantial information to document the magnitude and extent of this concern for pygmy rabbits throughout their range.

Summary of Habitat Threats

While a variety of anthropogenic activities that affect sagebrush (*e.g.*, agriculture, grazing, mining) are occurring across the range of the pygmy rabbit, the petition does not provide substantial information that these activities, either singly or in combination with one another, are destroying or modifying pygmy rabbit habitat over all or a significant portion of the species' range. Also, with limited exceptions, the petition fails to provide scientific documentation to demonstrate that the areas where sagebrush habitat loss and degradation are occurring are also the areas where pygmy rabbit populations occur. Additionally, the petition does not provide substantial information to document what the effects of these anthropogenic changes are on pygmy rabbit population numbers across the range of the species. Based on the preceding discussion, we do not believe that substantial information is available indicating that the present or threatened destruction, modification, or curtailment of habitat or range may, either singularly or in combination with other factors, rise to the level of a threat to the continued existence of the species throughout all or a significant portion of the species' range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Hunting

The petition contends that pygmy rabbit populations at low levels could be harmed due to hunting mortality and research activities. The petition also notes the difficulty in distinguishing pygmy rabbits from other rabbit species, especially cottontails (*Sylvilagus* spp.) (Garber and Beauchaine 1993), and claims that this difficulty could lead to accidental shootings. The petition contends that road networks associated with energy, pipeline, powerline, mining, and development provide travel corridors for hunters, increasing the likelihood of pygmy rabbit mortality.

The following information from the petition summarizes potential impacts to the species from hunting. Williams (1986) stated that although hunting impacts were not known in California, he thought that hunters probably did not kill many because the species was quite secretive and rarely left dense brush. Rauscher (1997) reported pygmy rabbit hunting in southwestern Montana, but stated that hunting did not appear to be a significant mortality factor. Fisher (1979) recommended that bag limits be monitored in Idaho, especially where habitat was declining, because with the pygmy rabbit's lower reproductive potential as compared to other rabbits, fewer surplus animals may be available to hunters. Pritchett *et al.* (1987) reported that, according to locals near Loa, in Wayne County, Utah, pygmy rabbits have been "extensively hunted" along with black-tailed jackrabbits (*Lepus californicus*) and cottontails. Where he was able to access portions of his previous study area outside Cedar City, Utah, Janson (2002) found spent shotgun shells. He thought it was probable that some pygmy rabbits were shot because most hunters do not distinguish between pygmy rabbits and cottontails.

The petition also contends that shooting or poisoning likely caused pygmy rabbit population declines in the past even though jackrabbits were primarily taken. While we are aware that rabbit drives occurred (Bacon *et al.* 1959; Jackman and Long 1965), there is little documentation on the impacts to pygmy rabbits. Bacon *et al.* (1959) collected rabbits, mostly by organized drives of hunters who shot them, to gather ectoparasitic (parasite on outer surface of an animal) information on wild rabbits and rodents in eastern and central Washington between 1951 and 1956. Of the 1,040 rabbits collected, representing four species, only one was a pygmy rabbit. It is unknown if the single collection indicates pygmy rabbits are less vulnerable to drives, or if numbers were reduced in that area at the time.

Currently, only three (California, Montana, and Nevada) of the eight States where the pygmy rabbit occurs allow hunting. For those States that allow hunting of pygmy rabbits, the State Wildlife Boards of Commissioners set hunting regulations yearly. In California the hunting season extends from July 1 to the last Sunday in January with a bag limit of 5 per day and 10 in possession (Pat Lauridson, California Department of Fish and Game, pers. comm. 2005). The 2004 pygmy rabbit hunting season in Nevada opened October 9 and closed February 28 with a daily limit of 10 and a possession limit of 20 (Sandy Canning, Nevada Department of Wildlife, pers. comm. 2005). For Montana, information on hunting seasons is more limited. Based on the Montana Fish, Wildlife and Parks webpage pygmy rabbits can be hunted year round and there is no bag limit. For the three States that allow hunting of this species, harvest data are collected through hunter surveys but the various rabbit species are not distinguished from one another so the number of pygmy rabbits harvested in these States per year is not known.

Evaluation of Information in the Petition

The petition did not provide, nor are we aware of, any long-term historic or recent hunting data that would clarify past or current hunting pressure on the pygmy rabbit across its range. This includes a lack of information related to poaching and accidental shootings. The petition does not provide substantial information indicating that hunting may threaten the continued existence of the species across all or a significant portion of its range.

Research

The petition presents the following information on the threat of research activities to pygmy rabbits. Research activities on the species that involve trapping, handling, and holding them for a period of time can result in mortality from exposure, injury, trap

predation, intraspecific fighting, and capture stress (Wilde 1978; Gahr 1993; Rauscher 1997). Mortality rates reported for captured pygmy rabbits have been 3 percent (Gahr 1993), 5 percent (Wilde 1978), and 19 percent (Rauscher 1997). Investigations may also involve digging out of burrows, stepping on burrows accidentally, measuring vegetation and other site characteristics near burrows, and other general disturbance in the study area (Janson 1946; Bradfield 1974; Green 1978; Wilde 1978; Gahr 1993; Katzner 1994; Gabler 1997; Rauscher 1997). Katzner (1994) reported that all of his radio-collared rabbits (10) died. He suggested the weight of the radiocollars, and increased grooming as a result of their presence, may have increased a rabbits' vulnerability to predation.

Evaluation of Information in the Petition

While these actions can be of concern for small populations such as in Washington (66 FR 59734, 68 FR 10388), the petition did not adequately describe how conducting research activities within pygmy rabbit habitats may threaten the continued existence of the species. Therefore, we conclude that the petition does not present substantial information to indicate that conducting research activities within pygmy rabbit habitat threatens the existence of pygmy rabbits throughout all of a significant portion of their range.

C. Disease or Predation

The petition contends that disease likely poses a serious threat to remaining pygmy rabbit populations. A lack of adequate food or an increase in stress associated with altered sagebrush habitat throughout its range, could increase the species' susceptibility to disease. It also states predation may not represent a significant threat to relatively large well-distributed populations, but may have an impact on small pygmy rabbit populations in degraded habitats. The petition also mentions West Nile Virus as a growing concern for all native wildlife including pygmy rabbits. The petition cites the following information to support these claims.

Pygmy rabbits can harbor high parasite loads (Janson 1946; Wilde 1978; Gahr 1993; WDFW 1995; 66 FR 59734). These parasites include ticks, fleas, lice, and bot flies (Dice 1926; Janson 1946; Larrison 1967; Wilde 1978; Gahr 1993; Rauscher 1997), which can be vectors of disease. Reports of episodes of plague and tularemia from these vectors in populations of other leporid species indicate they often spread rapidly and can be fatal (Quan 1993, cited in 68 FR 10388). There have been no reports of severe disease epidemics occurring in pygmy rabbits (68 FR 10388). Parasites and disease have not been regarded as a major threat to pygmy rabbits (Wilde 1978; Green 1979, cited in 68 FR 10388).

Gahr (1993) found bot flies only on pygmy rabbits located in the grazed area of her study, indicating that cattle may act as a vector for spreading parasites and possibly disease. She only had two rabbits with bot flies. She commented that parasitism by bot flies is not necessarily detrimental to the rabbit, and additional study is needed to determine if cattle presence increases the incidence of ectoparasites for pygmy rabbits. Siegel (2002) and Austin (2002) also expressed concern that disease transport and transmission by domestic livestock to pygmy rabbits could be a threat. Austin (2002) raised the concern that a calicivirus, such as Rabbit Hemorrhagic Disease, could explain declines in pygmy rabbit populations and suggests additional research is needed. Janson (2002) reported that no obviously diseased pygmy rabbits were seen in his earlier work in the 1940s. He thought it may be likely that disease reduced pygmy rabbit populations periodically when they reached high densities.

Predation is the main cause of pygmy rabbit mortality (Wilde 1978; Green 1979, cited in 68 FR 10388). As discussed in the background section, pygmy rabbits have numerous predators and have adapted to their presence (Janson 1946; Gashwiler *et al.* 1960; Green 1978; Wilde 1978). The petition contends that habitats degraded by grazing and its associated facilities, or other actions can damage the structural components of the sagebrush habitat as well as increase or redistribute predators, thus increasing the pygmy rabbit's vulnerability to predation. Weiss and Verts (1984) thought that use of denser and taller sagebrush habitats by pygmy rabbits was related to predator avoidance. Katzner (1994) documented that raptors were a cause of mortality and denser sagebrush cover deterred these avian predators. The petition also includes vertical structures, such as fences and powerlines, as features providing raptor perches and possibly impacting pygmy rabbit populations, as discussed earlier. Siegel (2002) suggested that artificial livestock watering possibly increased coyote numbers in Washington.

Evaluation of Information in the Petition

Disease and predation may be significant threat factors to small pygmy rabbit populations. Habitat degradation and fragmentation may increase the effects of disease, parasites, and predation on some populations. However, the petition does not adequately describe how the species' continued survival over all or a significant portion of its range is threatened by disease and predation. The information presented indicates that these potential threats have not been evaluated, and that further research is needed to determine actual impacts to pygmy rabbits. Thus the petition does not provide substantial information to indicate that disease or predation may threaten pygmy rabbits over all or a significant portion of its range.

D. Inadequacy of Existing Regulatory Mechanisms

The petition contends that State and Federal agencies have failed to conduct monitoring for the species in most of its range and to protect it from numerous direct and indirect impacts associated with livestock grazing, prescribed and wild fires, energy exploration and development, vegetation manipulation, weed invasion, roads, and OHV/ORV proliferation (see Factor A). The petition contends that mechanisms to regulate and control these various activities have failed to prevent harm to pygmy rabbit habitat in a significant portion of its range. The petition cites the following information to support these claims.

A large portion of pygmy rabbit habitat occurs on BLM lands. BLM has designated the pygmy rabbit as a special status species/bureau assessment species in five of the seven States in which it occurs (Idaho, Montana, Nevada, Oregon, and Wyoming). Special status species management is discussed in BLM's 6840 Manual, "Special Status Species Management" (BLM 2001b). This manual provides agency policy and guidance for the conservation of special status plants and animals and the ecosystems on which they depend, but it is not a regulatory document. Currently, there are no regulations requiring BLM land use plans to address the conservation needs of special status species (BLM 2003).

According to the petition, the U.S. Forest Service (USFS) does not include the pygmy rabbit as a Management Indicator Species in any of the States where the pygmy rabbit occurs (Committee for the High Desert *et al.* 2003) on USFS lands. Pygmy rabbit habitat also occurs on lands managed by other Federal agencies such as the Service and National Park Service.

Currently, hunting of pygmy rabbits is allowed in three of the eight States within the species' range (Committee for the High Desert *et al.* 2003). Hunting of pygmy rabbits is not allowed in Idaho

or Wyoming, where they are considered a species of special concern, or in Utah where they are considered a sensitive species. Hunting is also not allowed in Oregon, where the pygmy rabbit is protected from take. In Montana, the pygmy rabbit is also considered a species of concern, but there is no protection from take. According to the petition, Wyoming is the only state that has a management plan for the pygmy rabbit (Committee for the High Desert *et al.* 2003). In Washington, the pygmy rabbit was listed as threatened in 1990 by the Washington Wildlife Commission (Commission). In 1993, the Commission reclassified the species as endangered (WDFW 1995). A recovery plan for the species was completed in 1995, and an addendum to the plan was prepared in 2001 (WDFW 1995, 2001).

Evaluation of Information in the Petition

Based on the information in the petition, the primary concern expressed by the petitioners regarding the inadequacy of existing regulatory mechanisms is related to pygmy rabbit habitat conservation. Sagebrush habitat degradation and loss, discussed under Factor A, is due mostly to human activities as opposed to natural events. However, the petition does not provide substantial scientific information that quantifies impacts to pygmy rabbit habitat rangewide, or the level of significance of these threats to pygmy rabbit populations. Thus, we conclude that the petition does not present substantial information to indicate that pygmy rabbits are threatened by the inadequacy of existing regulatory mechanisms across all or a significant portion of its range.

E. Other Natural or Manmade Factors Affecting the Species Continued Existence

The petition contends that several other factors, not discussed above, negatively impact pygmy rabbit populations. These include: intra- and interspecific competition, habitat fragmentation, natural stochastic (random) events such as floods and drought; mortality caused by collisions with OHV/ORV, snowmobiles, and automobiles; and life history traits. The petitioners are also concerned that habitat manipulations taken to benefit sage grouse may negatively impact pygmy rabbit. Lastly, the petition claims that predator control to benefit livestock may have a negative impact on pygmy rabbits.

The petition suggests that because pygmy rabbits are extreme habitat specialists, intraspecific competition among individuals may be exacerbated under environmental stress such as drought. The petition also contends interspecific competition with other herbivores for sagebrush such as jackrabbits (Wilde 1978), pronghorn, and mule deer, could occur. Large populations of jackrabbits from past decades are likely gone, but as sagebrush is reduced across the range, they may compete with pygmy rabbits at lower population levels. Conde (1982) compared pygmy rabbit and black-tailed jackrabbit use in sagebrush-greasewood habitat in Cassia County, Idaho. She found in summer that pygmy rabbits selected areas with abundant grass while jackrabbits selected areas with abundant forbs. During the fall-winter period, shrubs played an important role for both species, but pygmy rabbits fed on sagebrush leaves and young stems (Johnson 1979, cited in Conde 1982) and jackrabbits on 2-year old woody stems (Currie and Goodwin 1966, cited in Conde 1982). Spatial distribution and exploitation of different vegetation in the summer allow a sympatric relationship to occur between these two species (Conde 1982).

Siegel (2002) at Sagebrush Flat, Washington, found cottontails inhabited burrows dug by pygmy rabbits, but it is unclear if cottontails were displacing pygmy rabbits. Cottontails may use burrows after they are abandoned by pygmy rabbits, because 60 percent of the burrows used by cottontails had not shown pygmy rabbit use on the date the burrow was last checked. Siegel (2002) found pygmy rabbits reused burrows in summer that had been occupied by cottontails the previous winter.

Grazing competition with livestock will depend on the range conditions and grazing practices that vary across the range of the pygmy rabbit. At Sagebrush Flat, Washington, Siegel (2002) determined that livestock grazing seasonally reduced the quantity of preferred vegetation by pygmy rabbits as well as reduced the nutritional quality of the forage. By spring, fewer differences were noted, likely reflecting the new spring growth. Other impacts of cattle grazing in pygmy rabbit habitat have been previously discussed under Factor A. In Montana, there is spatial overlap between big game winter range, other sagebrush winter ranges, and the range of pygmy rabbits. Hence, interspecific competition may result (Janson 2002). No substantial scientific information regarding the effects of intra- and interspecific competition on pygmy rabbits has been provided.

The petition identifies habitat fragmentation as a threat to pygmy rabbits as it results in small, isolated populations surrounded by vast areas of inhospitable lands (Austin 2002; White and Bartels 2002; Roberts 2003). Habitat fragmentation can influence size, stability, and success of pygmy rabbit populations because of their low dispersal capabilities (Katzner and Parker 1997). Bartels (2003) suggested that pygmy rabbit distribution may be more fragmented than previously thought due to the limited availability of suitable habitat and their absence from large areas of sagebrush. Bartels (2003) suggested other disturbances, such as habitat fragmentation, seeding after wildfires, improper range improvements, sagebrush removal, development, agriculture, sagebrush diseases, and floods, are all contributing factors.

The petition claims that because most of the remaining pygmy rabbit populations are small, they are vulnerable to environmental and demographic stochasticity. Natural stochastic events can significantly impact local populations if they result in high mortality, habitat loss, or little or no possibility of recolonization. They are most significant for small or fragmented populations. Small, isolated populations are also at a greater risk to the deleterious effects of demographic and genetic problems (Schaffer 1981). The petition cites a concern with flooding which may cause burrow abandonment, mortality, and erosion of deep soils. Pygmy rabbits are known to use deeper soils found along drainages for burrows (Flath and Rauscher 1995). Bartels and Hays (2001) state that historic pygmy rabbit habitat was lost in Oregon and Idaho due to flooding. White and Bartels (2002) reported that uncontrolled floods at the Sagebrush Flat site in Washington were a major reason for loss of individuals during 1996 to 1997. Bartels (2003) mentions a large flood event in pygmy rabbit habitat in the Harney Basin, Oregon, in 1984. Natural stochastic events have not been reported as types of events that have played a significant role in population abundance and/or trends for the pygmy rabbit range wide, nor did the petition provide substantial scientific information that current pygmy rabbit populations are small or isolated.

Because the pygmy rabbit is a habitat specialist, and its climax-type habitat is highly fragmented and occurs across the landscape, the petition contends the species' life history traits could affect population viability. Pygmy rabbits have small home ranges, are not evenly distributed across the species' range, and appear to have poor dispersal and low reproduction capabilities. Pygmy rabbits do not respond to abundant spring food supply by producing

additional litters like other rabbits (Wilde 1978). These factors may explain the slow recolonization of vacated habitat even under normal conditions (Heady *et al.* 2001). However, though the pygmy rabbit is a habitat specialist, the petition does not present substantial information on how the pygmy rabbit's natural history characteristics have limited the species across its range.

Lastly, the petition does not provide supporting documentation that supports the claim that predator control for livestock benefits increases predation on pygmy rabbits.

Based on the foregoing discussion, we do not believe that the petition has presented substantial scientific information to indicate that natural or manmade factors threaten the continued existence of pygmy rabbits throughout all or a significant portion of the species' range.

Finding

We have reviewed the petition and literature cited in the petition, and evaluated that information in relation to other pertinent literature and information available in our files. After this review and evaluation, we find the petition does not present substantial information to indicate that listing the pygmy rabbit may be warranted at this time. Although we will not be commencing a status review in response to this petition, we will continue to monitor the species' population status and trends, potential threats, and ongoing management actions that might be important with regard to the conservation of the pygmy rabbit across its range. We encourage interested parties to continue to gather data that will assist with the conservation of the species. If you wish to provide information regarding the pygmy rabbit, you may submit your information or materials to the Field Supervisor, Nevada Fish and Wildlife Office (*see* **ADDRESSES** section above).

References Cited

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

Author

The primary author of this notice is Marcy Haworth, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (*see* **ADDRESSES**).

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 12, 2005.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 05–10056 Filed 5–19–05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050510127–5127–01; I.D. 050305D]

RIN 0648–AS35

Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery; Framework Adjustment 1 to the Atlantic Deep-Sea Red Crab Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Framework Adjustment 1 to the Atlantic Deep-Sea Red Crab (Red Crab) Fishery Management Plan (FMP). This proposed rule would modify the existing annual review and specification process to allow specifications to be set for up to a 3–year timeframe. The proposed action would allocate for fishing year (FY) 2006 and FY2007 the current (FY2005) target total allowable catch (TAC) and fleet days-at-sea (DAS) of 5.928 million lb (2.69 million kg) and 780 fleet DAS, respectively. The primary purpose of this proposed action is to conserve and manage the red crab resource, reduce the staff resources necessary to effectively manage this fishery by reducing the frequency with which Stock Evaluation and Fishery Evaluation (SAFE) Reports, specification packages, and rule-making documents need to be prepared and processed, and provide consistency and predictability to the industry.

DATES: Comments must be received (see **ADDRESSES**) on or before 5 p.m., local time, on June 20, 2005.

ADDRESSES: Written comments on the proposed framework adjustment may be submitted by any of the following methods:

- E-mail: *RC2005@noaa.gov*. Include in the subject line the following identifier: "Comments on Fr Adj 1 to the Red Crab FMP."
- Federal e-Rulemaking portal: *http://www.regulations.gov*.
- Mail: Comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester MA 01930. Mark the outside of the envelope: "Comments on Fr Adj 1 to the Red Crab FMP."
- Fax: (978) 281–9135.

Copies of supporting documents, including the Environmental Assessment (EA), Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA), are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The EA/RIR/IRFA is also accessible via the Internet at *http://www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, (978) 281–9272.

SUPPLEMENTARY INFORMATION:

Background

The Red Crab FMP was implemented on October 21, 2002. Regulations implementing the Red Crab FMP require the New England Fishery Management Council (Council) to review annually the red crab specifications. The Council's Red Crab Plan Development Team (PDT) meets at least annually to review the status of the stock and the fishery. Based on this review, the PDT reports to the Council's Red Crab Committee any necessary adjustments to the management measures and recommendations for the specifications. Specifications may include the specification of optimum yield (OY), the setting of a target TAC, allocation of DAS, and/or adjustments to trip/possession limits. In developing the management measures and recommendations for the annual specifications, the PDT reviews the following data, if available: Commercial catch data; current estimates of fishing mortality and catch-per-unit-effort; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling, port sampling, and survey data or, if sea sampling data are unavailable, length frequency information from port sampling and/or surveys; impact of other fisheries on the mortality of red crabs; and any other relevant information. The regulations also require the Council to prepare a biennial SAFE Report. Recommended specifications are subsequently presented to the Council for adoption and recommendation to NMFS.

This process has proven to be administratively burdensome given that

the overall specifications have not changed since the FMP was implemented.

Proposed Action

This action includes two basic determinations by the Council. First, the Council decided that the annual review and specification process should be modified (Decision 1). Second, since the Council elected to modify the annual review and specification process, it determined the proposed specifications for FY2006 and FY2007 (Decision 2).

Multi-year Specifications

This proposed rule would establish multi-year specifications. Three years was identified as an appropriate length of time to reduce the administrative burden associated with an annual review cycle without increasing the risk of over-harvesting the red crab resource. The appropriate environmental and regulatory reviews required under the Magnuson-Stevens Fishery Conservation and Magnuson Act (Magnuson-Stevens Act), the National Environmental Policy Act (NEPA), and other applicable laws would be completed during the year in which 3–year specifications are set. The Red Crab PDT would accomplish an updated SAFE Report every 3 years, as well as recommend specifications for the following 3 fishing years, provided that it continues to undertake an annual evaluation of the red crab stock and fishery status. The PDT would not evaluate other aspects of the fishery every year, but would concentrate on the most recent fishery-dependent information including, but not limited to, DAS used and red crab landings. More comprehensive analyses would be conducted in the SAFE Report every 3 years. The Council would retain the flexibility to set specifications for less than 3 years based on new information and/or recommendations from the PDT.

Multi-year specifications would provide the industry with greater regulatory consistency and predictability and would simplify the overall process by reducing the frequency of Council decision-making and NMFS rulemaking. However, the maximum 3–year specification process would not curtail the Council from setting specifications during the interim years if information obtained during the annual review indicates that the red crab specifications warrant a change, e.g., to comply fully with the Magnuson-Stevens Act.

This action, which is primarily administrative in terms of the frequency with which specifications are set, would not be expected to have any substantial direct social or economic impact on the red crab fishery. All potential impacts on the resources associated with this fishery would derive from the additional level of risk to these resources that could occur if the specifications were set at too high a level. If specifications were set too high, then there could be a greater risk of overfishing. However, the annual review required under the proposed action would reduce the risk of specifications being set at an inappropriate level.

FY2006 and FY2007 Specifications

The proposed action would maintain, for FY2006 and FY2007, the current (FY2005) TAC and fleet DAS of 5.928 million lb (2.69 million kg) and 780 fleet DAS, respectively. Because the fleet, which is small and closely-managed, has neither exceeded the TAC nor used all its allocated DAS since implementation of the FMP, its landings would not be expected to exceed predicted amounts.

The Council previously decided to recommend maintaining the status quo specifications for FY2005, which maintained the same TAC and DAS allocation as implemented in FY2003 and FY2004. The impact of maintaining these specifications would not be expected to negatively impact the resource in FY2006 and FY2007, provided there are no major unforeseen environmental changes that cause the red crab resource to dramatically decrease or increase. Further, the measures implemented under the FMP are expected to continue to protect the resource from overexploitation and maintain a sustainable fishery. Because this action proposes to maintain the status quo, it would be expected to have the same effect.

The only measure evaluated in this action that could vary from the impacts already assessed in the FMP would be DAS limits. The FMP describes that singularly, DAS allocation is unlikely to have any direct effects on the red crab resource. However, because there are only a certain number of vessels that participate in the directed red crab fishery, the amount of red crab harvested is constrained. Therefore, by limiting the amount of time a red crab vessel may harvest red crab, the DAS program is the principal fishing effort control program.

Because the FMP is managed under a target TAC, rather than a hard TAC, there is no guarantee that the fishery will not exceed the quota; however, the DAS management program implemented under the FMP was designed to manage the red crab resource at a level that produces the maximum sustainable yield, while harvesting the target TAC. Therefore, if DAS are adjusted, the level of red crab harvest would be expected to adjust accordingly, assuming a constant harvest rate. For example, under the proposed alternative 780 DAS would be allocated compared to 741 DAS as considered under another of the alternatives. If a constant harvest rate is assumed, then the subject non-preferred alternative would result in an approximate 5 percent decrease in red crab landings, relative to the proposed alternative. Therefore, the difference between the alternatives in terms of biological impacts is very small.

In terms of the biological impacts on other non-target species and the ecosystem, based on analysis in the FMP/EIS, it is unlikely that any of the alternatives in the EA/RIR/IRFA would have an impact. There is very little known about the interactions of the deep-sea red crab with other species and their associated communities. The FMP explains that initial reports from industry members indicate that there is very little, if any, bycatch of other species in the directed red crab fishery. According to the recent SAFE Report (October 2004), there are no records of observed red crab trips in the observer database, and the trips that are recorded in the Vessel Trip Report (VTR) database have very little bycatch information. The FMP did identify that the bycatch of red crab in other fisheries may be a more significant issue. Section 3.1.2.1 of the SAFE Report describes the bycatch of red crab in other fisheries from the data available. There is some anecdotal information that there may be considerable bycatch of red crab in the offshore monkfish fishery, but there are not sufficient data to conclude that red crab bycatch is a significant concern for that fishery at this time.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, which has been adopted by NMFS and that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the reasons why this action is being considered, and the objectives of and legal basis for this action are contained at the beginning of this section in the preamble. There are no new recordkeeping or reporting requirements proposed in this rule. It would not duplicate, overlap, or conflict with any other Federal rules. All of the affected

vessels are considered small entities under the standards described by the Small Business Administration because they have annual returns (revenues) that do not exceed $3.5 million annually and, therefore, there are no disproportionate impacts between large and small entities. A summary of the analysis follows:

As stated in the preamble, this action includes two basic decisions of the Council. First, the Council determined whether the annual review and specification process should be modified (Decision 1), as opposed to the No Action alternative, which, if selected, would maintain the status quo and require that specifications be set annually. Since the Council elected to modify the annual review and specification process, it then decided to propose the specifications for FY2006 and FY2007 (Decision 2).

Decision 1 of the proposed action, which deals primarily with the 3–year review and specification cycle for the alternatives considered, has two options. Option 1 would not require an annual review of the status of the red crab resource and fishery, while Option 2 (the proposed action) would require such review.

Decision 1 of the proposed action would not be expected to have a direct economic impact on the four active vessels in the fishery and/or associated businesses and port communities.

Multi-year specifications could improve business planning for the red crab industry. For example, vessel owners and processors could plan better when they know their minimum individual DAS allocation several years in advance. The single red crab processor involved in the red crab industry explained that multi-year specifications could improve its ability to sell red crab. Because there is only one processor in this fishery, if the TAC and fleet DAS are specified for several years, instead of only one, buyers could have more confidence in the supply of this product. Red crab vessels, in general, have lower crew turnover than in most other fisheries. The improved business planning that could occur under multi-year specifications could have indirect benefits to crew members as well, offering more confidence in the future of the industry.

Decision 2 of the proposed action, which deals with the specifications for FY2006 and FY2007, originally identified three alternatives. Two of these essentially became the same alternative so that the remaining two are considered in the economic analysis. The preferred alternative would maintain the same TAC (5.928 million lb/2.69 million kg) and fleet DAS allocation (780) as proposed under the FMP in FY2004 and FY2005. The non-preferred alternative would continue the same TAC but would allocate a total fleet DAS allocation 5 percent less than the DAS allocation proposed for FY2005. This allocation would be the same for FY2006 and FY2007. Therefore, under the non-preferred alternative, the DAS allocation for both fishing years would be 741. A complete description and discussion of the alternatives may be seen in Section 5.0 of the EA/RIR/IRFA.

The continuing requirement that a vessel must declare its intent to participate in the fishery 6 months prior to the start of the next FY means that, because of the small number of vessels in the fishery, each vessel's participation has a large impact on the appropriate number of DAS that the fleet could utilize in catching the target TAC. The advance knowledge and planning for efficient harvest have economic benefits from harvesting to processing to marketing.

Given the proposed action of 780 fleet DAS for FY2006 and FY2007, the economic impacts would not be expected to differ from those identified in the FMP or from the FY2005 specifications. If one vessel continues to opt out of the fishery, as one did in FY2004 and FY2005, the four remaining vessels would receive more individual DAS than originally allocated under the FMP. Therefore, the economic impacts of this action would be expected to be positive for the vessels declaring their intent to remain in the fishery, assuming they utilize the additional individual DAS awarded, as compared to the DAS allocated to each vessel under the FMP.

There would be no adverse impacts associated with a fleet allocation of 780 DAS. Since the implementation of the FMP, the fleet has not utilized its full allocation, so that no barriers have existed to prevent vessels from increasing their landings and revenue. The potential exists for vessels to increase their profitability over and above that which existed under the FMP.

Aside from the number of DAS that each vessel would be allocated, there are other recent developments that could alter the efficiency of the industry. During 2004, all vessels began landing in Fall River, Massachusetts, and the processor reported that though it is more convenient, overall costs are probably the same. Generally, the processor sends one or two trucks to Fall River to pick up the red crab product after each trip. Since implementation of the FMP, the processor has worked with the industry and its clients to reduce costs. For example, it has developed a creative way to change the packing of red crab, which has reduced costs and enabled the processor to pay the vessels approximately 10 cents more per lb.

Industry reported that fishing costs have increased during the past FY. Fuel- and oil-based products are more expensive, and insurance rates have increased by about 50 percent. These increases have been somewhat offset by an increase in price paid for red crab. The average price is about 10 cents per lb higher this FY than in 2003. Vessel owners reported that they are receiving about 94 cents per lb for red crab (whole and butchered product) versus approximately 84 cents per lb during FY2003.

It is not possible to quantify the net benefits of each of the alternatives, but it is possible to determine the comparable net benefits of each of these two alternatives. The most important issue with which to evaluate the alternatives is the number of DAS allocated to limited access vessels. The higher number of DAS of 780 (Alternative 2.1) would allow the industry the potential to generate greater economic benefits than the alternative of 741 DAS (Alternative 2.3).

Costs are expected to continue to increase in FY2006 and FY2007, as has been the pattern in the past. The industry has managed to adjust to changing cost conditions in the past, and adjustments are expected to continue. The close relationship between the harvest sector and the processing sector contributes to the industry's ability to adjust to changing price structures. Employment is not expected to be affected by the alternative selected.

The analysis in the IRFA indicates that there are no significant alternatives considered that would increase economic benefits relative to the proposed alternative in this proposed rule. This action is not expected to alter the fishing practices of the four vessels participating in the fishery. Thus, this action is not expected to have a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 16, 2005.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. Section 648.260 is amended by revising the section heading and paragraphs (a) introductory text, (b) introductory text, and (b)(1) to read as follows:

§ 648.260 Specifications.

(a) *Process for setting specifications.* The Council's Red Crab Plan Development Team (PDT) will prepare a Stock Evaluation and Assessment (SAFE) Report at least every 3 years. Upon completion of, and based on, the SAFE Report, the PDT will develop and present to the Council recommended specifications for up to 3 fishing years. The PDT will meet at least once annually during the intervening years to review the status of the stock and the fishery. Based on such review, the PDT will provide a brief report to the Council on any changes or new information about the red crab stock and/or fishery, and it will recommend whether the specifications for the upcoming years need to be modified. The annual review will be limited in scope and will concentrate on the most recent fishery-dependent information including, but not limited to, days-at-sea (DAS) used and red crab landings. In the event that the PDT recommends an adjustment to the specifications, the PDT will prepare a supplemental specifications package for a specific time duration up to 3 years. Specifications include the specification of OY, the setting of any target TACs, allocation of DAS, and/or adjustments to trip/possession limits.

* * * * *

(b) *Development of specifications.* In developing the management measures and specifications, the PDT will review the following data, if available: Commercial catch data; current estimates of fishing mortality and catch-per-unit-effort (CPUE); stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling, port sampling, and survey data or, if sea sampling data are unavailable, length frequency information from port sampling and/or surveys; impact of other fisheries on the mortality of red crabs; and any other relevant information.

(1) The Red Crab PDT, after its review of the available information on the status of the stock and the fishery, may recommend to the Council any measures necessary to assure that the specifications will not be exceeded, as well as changes to the appropriate specifications.

* * * * *

[FR Doc. 05–10130 Filed 5–19–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 70, No. 97
Friday, May 20, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 05–002–1]

Interstate Movement of Garbage From Hawaii; Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment relative to a request to allow the interstate movement of garbage from Hawaii. The document contains a general assessment of the potential environmental effects associated with moving garbage interstate from Hawaii to the mainland United States subject to certain pest risk mitigation measures. The environmental assessment documents our review and analysis of environmental impacts associated with, and alternatives to, the proposed action. We are making this environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before June 20, 2005.

ADDRESSES: You may submit comments by either of the following methods:

- EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 05–002–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 05–002–1.

Reading Room: You may read any comments that we receive on the environmental assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Dublinski, Import Specialist, Permits, Registrations, and Imports, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1236; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The importation and interstate movement of garbage is regulated by the Animal and Plant Health Inspection Service (APHIS) under 7 CFR 330.400 and 9 CFR 94.5 (referred to below as the regulations) in order to protect against the introduction into and dissemination within the United States of plant and animal pests and diseases.

APHIS is advising the public that we have prepared an environmental assessment relative to a request to allow the interstate movement of garbage from Hawaii to the mainland United States. The environmental assessment, titled "Movement of Plastic-Baled Municipal Solid Waste from Hawaii to the Continental United States (May 2005)" examines the potential environmental effects associated with moving garbage interstate from Hawaii to the continental United States subject to certain pest risk mitigation measures. The environmental assessment documents our review and analysis of environmental impacts associated with, and alternatives to, the proposed action. We are making this environmental assessment available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The environmental assessment may be viewed on the Internet on the EDOCKET Web site (see **ADDRESSES** above for instructions for accessing EDOCKET) or on the APHIS Web site at *http://www.aphis.usda.gov/ppq/enviro_docs/index.html*. You may request paper copies of the environmental assessment by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the environmental assessment when requesting copies. The environmental assessment is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

The environmental assessment has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 16th day of May 2005.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–10101 Filed 5–19–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 05–015–2]

National Animal Identification System; Draft Strategic Plan and Draft Program Standards

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability; extension of comment period.

SUMMARY: We are extending the comment period for our notice of

availability of a Draft Strategic Plan and a Draft Program Standards document for the National Animal Identification System. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before July 6, 2005.

ADDRESSES: You may submit comments by either of the following methods:

- EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 05–015–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 05–015–1.

Reading Room: You may read any comments that we receive on Docket No. 05–015–1 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Neil Hammerschmidt, Animal Identification Officer, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–5571; or Dr. John F. Wiemers, National Animal Identification Staff, VS, APHIS, 2100 S. Lake Storey Road, Galesburg, IL 61401; (309) 344–1942.

SUPPLEMENTARY INFORMATION: On May 6, 2005, we published in the **Federal Register** (70 FR 23961–23963, Docket No. 05–015–1) a notice advising the public that a Draft Strategic Plan and a Draft Program Standards document for the National Animal Identification System (NAIS) were available for public comment and review. The Draft Strategic Plan describes the process of developing the NAIS, in particular the timeline for full implementation, while the Draft Program Standards document presents our current view of how the system would work when fully implemented.

The notice of availability also included questions intended to solicit comments on various aspects of the two documents on which we were particularly interested in receiving feedback from the public. In the notice, we solicited comments for 30 days, ending June 6, 2005.

In this document, we are extending the comment period for Docket No. 05–015–1 for an additional 30 days, until July 6, 2005. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 17th day of May 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–10102 Filed 5–19–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Waivers Under Section 6(o) of the Food Stamp Act

AGENCY: Food and Nutrition Service.

ACTION: Notice.

SUMMARY: In accordance with Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. Section 6(o) of the Food Stamp Act of 1977, as amended by Section 824 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, establishes a time limit for the receipt of food stamp benefits for certain able-bodied adults who are not working. The provision authorizes the Secretary of Agriculture, upon a State agency's request, to waive the provision for any group of individuals if the Secretary determines "that the area in which the individuals reside has an unemployment rate of over 10 percent, or does not have a sufficient number of jobs to provide employment for the individuals." As required in the statute, in order to receive a waiver the State agency must submit sufficient supporting information so that the United States Department of Agriculture (USDA) can make the required determination as to the area's unemployment rate or sufficiency of available jobs. This collection of information is therefore necessary in order to obtain waivers of the food stamp time limit.

DATES: Written comments must be received on or before July 19, 2005.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Patrick Waldron, Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. Comments may also be faxed to the attention of Mr. Waldron at (703) 305–2486. The Internet address is: *Patrick.Waldron@fns.usda.gov.* All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, 22302, Room 812.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Mr. Waldron at (703) 305–2495.

SUPPLEMENTARY INFORMATION:

Title: Waiver Guidance for Food Stamp Time Limits.

OMB Number: 0584–0479.

Form Number: N/A.

Expiration Date: 8/31/05.

Type of Request: Revision of a previously approved collection.

Abstract: Section 824 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. 104–193, 110 Stat. 2323 amended Section 6(o) of the Food

Stamp Act of 1977 (7 U.S.C. 2015(o)) to establish a time limit for the receipt of food stamp benefits for certain able-bodied adults who are not working. The provision authorizes the Secretary of Agriculture, upon a State agency's request, to waive the provision for any group of individuals if the Secretary determines "that the area in which the individuals reside has an unemployment rate of over 10 percent, or does not have a sufficient number of jobs to provide employment for the individuals." As required in the statute, in order to receive a waiver the State agency must submit sufficient supporting information so that USDA can make the required determination as to the area's unemployment rate or sufficiency of available jobs. This collection of information is therefore necessary in order to obtain waivers of the food stamp time limit. During the last three years, the Food and Nutrition Service (FNS) has received on average 48 requests for waivers from an average of 45 State agencies. Each request submitted by a State agency to exempt individuals residing in specified areas is considered by FNS to be a separate request, since the requested exemptions may be based on different criteria, are submitted at different times, and require separate analysis. Although State agencies have submitted significantly fewer multiple requests since the last time that this reporting burden was extended, in order to ensure that all areas that potentially qualify for exemptions are included in their waiver requests, State agencies are employing a more sophisticated analysis covering multiple timeframes and multi-county geographical and labor market areas, requiring more time for the preparation and evaluation of each request. In addition, the number of State agencies requesting waivers has risen from an annual average of 40 to an annual average of 45. Since these waivers must be renewed on an annual basis and new ones may be submitted to reflect changing labor market conditions, FNS anticipates receipt of approximately the same number of waiver requests every year.

Affected Public: State and local governments.

Estimated Number of Respondents: 45.

Estimated Number of Responses: 48.

Estimated Number of Responses per Respondent: 1.1.

Estimated Time per Response: 35 hours.

Estimated Total Burden: 1680 hours.

Dated: May 13, 2005.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 05–10051 Filed 5–19–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Chequamegon-Nicolet National Forest, WS; Fishbone Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service, Chequamegon-Nicolet National Forest, Washburn, Ranger District intends to prepare an environmental impact statement (EIS) to disclose the environmental consequences of the "Fishbone Project" vegetation management proposal. In the EIS the Forest Service will address the potential environmental impacts associated with timber harvest (including clearcut harvest with reserve trees, shelterwood, and thinning), restoring small, open areas and "pocket barrens" as a component of the overall landscape, and providing a safe road system that meets the long term transportation needs. The Fishbone Project Area is approximately 22,000 acres in size and is located approximately 6 miles east of Iron River, Wisconsin.

DATES: Comments concerning the scope of the analysis should be received by June 15, 2005 to receive timely consideration in the preparation of the draft EIS. The draft environmental impact statement is expected by Janaury, 2006, and the final environmental impact statement is expected by April, 2006.

ADDRESSES: Send written comments to the responsible official care of: Jennifer Maziasz, Project Leader; Chequamegon-Nicolet National Forest, Washburn Ranger District; P.O. Box 578, Washburn, WI 54891. Send electronic comments to: *comments-eastern-chequamegon-nicolet-washburn@fs.fed.us.* See **SUPPLEMENTARY INFORMATION** section for information on how to send electronic comments.

FOR FURTHER INFORMATION CONTACT: Jennifer Maziasz, Project Leader, Chequamegon-Nicolet National Forest, Washburn Ranger District, USDA Forest Service; telephone: 715–373–2667. See address above under **ADDRESSES.** Copies of the documents may also be requested at the same address. Another means of obtaining the information is to visit the Forest Web page at *http://www.fs.fed.us/r9/cnnf/* click on "Natural Resources", then "Fishbone Project".

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action: The purpose and need for the project is to: (1) Restore forest health and improve the economic value in older, decadent, and/or diseased oak and aspen stands by promoting younger growth, reducing competition, improving crown condition, or increasing species diversity, (2) Improve the vigor, health, and future economic value of red pine plantations by reducing tree competition, (3) Restore small, open areas and "pocket barrens" as a component of the overall landscape, (4) Provide an efficient and safe road system that meets the long term transportation needs, and (5) Provide timber to meet local and/or regional demands for wood products.

Proposed Action: The proposed project consists of approximately 5,200 acres of forest management activities. Briefly, the objectives of the proposal are to maintain and enhance the forest health and vigor of trees within the project area while providing a variety of wood products; and, to restore and improve various aspects of the terrestrial ecosystem and transportation system. A brief summary of the proposed activities follows: (1) Clearcut (with reserve trees) 1,500 acres, (2) thin 2,100 acres, (3) shelterwood harvest 1,600 acres, (4) maintain 50 acres of wildlife openings by brushing and/or prescribed burning, (5) restore 200 acres of "pocket barrens" by thinning and/or prescribed burning (pocket barrens are small areas of rare plant communities dominated by grass, low shrubs, small trees, and scatttered large trees), and (6) manage for an efficient road system. Road activities would construct 6 miles of new permanent roads and 4 miles of temporary roads to facilitate timber harvest. In addition, 35 miles of roads that the Forest Service has determined is not needed for the long term management would be decommissioned.

Responsible Official: Anne Archie, Forest Supervisor; Chequamegon-Nicolet National Forest, 1170 4th Avenue South, Park Falls, WI 54552.

Nature of Decision To Be Made: The decision will be limited to answering the following three questions based on the environmental analysis: (1) What actions would be used to address the purpose and need, (2) where and when these actions would occur, and (3) what mitigation measures and monitoring requirements will be required.

Scoping Process: The Chequamegon-Nicolet National Forest plans to scope

for information by contacting persons and organizations on the District's mailing list, by publishing a notice the local newspapers, and by posting flyers at key locations within and nearby the Fishbone project area. No public meetings are planned at this time.

Electronic Access to Information: Information is available electronically on the Forest Web page: *http://www.fs.fed.us/r9/cnnf/*—click on "Natural Resources", then "Fishbone Project". Send electronic comments to: *comments-eastern-chequamegon-nicolet-washburn@fs.fed.us.* When sending electronic comments, please reference the Fishbone Project in the subject line. In addition, include your name and address.

Comment Requested: This notice of intent initiates the scoping proces which guides the development of the environmental impact statement. Although comments are welcome throughout the analysis process, your comments would be most useful if received by June 15, 2005. Everyone who provides comments will be periodically updated during the course of the Fishbone Project regarding its development, as well as receive a copy of the Draft Environmental Impact Statement in order to review the results of our analysis.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: May 10, 2005.

Anne F. Archie,

Forest Supervisor, Chequamegon-Nicolet National Forest.

[FR Doc. 05–10078 Filed 5–19–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Humboldt-Toiyabe National Forest; California and Nevada; Great Basin South Rangeland Project Analysis

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Bridgeport Ranger District, Humboldt-Toiyabe National Forest will prepare an environmental impact statement (EIS) on a proposal to authorize continued livestock grazing on National Forest System lands east of Bridgeport, California. The project area is located in portions of Mineral and Lyon counties, Nevada, and portions of Mono County, California. The analysis will determine if a change in management direction for livestock grazing is needed to move existing resource conditions towards desired conditions. The Conway, East Walker, Huntoon, Larkin Lake, Masonic, Aurora, Nine Mile, Powell Mountain, Rough Creek, Whiskey Flat, and Wild Horse Allotments would continue to have authorized grazing. Squaw Creek Allotment would continue to be vacant.

DATES: Comments concerning the scope of the analysis must be received within 30 days from the date this notice is published in the **Federal Register**. The draft environmental impact statement is expected in September, 2005 and the final environmental impact statement is expected in December, 2005.

ADDRESSES: Send written comments to District Ranger, Bridgeport Ranger District, HCR 1 Box 1000, Bridgeport, California 93517.

FOR FURTHER INFORMATION CONTACT: Dave Loomis, Project Manager, Carson Ranger District, 1536 S. Carson Street, Carson City, Nevada 89701.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

There is a need to maintain or improve the overall health of the rangeland in the project area. The purpose of this project is to determine the management direction for livestock grazing needed to move existing resource conditions within the project area towards desired conditions.

Proposed Action

The Bridgeport Ranger District, Humboldt-Toiyabe National Forest, is proposing to authorize continued cattle grazing on the 410,000 acre Great Basin South area under updated grazing management direction in order to move existing rangeland resource conditions within the project area toward desired condition. The updated direction will be incorporated in attendant grazing permits and allotment management plans to guide grazing management within the project area during the coming decade, or until amendments are warranted based on changed condition.

Possible Alternatives

In addition to the proposed action, two additional alternatives have been tentatively identified for analysis in the EIS:

1. *No Action Alternative:* Continue current grazing management.

2. *No Grazing Alternative:* Do not issue new grazing permits when existing permits expire.

Responsible Official

Forest Supervisor, Humboldt-Toiyabe National Forest, 1200 Franklin Way, Sparks, NV 89431.

Nature of Decision To Be Made

Based on the environmental analysis in the EIS, the Forest Supervisor will decide whether or not to continue grazing on the allotments within the Great Basin South Project area in accordance with the standards in the proposed action or as modified by additional mitigation measures and monitoring requirements.

Scoping Process

The Forest Service will mail information to interested parties. Public involvement will be ongoing throughout the analysis process and at certain times public input will be specifically requested. There are currently no scoping meetings planned.

Preliminary Issues

The following are some potential issues identified through internal Forest Service scoping based on our experience with similar projects. The list is not considered all-inclusive, but should be viewed as a starting point. We are asking you to help us further refine the issues and identify other issues or concerns relevant to the proposed project.

- Continued livestock grazing has the potential to adversely affect the health of riparian vegetation.
- Continued livestock grazing has the potential to adversely affect the health of rangeland vegetation.
- Continued livestock grazing has the potential to adversely affect sage grouse habitat.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, that at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 [1978]). Also, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 [9th Cir. 1986] and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 [E.D. Wis. 1980]). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement, or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: May 12, 2005.

Randall M. Sharp,

Natural Resources Staff Officer.

[FR Doc. 05–9878 Filed 5–19–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Albuquerque, New Mexico, June 27–29, 2005. The purpose of the meeting is to discuss emerging issues in urban and community forestry.

DATES: The meeting will be held June 27–29, 2005.

ADDRESSES: The meeting will be held at the Hyatt Regency Hotel, 330 Tijeras, NW., Albuquerque, NM 87102. Individuals who wish to speak at the meeting or to propose agenda items must send their names and proposals to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, P.O. Box 1003, Sugarloaf, CA 92386–1003. Individuals may fax their names and proposed agenda items to (909) 585–9527.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Urban and Community Forestry Staff, (909) 585–9268.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members; however, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided.

Dated: May 10, 2005.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 05–10084 Filed 5–19–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet at the Trinity County Office of Education in Weaverville, California, June 13, 2005. The purpose of this meeting is to discuss proposed projects under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: June 13, 2005.

ADDRESSES: Trinity County Office of Education, 201 Memorial Drive, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Michael R. Odle, Assistant Public Affairs Officer and RAC Coordinator.

SUPPLEMENTARY INFORMATION: The meeting is open to the pubic. Public input sessions will be provided and individuals will have the opportunity to

address the Trinity County Resource Advisory Committee.

Dated: May 16, 2005.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 05–10077 Filed 5–19–05; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must Be Received On Or Before: June 19, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703)603–0655. or e-mail *SKennerly@jwod.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Custodial Services (At the following locations), Desert Chemical Depot, Utah, Tooele Army Depot, Tooele, Utah.
NPA: Pioneer Adult Rehabilitation Center Davis County School District, Clearfield, Utah.
Contracting Activity: U.S. Army Field Support Command, Rock Island, Illinois.

Service Type/Location: Custodial Services, William R. Burke Courthouse, Third Street and Lufkin Avenue, Lufkin, Texas.
NPA: Burke Center, Inc., Lufkin, Texas.
Contracting Activity: GSA, Public Buildings Service, Central Area—7PCD, Dallas, Texas.

Service Type/Location: Document Destruction, Department of Agriculture, Farm Service Agency, 6501 Beacon Drive, Kansas City, Missouri.
NPA: Independence and Blue Springs Industries, Inc., Independence, Missouri.
Contracting Activity: Department of Agriculture, Farm Service Agency, Kansas City, Missouri.

Service Type/Location: Mail Delivery Services (At the following locations at Fort Hood, Texas),
11 Army Secure Operating Systems, Building 22019, 22019 53rd Street,
712 Army Secure Operating Systems, Building 22020, 22020 53rd Street,
9 Army Secure Operating Systems & 3 WS, Building 90042, 90042 Clarke Road,
Dormitory, Building 91220, Headquarters Avenue, Room C104,
III Corps Building, 1001 761st Tank Battalion Avenue, Fort Hood, Texas.
NPA: Professional Contract Services, Inc., Austin, Texas.
Contracting Activity: 2nd Contracting Squadron/LGC, Barksdale AFB, Louisiana.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities

2. If approved, the action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Belt, Automobile, Safety NSN: 2540–00–894–1273—Belt, Automobile, Safety
NSN: 2540–00–894–1275—Belt, Automobile, Safety
NSN: 2540–00–894–1276—Belt, Automobile, Safety
NSN: 2540–00–894–1274—Belt, Automobile, Safety
NPA: Arizona Industries for the Blind, Phoenix, Arizona.
Contracting Activity: Defense Supply Center Columbus, Columbus, Ohio.

Tray, Desk
NSN: 7520–00–232–6828—Tray, Desk.
NPA: Opportunity Workshop of Lexington, Inc., Lexington, Kentucky.
Contracting Activity: GSA/Office Supplies & Paper Products Acquisition Center New York, NY.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E5–2531 Filed 5–19–05; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who are Blind or Severely Disabled.

ACTION: Additions to and Deletions from Procurement List.

SUMMARY: This action adds to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List services previously furnished by such agencies.

DATES: *Effective Date:* June 19, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely

Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On December 10, 2004, February 4, and March 25, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 71777/78, 70 FR 5963, and 15288) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

The following comments pertain to Vegetable Oil (Domestic) 10% of USDA Requirement:

Comments were received from one of the current contractors for this vegetable oil. The commenter also provided comments on an earlier version of this proposed addition to the Procurement List, notice of which appeared in the December 10, 2004 **Federal Register** (69 FR 71777), and on an earlier unpublished version of the proposed addition. The commenter in its most recent comments asked the Committee for Purchase From People Who Are Blind or Severely Disabled to consider all of these previous comments to the extent they remain applicable. The Committee considered these earlier comments as they were intended, and reduced or clarified the quantities being proposed for addition to the Procurement List at the two stages of the addition process to which the earlier comments applied.

The commenter claimed in its most recent comments that this proposed addition does not meet the Committee's regulatory requirement that a Procurement List addition create employment for people with severe disabilities because the Committee has not demonstrated that jobs will be created for people who are not currently employed, as opposed to additional hours for the current work force. However, this claim does not accurately reflect the Committee's regulatory requirement, which appears at 41 CFR 51–2.4(a)(1). This regulation provides that a proposed addition to the Procurement List must demonstrate a potential to generate employment for people with severe disabilities. The requirement is stated in this way because until a nonprofit agency actually produces a product in response to Government orders, it is impossible to know with certainty how much labor the production will create, to say nothing of which individuals will perform the labor. In addition, the Committee only requires a nonprofit agency to indicate the quantity of direct labor estimated to be created, not the individuals who will provide it or their current employment status. The nonprofit agency involved in this proposed addition has provided that information concerning the amount of labor that will be created. The nonprofit agency also indicated that this labor includes both new and current employees.

In both current and earlier comments, the commenter has taken issue with the Committee's practice of adding a percentage of the U.S. Department of Agriculture (USDA)'s overall requirement for vegetable oil for domestic programs to the Procurement List. The commenter noted that the various types and package sizes are provided by different contractors. As a result, the commenter claimed, the fact that the designated nonprofit agency will be providing the ten percent of the overall USDA domestic requirement by providing liquid vegetable oil in one-gallon bottles will have a larger impact on contractors providing vegetable oil in this same manner than the percentage would seem to indicate. Specifically, the commenter claimed that this Procurement List addition represents about thirteen percent of the requirement for this oil and package type, and that it is provided by three small businesses.

The Committee begins its assessment of impact on contractors affected by potential Procurement List additions by sending a certified letter to each contractor requesting sales data, and stating that if the contractor does not reply, the Committee will consider the lack of a reply as an indication the contractor does not consider the impact of the potential addition to be severe. For this proposed addition to the Procurement List, the Committee wrote to several current contractors, including the three small businesses identified by the commenter. Two of these businesses responded and provided sales data. This information showed that the value of the proposed addition represents a very small percentage of the sales of these two businesses (less than one percent each). Even when the impact of earlier Procurement List additions on one of the businesses (the commenter), and that company's long history as a supplier of the vegetable oil to USDA is considered, as provided in the Committee's impact assessment regulation, at 41 CFR 51–2.4(a)(4), the impact on any of the contractors USDA identified to the Committee did not rise to the level which the Committee considers to constitute severe adverse impact.

The commenter provided several scenarios under which it claimed impact on various suppliers could be greater, depending on the types of liquid oil which the designated nonprofit provided in its one-gallon bottles, and on possible variations in USDA's contract awards for the part of the domestic vegetable oil not covered by the Procurement List. However, the commenter provided no factual support for these speculations, which involve actions by USDA which are not within the Committee's ability to predict or control by its addition process.

The commenter also claimed other impacts on its business, including plant closures, based on earlier comments reacting to the initial projected addition, which was four times the size of the Procurement List addition the Committee eventually proposed. The response from the other small business to the Committee's request for sales data also based its impact claims on this larger addition plan. The Committee believes that reduction of the proposed addition to its current level will prevent any severe impacts from occurring, as indicated in the above paragraph on impact calculation.

Finally, the commenter claimed that the proposed addition would harm USDA's domestic feeding programs, as the "contracting premium" associated with the Committee's program would limit the amount of food USDA could provide with its current budget. However, USDA has informed the Committee that it supports the proposed addition to the Procurement List of ten percent of its requirement for vegetable oil for domestic programs.

The following material pertains to all of the items being added to the Procurement List.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or

other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. The action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product and services are added to the Procurement List:

Product

Vegetable Oil (Domestic) 10% of USDA Requirement
NSN: 8945–00–NSH–0002—Vegetable Oil (Domestic) 10% of USDA Requirement
NPA: Advocacy and Resources Corporation, Cookeville, Tennessee
Contracting Activity: USDA, Farm Service Agency, Washington, DC

Services:

Service Type/Location: Custodial Services, Transportation Security Administration, Pittsburgh International Airport, Pittsburgh, Pennsylvania.
NPA: ARC—Allegheny, Pittsburgh, Pennsylvania.
Contracting Activity: GSA, PBS—Pittsburgh, Pittsburgh, Pennsylvania.
Service Type/Location: Custodial Services, Williams Gateway Airport, 6416 Sossamon Road, Mesa, Arizona.
NPA: Goodwill Community Services, Inc., Phoenix, Arizona.
Contracting Activity: Department of Homeland Security, Indianapolis, Indiana.
Service Type/Location: Dormitory Management Services, Department of Homeland Security, Federal Law Enforcement Training Center (Artesia Facility), 1300 W. Richey , Building 25, Artesia, New Mexico.
NPA: Adelante Development Center, Inc., Albuquerque, New Mexico.
Contracting Activity: Department of Homeland Security (FLETC), Artesia, New Mexico.
Service Type/Location: Janitorial/Custodial, Department of Homeland Security, Customs and Border Protection, 700 Maritime Street, Oakland, California.
NPA: The Independent Way, Oakland, California.
Contracting Activity: Department of Homeland Security, Indianapolis, Indiana.

Deletions

On March 25, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 15288) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services deleted from the Procurement List.

End of Certification

Accordingly, the following services are deleted from the Procurement List:

Services

Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, New Orleans, 4200 Michaud Boulevard, New Orleans, Louisiana.
NPA: Goodworks, Inc., New Orleans, Louisiana.
Contracting Activity: Department of the Army.
Service Type/Location: Mailroom Operation, New Orleans Strategic Petroleum Reserve (SPR) Site, New Orleans, Louisiana.
NPA: Goodworks, Inc., New Orleans, Louisiana.
Contracting Activity: DnyMcDermott Petroleum Operation Company—Department of Energy.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E5–2542 Filed 5–19–05; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1391]

Grant of Authority for Subzone Status, Pfizer, Inc. (Pharmaceuticals/Animal Health Products), Groton, CT

Pursuant to its authority under the Foreign-Trade Zones Act, of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the New London Foreign Trade Zone Commission, grantee of Foreign-Trade Zone 208, has made application to the Board for authority to establish a special-purpose subzone at the manufacturing facilities of Pfizer, Inc., located in Groton, Connecticut (FTZ Docket 45–2004, filed 10/20/2004);

Whereas, notice inviting public comment was given in the **Federal Register** (69 FR 64434, 10/26/2004); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to pharmaceutical/animal health products at the manufacturing facilities of Pfizer, Inc., located in Groton, Connecticut (Subzone 208A), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 9th day of May, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–10030 Filed 5–19–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1390]

Expansion of Foreign-Trade Zone 22, Chicago, IL, 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 Illinois International Port District, grantee of Foreign-Trade Zone 22, submitted an application to the Board for authority to expand FTZ 22 to include a site (317 acres, Site 6) within the 371-acre Rock Run Business Park located in Joliet (Will County), Illinois, within the Chicago Customs port of entry (FTZ Docket 32–2004; filed 8/5/04);

Whereas, notice inviting public comment was given in the **Federal Register** (69 FR 48842, 8/11/04), 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 22 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 9th day of May, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–10031 Filed 5–19–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1389]

Expansion of Foreign-Trade Zone 154, Baton Rouge, LA, 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 Greater Baton Rouge Port Commission, grantee of Foreign-Trade Zone (FTZ) 154, submitted an application to the Board for authority to expand FTZ 154 to include a site (120 acres) within the 155-acre St. Martin Parish Industrial Park located near St. Martinville, Louisiana (Site 5), adjacent to the Baton Rouge Customs port of entry (FTZ Docket 29–2004; filed 7/28/04); Whereas, notice inviting public comment was given in the **Federal Register** (69 FR 47865, 8/6/04) 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 addendum report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that the proposal would be in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 154 to include a site (designated as FTZ 154—Site 5) is approved, subject to the Act and the Board's regulations, including Section 400.28, and subject to the conditions and restrictions listed below:

1. The approval for FTZ 154—Site 5 is for an initial period of five years (to April 30, 2010) subject to extension upon review.

2. The applicant is required to submit annually special reports on developments at FTZ 154—Site 5, including information relating to changes in the site status or plans, changes in ownership, new activity under zone procedures, and other relevant information as directed by the FTZ Board's Executive Secretary.

3. The site will be subject to special monitoring visits by the FTZ staff.

4. Activation at the general-purpose zone project overall is subject to the Board's standard 2,000-acre limit.

Signed at Washington, DC, this 9th day of May, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–10029 Filed 5–19–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 20–2005]

Proposed Foreign-Trade Zone, Fargo, North Dakota; Application and Pubic Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Municipal Airport Authority of the City of Fargo, North Dakota, to establish a general-purpose foreign-trade zone at sites in Fargo, North Dakota, within and adjacent to the Fargo, North Dakota, Customs port of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended, (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 11, 2005. The applicant is authorized to make the proposal under Chapter 103, Section 83 of the North Dakota Century Code.

The proposed zone would consist of 6 sites covering 1,026 acres in the Fargo, North Dakota, area: Site 1—270 acres within the 1,546-acre Airport, Science and Technology Complex, Hector International Airport, 2801 32nd Avenue, Fargo; Site 2—392 acres within the 1,074-acre Midtown Industrial Complex, 3301 1st Avenue, Fargo; Site 3—222 acres within the 395-acre West Fargo Industrial Complex, 1262 Main Avenue, Fargo; Site 4—27 acres within the 31-acre Heartland Industrial Complex, 310 Industrial Boulevard, Casselton; Site 5 (100 acres)—Mapleton Industrial Complex, intersection of 164th Avenue Southeast and Karl Olson Street, Fargo; and, Site 6 (15 acres)—Swanson Industrial Complex, 4055 40th Avenue South, Fargo. The sites are owned by a number of public and private corporations.

The application indicates a need for zone services in the Fargo, North Dakota, area. Several firms have indicated an interest in using zone procedures for warehousing/distribution activities for such products as medical products, automotive components, and production equipment. Specific manufacturing requests are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on June 14, 2005, at 9:30 a.m., at the Fargo Municipal Airport

Authority Board Room, 2801 32nd Avenue North, Fargo, North Dakota 58102.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following locations:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099—14th Street, NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue NW., Washington, DC 20230.

The closing period for their receipt is July 19, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 3, 2005).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the Hector Airport Passenger Terminal Administration Office, 2801 32nd Avenue North, Fargo, North Dakota 58102.

Dated: May 11, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–10028 Filed 5–19–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review: Certain Cased Pencils from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 20, 2005.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Erin Begnal, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4474 and (202) 482–1442, respectively.

SUPPLEMENTARY INFORMATION: On January 12, 2005, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on certain cased pencils from the People's Republic of China. *See Certain Cased Pencils from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part*, 70 FR 2115 (January 12, 2005). Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the final results are currently due on May 12, 2005.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Trade Act as amended (the Act) provides that the Department may extend the time limit for completion of the final results of an administrative review to a maximum of 180 days if it determines that it is not practicable to complete the final results within the statutory time limit of 120 days from the date on which the preliminary results were published. The Department has determined that, due to the complexity of the issues arising from the calculation of surrogate values, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act and section 19 CFR 351.213(h)(1) of the Department's regulations. Therefore, the Department is extending the time limit for the completion of these final results until no later than July 11, 2005, which is 180 days from the date on which the notice of the preliminary results was published.

This notice is published in accordance with section 751(a)(3)(A) of the Act and section 19 CFR 351.213(h)(2) of the Department's regulations.

Dated: May 12, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–2560 Filed 5–19–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Notice of Final Results of Antidumping Duty Changed Circumstances Review: Polyethylene Terephthalate Film, Sheet and Strip from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) received no comments in response to its preliminary determination that Jindal Poly Films Limited (Jindal Poly Films) is the successor–in-interest to Jindal Polyester Limited (Jindal Polyester). In these final results of review, we have continued to find Jindal Poly Films to be the successor–in-interest to Jindal Polyester.

EFFECTIVE DATE: May 20, 2005.

FOR FURTHER INFORMATION CONTACT: Jeffrey Pedersen or Kavita Mohan, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2769 and (202) 482–3542, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 22, 2005, the Department published a notice of preliminary results of its changed circumstances review of the antidumping duty order on polyethylene terephthalate film, sheet and strip (PET film) from India in which it preliminarily determined that Jindal Poly Films is the successor–in-interest to Jindal Polyester. *See Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Polyethylene Terephthalate Film, Sheet and Strip from India* 70 FR 20863 (April 22, 2005) (*Preliminary Results*). We invited interested parties to comment on these findings. On April 19, 2005, and April 20, 2005, Jindal Poly Films and petitioners,[1] respectively, submitted letters in which they notified the Department that they would not file comments on the *Preliminary Results*.

Scope of the Order

The products covered by this order are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance–enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this order is dispositive.

[1] The petitioners are Dupont Teijin Films, Mitsubishi Polyester Film of America, and Toray Plastics (America), Inc.

Final Results of Changed Circumstances Review

Given that we received no comments from interested parties on the *Preliminary Results*, and for the reasons stated in the *Preliminary Results*, we find Jindal Poly Films to be the successor–in-interest to Jindal Polyester for antidumping duty cash deposit purposes. We will instruct U.S. Customs and Border Protection to suspend shipments of subject merchandise made by Jindal Poly Films, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review at Jindal Polyester's antidumping duty cash deposit rate. *See Granular Polytetrafluoroethylene Resin from Italy; Final Results of Antidumping Duty Changed Circumstances Review*, 68 FR 25327 (May 12, 2003). This deposit rate shall remain in effect until publication of the final results of the next antidumping duty administrative review in which Jindal Poly Films participates.

We are issuing and publishing this determination and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and section 351.216(e) of the Department's regulations.

Dated: May 12, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–2523 Filed 5–19–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The President's Export Council (PEC) will hold a full Council meeting to discuss topics related to export expansion. The meeting will include discussion of trade priorities and initiatives, PEC subcommittee activity and proposed letters of recommendation. The PEC was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. trade. It was most recently renewed by Executive Order 13316.

DATES: May 25, 2005.

Time: 10 a.m. to 11:45 a.m. (e.d.t.).

ADDRESSES: U.S. Department of Commerce, Room 4832, 1401 Constitution Avenue, NW., Washington, DC 20230. This program will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be submitted no later than May 16, 2005, to J. Marc Chittum, President's Export Council, Room 4043, Washington, DC 20230 (telephone: 202–482–1124). Seating is limited and will be on a first come, first served basis. Attendees must RSVP prior to the meeting for security reasons.

FOR FURTHER INFORMATION CONTACT: J. Marc Chittum, President's Export Council, Room 4043, Washington, DC 20230 (phone: 202–482–1124), or visit the PEC Web site, *http://www.ita.doc.gov/td/pec.*

Dated: May 16, 2005.

J. Marc Chittum,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 05–10169 Filed 5–17–05; 4:12 pm]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) will meet Tuesday, June 7, 2005, from 8:30 a.m. until 5 p.m., Wednesday, June 8, 2005, from 8:30 a.m. until 5 p.m., and Thursday, June 9, 2005, from 8:30 a.m. until 12 p.m. All sessions will be open to the public. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) and amended by the Federal Information Security Management Act of 2002 (Pub. L. 107–347) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. Details regarding the Board's activities are available at *http://csrc.nist.gov/ispab/.*

DATES: The meeting will be held on June 7, 2005, from 8:30 a.m. until 5 p.m., June 8, 2005, from 8:30 a.m. until 5 p.m., and June 9, 2005, from 8:30 a.m. until 12 p.m.

ADDRESSES: The meeting will take place at the Doubletree Hotel and Executive Meeting Center, 1750 Rockville Pike, Rockville, Maryland.

Agenda

—Welcome and Overview

—Customer Relations Management (CRM) Work Project

—Briefing on Supervisory Controls and Data Acquisition (SCADA)

—Role of the Chief Privacy Officer

—National Information Assurance Credentialing Strategy

—Policy Framework for Privacy and Security

—Briefing on Security Line of Business Initiative

—Agenda Development for September 2005 ISPAB Meeting

—Wrap-Up

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters.

Public Participation: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. It would be appreciated if 35 copies of written material were submitted for distribution to the Board and attendees no later than June 3, 2005. Approximately 15 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Hash, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–3357.

Dated: May 16, 2005.

Richard F. Kayser,

Acting Deputy Director.

[FR Doc. 05–10097 Filed 5–19–05; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management, National Ocean Service, Commerce.

ACTION: Notice of Intent to Evaluate and Notice of Availability of Final Findings.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Pennsylvania Coastal Management Program.

The Coastal Zone Management Program evaluation will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) and regulations at 15 CFR Part 923, Subpart L.

The CZMA requires continuing review of the performance of states with respect to coastal program implementation. Evaluation of Coastal Zone Management Programs requires findings concerning the extent to which a state has met the national objectives, adhered to its Coastal Management Program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluation will include a site visit, consideration of public comments, and consultations with interested Federal, state and local agencies and members of the public. A public meeting will be held as part of the site visit.

Notice is hereby given of the date of the site visit for the listed evaluation, and the date, local time, and location of the public meeting during the site visit.

The Pennsylvania Coastal Management Program evaluation site visit will be held July 11–15, 2005. One public meeting will be held during the week. The public meeting will be held on Wednesday, July 13, 2005, at 7 p.m. at the Philadelphia Water Works, 640 Water Works Drive, Philadelphia, Pennsylvania.

Copies of a state's most recent performance reports, as well as OCRM's notification and supplemental request letters to the state, are available upon request from OCRM. Written comments from interested parties regarding this Program are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

Notice is hereby given of the availability of the final evaluation findings for the Virgin Islands Coastal Management Program (CMP); and the South Slough (Oregon) and Guana-Tolomato-Matanzas (Florida) National Estuarine Research Reserves (NERRs). Sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended, require a continuing review of the performance of coastal states with respect to approval of CMPs and the operation and management of NERRs.

The territory of the Virgin Islands was found to be implementing and enforcing its federally approved coastal management program, addressing the national coastal management objectives identified in CZMA Section 303(2)(A)–(K), and adhering to the programmatic terms of its financial assistance awards. South Slough (Oregon) and Guana-Tolomato-Matanzas (Florida) NERRs were found to be adhering to programmatic requirements of the NERR System.

Copies of these final evaluation findings may be obtained upon written request from: Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland 20910, or *Ralph.Cantral@noaa.gov*, (301) 713–3155, extension 118.

FOR FURTHER INFORMATION CONTACT: Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland 20910, (301) 713–3155, extension 118.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration.

Dated: May 13, 2005.

Eldon Hout,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 05–10161 Filed 5–19–05; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Damage Assessment and Restoration Program; Indirect Cost Rates (2003 FY)

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Indirect Cost Rates for the Damage Assessment and Restoration Program for Fiscal Year 2003.

SUMMARY: The National Oceanic and Atmospheric Administration's (NOAA) Damage Assessment and Restoration Program (DARP) is announcing new indirect cost rates on the recovery of indirect costs for its component organizations involved in natural resource damage assessment and restoration activities for fiscal year (FY) 2003. The indirect cost rates for this fiscal year and dates of implementation are provided in this notice. More information on these rates and the DARP policy can be found at the DARP Web site at: *www.darp.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Brian Julius at 301–713–3038, ext. 199, by fax at 301–713–4387, or e-mail at *Brian.Julius@noaa.gov*.

SUPPLEMENTARY INFORMATION: The mission of the DARP is to restore natural resource injuries caused by releases of hazardous substances or oil under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*), the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 *et seq.*), and support restoration of physical injuries to National Marine Sanctuary resources under the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*). The DARP consists of three component organizations: The Damage Assessment Center (DAC) within the National Ocean Service; the Restoration Center within the National Marine Fisheries Service; and the Office of the General Counsel for Natural Resources (GCNR). The DARP conducts Natural Resource Damage Assessments (NRDAs) as a basis for recovering damages from responsible parties, and uses the funds recovered to restore injured natural resources.

Consistent with Federal accounting requirements, the DARP is required to account for and report the full costs of its programs and activities. Further, the DARP is authorized by law to recover reasonable costs of damage assessment and restoration activities under CERCLA, OPA, and the NMSA. Within the constraints of these legal provisions

and their regulatory applications, the DARP has the discretion to develop indirect cost rates for its component organizations and formulate policies on the recovery of indirect cost rates subject to its requirements.

The DARP's Indirect Cost Effort

In December 1998, the DARP hired the public accounting firm Rubino & McGeehin, Chartered (R&M), to: Evaluate the cost accounting system and allocation practices; recommend the appropriate indirect cost allocation methodology; and determine the indirect cost rates for the three organizations that comprise the DARP. A **Federal Register** notice on R&M's effort, their assessment of the DARP's cost accounting system and practice, and their determination regarding the most appropriate indirect cost methodology and rates for FYs 1993 through 1999 was published on December 7, 2000 (65 FR 76611). The notice and report by R&M can also be found on the DARP Web site at: *http://www.darp.noaa.gov.*

R&M continued its assessment of DARP's indirect cost rate system and structure for FYs 2000 and 2001. A second federal notice specifying the DARP indirect rates for FYs 2000 and 2001 was published on December 2, 2002 (67 FR 71537).

In October 2002, DARP hired the accounting firm of Cotton and Company LLP (Cotton) to review and certify DARP costs incurred on cases for purposes of cost recovery and to develop indirect rates for FY 2002 and subsequent years. As in the prior years, Cotton concluded that the cost accounting system and allocation practices of the DARP component organizations are consistent with Federal accounting requirements. Consistent with R&M's previous analyses, Cotton also determined that the most appropriate indirect allocation method continues to be the Direct Labor Cost Base for all three DARP component organizations. The Direct Labor Cost Base is computed by allocating total indirect cost over the sum of direct labor dollars plus the application of NOAA's leave surcharge and benefits rates to direct labor. Direct labor costs for contractors from the Oak Ridge Institute for Science and Education (ORISE) also were included in the direct labor base because Cotton determined that these costs have the same relationship to the indirect cost pool as NOAA direct labor costs. ORISE provides on-site support to the DARP in the areas of injury assessment, natural resource economics, restoration planning and implementation, and policy analysis. A third federal notice specifying the DARP indirect rates for FY 2002 was published on October 6, 2003 (68 FR 57672). Cotton's reports on the FY 2002 DARP indirect rates can also be found on the DARP Web site at: *http://www.darp.noaa.gov.*

Cotton reaffirmed that the Direct Labor Cost Base is the most appropriate indirect allocation method for the development of the FY 2003 indirect cost rates.

The DARP's Indirect Cost Rates and Policies

The DARP will apply the indirect cost rates for FY 2003 as recommended by Cotton for each of the DARP component organizations as provided in the following table:

DARP component organization	FY 2003 indirect rate (percent)
Damage Assessment Center (DAC)	261.96
Restoration Center (RC)	223.74
General Counsel for Natural Resources (GCNR)	206.47

These rates are based on the Direct Labor Cost Base allocation methodology.

The FY 2003 rates will be applied to all damage assessment and restoration case costs incurred between October 1, 2003 and September 30, 2004. DARP will use the FY 2003 indirect cost rates for future fiscal years until subsequent year-specific rates can be developed.

For cases that have settled and for cost claims paid prior to the effective date of the fiscal year in question, the DARP will not re-open any resolved matters for the purpose of applying the revised rates in this policy for these fiscal years. For cases not settled and cost claims not paid prior to the effective date of the fiscal year in question, costs will be recalculated using the revised rates in this policy for these fiscal years. Where a responsible party has agreed to pay costs using previous year's indirect rates, but has not yet made the payment because the settlement documents are not finalized, the costs will not be recalculated.

The DARP indirect cost rate policies and procedures published in the **Federal Register** on December 7, 2000 (65 FR 76611), on December 2, 2002 (67 FR 71537), and October 6, 2003 (68 FR 57672) remain in effect except as updated by this notice.

Dated: May 16, 2005.

Mitchell Luxenberg,

Acting Director, Management and Budget, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 05–10162 Filed 5–19–05; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051305D]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and AtmosphericAdministration, Commerce.

ACTION: Notice of availability of decision and analysis documents for incidental take permit.

SUMMARY: This notice advises the public that an incidental take permit to the Idaho Department of Fish and Game (IDFG), pursuant to the Endangered Species Act of 1973 (ESA), has been issued and that the decision documents are available upon request.

DATES: Permit 1481 was issued on March 30, 2005, subject to certain conditions set forth therein. The permit expires on May 31, 2010.

ADDRESSES: Requests for copies of the decision documents or any of the other associated documents should be directed to the Salmon Recovery Division, National Marine Fisheries Service, 10095 W. Emerald, Boise, Idaho 83704. The documents are also available on the Internet at *www.nwr.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Herb Pollard, Boise, Idaho, at phone number: (208) 378–5614, e-mail: *herbert.pollard@noaa.gov.*

SUPPLEMENTARY INFORMATION: This notice is relevant to the following species and evolutionarily significant units (ESUs):

Spring/summer chinook salmon (*Oncorhynchus tshawytscha*): threatened Snake River;

Fall chinook salmon (*Oncorhynchus tshawytscha*): threatened Snake River;

Sockeye salmon (*Oncorhynchus nerka*): endangered Snake River; and

Steelhead (*Oncorhynchus mykiss*): threatened Snake River.

Permits

Permit 1481 was issued to IDFG on March 31, 2005. Permit 1481 authorizes IDFG annual incidental take of naturally produced and artificially propagated

ESA-listed anadromous fish associated with the operation of recreational fisheries that target non-listed, hatchery-origin anadromous fish and resident game fish species. Permit 1481 expires May 31, 2010.

Permit 1481 authorizes IDFG's recreational fishing programs, including the following activities: (1) Resident recreational fishing in waters that also support ESA-listed chinook and sockeye salmon under the IDFG General Fishing Regulations, including kokanee and trout fisheries in Redfish, Alturas, and Pettit Lakes; (2) chinook salmon recreational fishing in the Clearwater River, Snake River, Salmon River, Little Salmon River, and South Fork Salmon River under the IDFG Anadromous Salmon Fishing Regulations; and (3) summer steelhead fishing during the fall and spring seasons under the IDFG Steelhead Fishing Regulations. The permit constitutes authorization for implementation of the IDFG General Fishing Regulations, the IDFG Anadromous Salmon Fishing Regulations, and the IDFG Steelhead Fishing Regulations. Recreational fisheries are monitored in a manner that allows evaluation of the effectiveness of protective regulations and conservation strategies.

NMFS' conditions in the permit will ensure that the take of ESA-listed anadromous fish will not jeopardize the continued existence of the listed species. In issuing the permits, NMFS determined that IDFG's Conservation Plan provides adequate mitigation measures to avoid, minimize, or compensate for take of ESA-listed anadromous fish.

Issuance of this permit, as required by the ESA, was based on a finding that the permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the listed species which are the subject of the permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This permit was issued in accordance with, and is subject to, 50 CFR part 222, the NMFS regulations governing listed species permits.

Dated: May 17, 2005.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–10128 Filed 5–19–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051305E]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Application for a scientific research/enhancement permit.

SUMMARY: Notice is hereby given that NMFS has received a scientific research and enhancement permit application relating to Pacific salmon. Permit 1530 would be issued jointly to the Washington Department of Fish and Wildlife, Nez Perce Tribe through the Bureau of Indian Affairs, and the Idaho Department of Fish and Game (Applicants) to operate the adult fish trap at Lower Granite Dam. The proposed actions are intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts. It is also intended to facilitate collection of broodstock to supply an artificial propagation program designed to enhance the propagation and survival of threatened Snake River fall chinook salmon.

DATES: Comments or requests for a public hearing on the application must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific daylight time on June 20, 2005.

ADDRESSES: Written comments on the application should be sent to Salmon Recovery Division, NMFS, 10095 W. Emerald, Boise, ID 83704. Comments may be submitted by e-mail. The mailbox address for providing e-mail comments is *LGRtrap.nwr@noaa.gov.*. Include in the subject line of the e-mail comment the following identifier: *Comments on trapping at Lower Granite Dam*. Comments may also be submitted via facsimile (fax) to (208) 378–5614.

FOR FURTHER INFORMATION CONTACT: Herb Pollard, Boise, Idaho, at phone number: (208) 378–5614, e-mail: *herbert.pollard@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species and evolutionarily significant units (ESUs) are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened Snake River (SR) fall.

Steelhead (*O. mykiss*): threatened SR.

Scientific research and enhancement permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits based on findings that such permits: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permit.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA.

Applications Received

Permit 1530

The Applicants are requesting a 5–year permit to take SR fall chinook salmon and SR steelhead during the course of operating an adult fish trap at Lower Granite Dam on the Columbia River.

The proposed action is designed to address two purposes. The trapping activity is intended to capture a random sample of Snake River fall chinook salmon and collect the necessary biological data and observations to statistically generate a "run reconstruction", or description of composition of the entire fall chinook salmon migration, as it passes Lower Granite Dam, according to age, sex, and origin (hatchery or natural). The second purpose is to collect additional adult fall chinook salmon for broodstock needed to support enhancement actions at Lyons Ferry Hatchery and Nez Perce Tribal Hatchery. Incidental to the primary purposes, the program will help managers simultaneously monitor several ongoing activities in the basin (e.g., natural production of listed species and the operation of the Federal Columbia River hydropower system) as well as stray rates and population health for the two listed species.

To achieve its purposes, the project includes four objectives: First, to capture SR fall chinook salmon so that they may be used for mitigation, compensation, and natural production. Second, to remove hatchery-origin fall chinook originating from projects other

than those in the Snake River Basin so that they do not spawn in the Snake River above Lower Granite Dam. Third, to facilitate research efforts including the capture of fish to measure the relative reproductive success of hatchery fish being used for natural supplementation and thereby monitor the success of that program. Fourth, to monitor the status of steelhead populations in the Snake River basin.

Fish species will benefit in several ways: by providing broodstock for Lyons Ferry Hatchery and Nez Perce Tribal Hatchery, the program will continue its efforts in directly increasing the abundance of the listed stocks. Removing salmon that stray from other hatchery programs will reduce adverse ecological and genetic interactions and preserve the listed stock. Information from the captured steelhead is essential to monitor the status and productivity of the listed populations, to help managers make decisions about how best to operate the hydropower system, and to gauge the effectiveness of a number of recovery efforts.

The fish would be captured at the Lower Granite Dam adult trap. Electronic controls direct fish passing through the ladder into a trap holding facility for small portions of each day. When not directed into the trap, most fish pass the ladder unimpeded. Trapped fish are anesthetized, examined, biological samples are taken, and the fish are either (1) returned to the ladder to continue their upstream migration (all of the steelhead and most of the chinook salmon), (2) selected for broodstock (in the case of a portion of the hatchery-origin and natural-origin chinook salmon), or (3) removed from the population (all hatchery-origin chinook salmon that are identified by tags or marks as strays from other hatcheries). Transport to one of the hatchery facilities of fish collected for broodstock occurs daily during peak run periods. Some natural-origin Snake River fall chinook salmon would be collected to integrate into the broodstock. Scale sampling may occur on-site prior to transport to the hatcheries. In addition, up to 250 more scale samples from natural origin fish are needed to provide an accurate description of run composition. Once sampled, fish not collected for broodstock are allowed to recover in small tanks and then returned to the fish ladder to continue their upstream migration.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted to determine whether the application meets the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30–day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: May 17, 2005.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–10129 Filed 5–19–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051705B]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene its Ecosystem Scientific and Statistical Committee (SSC).

DATES: The meeting will be held from 1 p.m. to 5 p.m. on Thursday, June 9, 2005, and from 8:30 a.m. to 2 p.m. on Friday, June 10, 2005.

ADDRESSES: The meeting will be held at the DoubleTree Guest Suites Tampa Bay, 3050 North Rocky Point Drive, Tampa, FL 33607.

Council address: Gulf of Mexico Fishery Management Council, 3018 North U.S. Highway 301, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone: 813.228.2815.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) will convene the first meeting of its newly formed Ecosystem Scientific and Statistical Committee (SSC) in Tampa, FL on June 9–10, 2005. The SSC will receive a presentation on EcoGIS, a pilot project that brings the National Marine Fisheries Service (NMFS), National Ocean Service (NOS), and the eight regional fishery management councils together to build on existing regional geographic information systems (GIS) capabilities; more fully develop GIS tools for managing and researching marine fishery ecosystems; and review the project's role in the development of an ecosystem based approach to fisheries management. The SSC will also review the findings of a workshop by ecosystem scientists that was held in February on ecosystem-based decision support tools for fisheries management. They will review a NMFS report titled *Strategies for Incorporating Ecosystem Considerations in Fisheries Management* and review an interim report of an ad hoc working group on guidelines for fishery ecosystem plans.

The SSC will then meet with the Council's ecosystem workshop facilitator and provide advice on issues to include in an upcoming series of public workshops on ecosystem based fisheries management. The SSC will review its role in identification of technical needs, establishing an inventory of existing information, and synthesizing public input on ecosystem goals and objectives.

A copy of the agenda and related materials can be obtained by calling the Council office at 813.228.2815.

Although other non-emergency issues not on the agendas may come before the Ecosystem SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (M-SFCMA), those issues may not be the subject of formal action during this meeting. Actions of the Ecosystem SSC will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the M-SFCMA, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) by May 31, 2005.

Dated: May 17, 2005.

Tracey Thompson,

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

[FR Doc. E5–2528 Filed 5–19–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051705D]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene its Socioeconomic Panel (SEP).

DATES: The meeting will be convene at 9 a.m. on Thursday, June 9, 2005, and conclude no later than 2 p.m. on Friday, June 10, 2005.

ADDRESSES: The meeting will be held at the Ramada Inn & Suites New Orleans Airport, 110 James Drive East, St. Rose, LA.

Council address: Gulf of Mexico Fishery Management Council, 3018 North U.S. Highway 301, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Assane Diagne, Economist, Gulf of Mexico Fishery Management Council; telephone: 813.228.2815.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) will convene its Socioeconomic Panel (SEP) to review the Red Snapper Stock Assessment and discuss data requirements for socioeconomic evaluations of individual fishing quota (IFQ) programs. In addition, the SEP will hear a presentation on policy implications of alternative modeling approaches for recreational fishing activities. The SEP will prepare a report containing their conclusions and recommendations. This report will be presented to the Council at its meeting on July 11–14, 2005, in Fort Myers Beach, FL.

A copy of the agenda and related materials can be obtained by calling the Council office at 813.228.2815.

Although other non-emergency issues not on the agendas may come before the SEP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the SEP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) by May 31, 2005.

Dated: May 17, 2005.

Tracey Thompson,

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

[FR Doc. E5–2530 Filed 5–19–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051705E]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Magnuson-Stevens Committee in June, 2005 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on June 6, 2005. See **SUPPLEMENTARY INFORMATION** for specific time and location of the meeting.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Monday, June 6, 2005 at 9:30 a.m. Magnuson-Stevens Committee Meeting

Location: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950; telephone: (978) 465-0492.

The Magnuson-Stevens Committee will discuss issues relevant to reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act in 2005. Positions developed by the Council Chairmen this year will be reviewed along with past Council comments. Recommendations will be updated and forwarded to the full Council for their consideration at its June 21-23 meeting in Portland, ME.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: May 17, 2005.

Tracey Thompson,

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

[FR Doc. E5–2565 Filed 5–19–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051705C]

North Pacific Fishery Management Council; Notice of Public Meetings

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

ACTION: Meetings of the North Pacific Fishery Management Council and its advisory committees.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings June 1 through June 9, 2005.

DATES: The Council's Advisory Panel will begin at 8 a.m., Wednesday, June 1 and continue through Sunday June 5, 2005. The Scientific and Statistical Committee will begin at 8 a.m. on Wednesday, June 1, 2005, and continue through Friday, June 3, 2005.

The Council will begin its plenary session at 8 a.m. on Friday June 3

continuing through Thursday June 9. All meetings are open to the public except executive sessions. The Ecosystem Committee will meet Thursday, June 2, from 1 p.m. to 5 p.m. The Enforcement Committee will meet Thursday, June 2, from 1 p.m. to 5 p.m.

ADDRESSES: Alyeska Prince Hotel, Seward Highway, Girdwood, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, Phone: 907–271–2809.

SUPPLEMENTARY INFORMATION: Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports

Executive Director's Report

NMFS Management Report (includes comment on proposed rule language for Bering Sea Aleutian Island (BSAI) Amendment 79 and Vessel Monitoring System (VMS) requirements for Gulf of Alaska (GOA) and Essential Fish Habitat (EFH) measures and possible Environmental Impact Statement (EIS) for specifications process)

U.S. Coast Guard Report

NMFS Enforcement Report

Alaska Department of Fish & Game (ADF&G) Report (GHL issues delayed to October)

U.S. Fish & Wildlife Service Report

North Pacific Research Board (NPRB) Report

Alaska Fishery Science Center (AFSC) Fishery Interaction research

Protected Species Report (includes update on Council/Board of Fisheries Committee and Marine Mammal Protection Act (MMPA) listing)

Alaska Ocean Observing System (AOOS)

2. Community Development Quota (CDQ) Management of Reserves: Status Report and action as necessary to refine alternatives

3. GOA Groundfish Rationalization: Receive Community Committee report. Review Preliminary Alternatives for Tanner Crab Bycatch. Review other information and refine alternatives

4. GOA Rockfish Demonstration Project: Final action

5. BSAI Pacific Cod Allocations: Review discussion paper on seasonal allocation issues and refine alternatives as necessary. Review discussion paper on alternative in-season management measures and refine alternatives as necessary

6. BSAI Salmon Bycatch: Initial Review

7. Bairdi Crab Split: Initial Review

8. Improved Retention/Improved Utilization (IR/IU): Initial Review of Amendment 80 Environmental Assessment/Regulatory Impact Review/ Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) (Head & Gut Cooperatives)

9. Observer Program Restructuring: Update of on Fair Labor Standard Act issues and discussion with Department of Labor. Preliminary Review of EA/ RIR/IRFA. Review of Observer Advisory Committee report

10. Groundfish Management: GOA Other Species calculation: Final Action

11. Crab: Crab Plan Team report, action as necessary

12. Ecosystem Management: Review Aleutian Island Area-specific management discussion paper, action as appropriate; review discussion paper on the Council's role in Ecosystem Approach Management, action as appropriate

13. Staff Tasking: Review tasking and committees and initiate action as appropriate. Programmatic Supplemental Environmental Impact Statement (PSEIS) Priorities, review objectives and develop workplan

14. Other Business

Scientific and Statistical Committee (SSC): The SSC agenda will include the following issues:

GOA Rockfish Demonstration Project

BS/AI Salmon Bycatch

Bairdi Crab Split

IR/IU

Observer Program

North Pacific Research Board Report

AFSC Fishery Research

Protected Species Report

AOOS Report

Crab

Ecosystem Management

Advisory Panel: The Advisory Panel will address the same agenda issues as the Council.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: May 17, 2005.

Tracey L. Thompson,

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

[FR Doc. E5–2529 Filed 5–19–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050905E]

Atlantic Highly Migratory Species (HMS); Notice of Sea Turtle Release/ Protocol Workshops

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

ACTION: Notice of public workshops.

SUMMARY: NMFS is announcing workshops that will demonstrate proper sea turtle handling, resuscitation, and release techniques for vessel operators using bottom longline (BLL) gear to catch sharks in the Atlantic Ocean, including the Gulf of Mexico. The workshops will also summarize the current regulations pertaining to safe handling and release protocols and requirements for possession and use of mitigation equipment for sea turtles and other protected resources.

DATES: The workshops will be held in June 2005. For specific dates and times see the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: The workshops will be held in Galveston and Port Isabel, TX; Venice, LA; Panama City, Madeira Beach, Key West, and Cocoa Beach, FL; Charleston, SC; and Manteo, NC. For specific locations see the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Charlie Bergmann, 3209 Frederic St., Pascagoula, MS 39567 or by phone at 228–762–4591 (office phone) or 228–623–0748 (cellular phone).

Additional information on Highly Migratory Species (HMS) management can be found online at: *http://www.nmfs.noaa.gov/sfa/hms* or by calling the Highly Migratory Species Management Division at 301–713–2347.

SUPPLEMENTARY INFORMATION: Atlantic tuna, swordfish, shark, and billfish fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act and the Atlantic Tunas Convention Act (ATCA), which authorizes rulemaking as may be necessary and appropriate to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). Implementing regulations for the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and the Billfish Fishery

Management Plan are at 50 CFR part 635.

On October 29, 2003, a Biological Opinion (BiOp) for Amendment 1 to the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks concluded that the measures in the Amendment were not likely to jeopardize the continued existence of any listed species under NMFS' purview. Pursuant to the 2003 BiOp, NMFS is conducting workshops for BLL fishermen to provide information regarding gear handling techniques and protocols that demonstrate ways to reduce the potential for serious injury or mortality should incidental capture of sea turtles or other protected resources via hooking or entanglement occur.

NMFS has scheduled nine workshops for June 2005 to ensure that shark BLL fishermen are aware of gear handling and release protocols and are proficient at using equipment available to reduce post-release mortality of protected resources that are caught with BLL gear. Additionally, fishermen who use BLL for other species such as grouper are also invited to attend these workshops.

Dates, Times, and Locations

The dates, times, and locations of these workshops are scheduled as follows:

1. June 1, 2005, NMFS Laboratory, 4700 Avenue U, Galveston, TX, from 1 to 5 p.m. (409) 766–3500.

2. June 3, 2005, Coast Guard Station, 436 Coast Guard Road, Venice, LA, from 1 to 5 p.m. (985) 534–2332.

3. June 6, 2005, Sea Grant Office/ County Extension Office, Panama City, FL, from 1 to 5 p.m. (850) 874–6105.

4. June 8, 2005, Harvey Government Center, 1200 Truman Ave., 2nd Floor, Key West, FL, from 1 to 5 p.m. (305) 292–4431.

5. June 10, 2005, City Hall, 300 Municipal Drive, Madeira Beach, FL, from 1 to 5 p.m. (727) 391–9951 x 228.

6. June 13, 2005, Sea Grant Building, 3695 Lake Drive, Cocoa Beach, FL, from 1 to 5 p.m. (321) 952–4536.

7. June 15, 2005, Marine Resources Institute, 217 Fort Johnson Road, Charleston/James Island, SC, from 1 to 5 p.m. (843) 953–9300.

8. June 17, North Carolina Aquarium–Roanoke Island, Airport Road, Manteo, NC, from 1 to 5 p.m. (252) 473–3494.

9. June 30, Port Isabel Community Center, 213 Yturria, Port Isabel, TX, from 1 to 5 p.m. (956) 943–9991.

Special Accommodations

These meetings are physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Charlie Bergmann (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days before the meeting.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: May 17, 2005.

Galen R. Tromble,

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

[FR Doc. 05–10127 Filed 5–17–05; 3:54 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051705A]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a joint meeting of its Snapper Grouper Committee and Advisory Panel, a meeting of its Snapper Grouper Committee, Joint Executive and Finance Committees, Protected Resources Committee, Joint Ecosystem and Habitat Committees, and a meeting of the full Council. In addition, there will be a public scoping meeting addressing the Fishery Ecosystem Plan and Comprehensive Amendment and public comment will be taken on Council consideration of an Interim Rule addressing overfishing for snapper grouper species.

DATES: The meeting will be held in June 2005. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Radisson Resort at the Port, 8701 Astronaut Boulevard, Cape Canaveral, FL 32920; Telephone: (1–800) 333–3333 or 321/ 784–0000, FAX 321/783–7718.

Copies of documents are available from Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: 843/571–4366 or toll free at 866/SAFMC–10; fax: 843/ 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION:

Meeting Dates

1. Joint Snapper Grouper Committee and Advisory Panel Meeting: June 13, 2005, 1:30 p.m. 5 p.m. and June 14, 2005, 8:30 a.m.–12 noon

The Snapper Grouper Committee will meet jointly with the Snapper Grouper Advisory Panel (AP) to review the results of the updated black sea bass assessment and receive a report from the Scientific and Statistical Committee (SSC). In addition, the Committee and AP will review the draft of Amendment 13B to the Snapper Grouper Fishery Management Plan regarding mandates under the Sustainable Fisheries Act to address overfishing and discuss the potential for Interim Rule. The Committee and AP will also discuss species to be considered in future stock assessments through the Southeast Data, Assessment and Review (SEDAR) process and receive a presentation from NOAA Fisheries, Southeast Regional Office regarding linking permits and landings databases.

Note: A public scoping meeting on the Fishery Ecosystem Plan and Comprehensive Amendment will be held June 13, 2005 beginning at 6:00 p.m. The Council will also accept public comment on Council consideration of an Interim Rule addressing overfishing for snapper grouper species immediately following the scoping meeting.

2. Snapper Grouper Committee Meeting: June 14, 2005, 1:30 p.m.–5 p.m. and June 15, 2005, 8:30 a.m.–12 noon

The Snapper Grouper Committee will review Amendment 13B to the Snapper Grouper Fishery Management Plan and finalize for public hearings. The Committee will also discuss the potential for Interim Rule and discuss species for future SEDAR assessments.

3. Joint Executive Committee and Finance Committee Meeting: June 15, 2005, 1:30 p.m.–5 p.m.

The Committees will develop the Council's positions on reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act, review NOAA's Ocean Action Plan, the Office of Management and Budget's (OMB) Peer Review Bulletin, and NOAA Fisheries' Report to Congress.

4. Protected Resources Committee Meeting: June 16, 2005, 8:30 a.m. 10:30 a.m.

The Protected Resources Committee will discuss a proposal for installation of a wind farm in the Exclusive Economic Zone (EEZ) off the coast of Georgia. The Committee will receive

updates on the Atlantic Large Whale Take Reduction Program's Proposed Rule and plan, the Bottlenose Dolphin Take Reduction Program, Acropora (coral) species proposed listing under the Endangered Species Act, and Biological Opinions for both Amendment 6 to the Shrimp Fishery Management Plan and Amendment 15 to the Coastal Migratory Pelagics (mackerel) FMP. The Committee will also discuss any protected resources concerns, if necessary, for Amendment 13B to the Snapper Grouper FMP with regards to the Biological Opinion.

5. Joint Ecosystem and Habitat Committees Meeting: June 16, 2005, 10:30 a.m.–3 p.m.

The Ecosystem and Habitat Committees will meet jointly to review and approve the Council's Energy Policy. The Committees will also review and approve an Outline for the Fishery Ecosystem Plan and discuss issues relevant to Sargassum management.

6. Council Session: June 16, 2005, 3 p.m. 5 p.m. and June 17, 2005, 8:30 a.m.–12 noon

From 3 p.m.–3:30 p.m., the Council will call the meeting order, make introductions and roll call, adopt the meeting agenda, and approve earlier meeting minutes.

From 3:30 p.m.–4 p.m., the Council will hear a report from the Joint Executive/Finance Committee and take action as appropriate.

From 4 p.m.–4:15 p.m., the Council will receive a report from the Protected Resources Committee and take action as appropriate.

From 4:15 p.m.–4:30 p.m., the Council will hear a report from the Joint Ecosystem and Habitat Committees and take action as appropriate.

From 4:30 p.m.–5 p.m., the Council will receive a briefing from NOAA General Counsel on litigation. (CLOSED SESSION).

Council Session: June 17, 2005, 8:30 a.m. 12 noon.

From 8:30 a.m.–10:30 a.m., the Council will receive a report from the Snapper Grouper Committee and approve Amendment 13B to the Snapper Grouper FMP for public hearings and/or take other action as appropriate.

From 10:30 a.m.–11 a.m., the Council will hear status reports from NOAA Fisheries' Southeast Regional Office and the Southeast Fishery Science Center.

From 11 a.m.–12:00 noon, the Council will receive agency and liaison reports, discuss other business and upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Except for advertised (scheduled) public hearings and public comment, the times and sequence specified on this agenda are subject to change.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by June 10, 2005.

Dated: May 17, 2005.

Tracey Thompson,

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

[FR Doc. E5–2527 Filed 5–19–05; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the African Growth and Opportunity Act

May 17, 2005.

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Directive to the Commissioner of Customs.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain textile and apparel goods from Senegal shall be treated as "hand-loomed, handmade, or folklore articles" and qualify for preferential treatment under the African Growth and Opportunity Act. Imports of eligible products from Senegal with an appropriate visa will qualify for duty-free treatment.

EFFECTIVE DATE: June 6, 2005.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 782-3400.

SUPPLEMENTARY INFORMATION:

Authority: The African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106-200) (AGOA) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries, including hand-loomed, handmade, or folklore articles, of a beneficiary country that are certified as such by the competent authority in the beneficiary country. In Executive Order 13191, the President authorized CITA to consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods shall be treated as being hand-loomed, handmade, or folklore articles. See *Implementation of the African Growth and Opportunity Act and the United States-Caribbean Basin Trade Partnership Act* published on January 22, 2001, (66 FR 7272).

In a letter to the Commissioner of Customs dated January 18, 2001, the United States Trade Representative directed Customs to require that importers provide an appropriate export visa from a beneficiary sub-Saharan African country to obtain preferential treatment under section 112(a) of the AGOA (66 FR 7837). The first digit of the visa number corresponds to one of nine groupings of textile and apparel products that are eligible for preferential tariff treatment. Grouping "9" is reserved for handmade, hand-loomed, or folklore articles.

CITA has consulted with Senegalese authorities, and has determined that hand-loomed fabrics, hand-loomed articles (e.g., hand-loomed rugs, scarves, place mats, and tablecloths), handmade articles made from hand-loomed fabrics, if produced in and exported from Senegal, are eligible for preferential tariff treatment under section 112(a) of the AGOA. In the letter published below, CITA directs the Commissioner, Bureau of Customs and Border Protection to allow duty-free entry of such products under U.S. Harmonized Tariff Schedule subheading 9819.11.27 if accompanied by an appropriate AGOA visa in grouping "9". No eligible folklore articles were included in Senegal's submission. CITA may extend this treatment to additional products following consultations with the Government of Senegal.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 17, 2005.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: The Committee for the Implementation of Textiles Agreements

(CITA), pursuant to Sections 112(a) of the African Growth and Opportunity Act (Title I of Pub. L. No. 106-200) (AGOA) and Executive Order 13191 of January 17, 2001, has determined, effective on June 6, 2005, that the following articles shall be treated as "hand-loomed, handmade, and folklore articles" under the AGOA: (a) Hand-loomed fabrics, hand-loomed articles (e.g., hand-loomed rugs, scarves, placemats, and tablecloths), (b) and hand-made articles made from hand-loomed fabrics, if made in Senegal from fabric hand-loomed in Senegal. Such articles are eligible for duty-free treatment only if entered under subheading 9819.11.27 and accompanied by a properly completed visa for product grouping "9", in accordance with the provisions of the Visa Arrangement between the Government of Senegal and the Government of the United States Concerning Textile and Apparel Articles Claiming Preferential Tariff Treatment under Section 112 of the Trade and Development Act of 2000. No eligible folklore articles were included in Senegal's submission. After additional consultations with Senegalese authorities, CITA may determine that other textile and apparel goods shall be treated as hand-loomed, handmade, or folklore articles.

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E5–2559 Filed 5–19–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0053]

Federal Acquisition Regulation;Information Collection; Permits, Authorities, or Franchises Certification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning permits, authorities, or franchises certification. The clearance currently expires on July 31, 2005.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before July 19, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeritta Parnell, Contract Policy Division, GSA (202) 501–4082.

SUPPLEMENTARY INFORMATION:

A. Purpose

This certification and copies of authorizations are needed to determine that the offeror has obtained all authorizations, permits, etc., required in connection with transporting the material involved. The contracting officer reviews the certification and any documents requested to ensure that the offeror has complied with all regulatory requirements and has obtained any permits, licenses, etc., that are needed.

B. Annual Reporting Burden

Respondents: 1,106.
Responses Per Respondent: 3.
Annual Responses: 3,318.
Hours Per Response: .094.
Total Burden Hours: 312.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0053, Permits, Authorities, or Franchises Certification, in all correspondence.

Dated: May 13, 2005

Julia B. Wise,

Director,Contract Policy Division.

[FR Doc. 05–10052 Filed 5–19–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Nuclear Capabilities will meet in closed session on May 26–27, 2005 (at IDA; general theme is the world environment); June 17, 2005 (at IDA; general theme is the complex, manufacturing, and systems engineering); July 21–22, 2005 (location TBD); August 1–12, 2005 (summer study session in Irvine, CA); August 30–31, 2005 (in addition to time in Irvine, location TBD) and September 13–14, 2005 (location TBD). The Institute for Defense Analysis (IDA) is located at 4850 Mark Center Drive, Alexandria, VA. The Task Force will review DoD needs and specific requirements for nuclear capabilities.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

DATES: May 26–27, 2005 (at IDA; general theme is the world environment); June 17, 2005 (at IDA; general theme is the complex, manufacturing, and systems engineering); July 21–22, 2005 (location TBD); August 1–12, 2005 (summer study session in Irvine, CA); August 30–31, 2005 (in addition to time in Irvine, location TBD); and September 13–14, 2005 (location TBD).

ADDRESSES: The Institute for Defense Analysis (IDA) is located at 4850 Mark Center Drive, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: LtCol David Robertson, USAF, Defense Science Board, 3140 Defense Pentagon, Room 3D865, Washington, DC 20301–3140, via e-mail at *david.robertson@osd.mil*, or via phone at (703) 695–4158.

SUPPLEMENTARY INFORMATION: The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Assess the current plan for sustaining the nuclear weapons stockpile and make recommendations

for ensuring the future reliability, safety, security, and relevance of the nuclear weapons stockpile for the 21st century; examine the DoD role in defining needs in the nuclear weapons stockpile and recommend changes in institutional arrangements to ensure an appropriate DoD role; assess progress towards the goal of an integrated new triad of strike capabilities (nuclear, advanced conventional, and non-kinetic) within the new triad of strike, defense and infrastructure; examine a wide range of alternative institutional arrangements that could provide for more efficient management of the nuclear enterprise; examine approaches to evolving the stockpile with weapons that are simpler to manufacture and that can be sustained with a smaller, less complex, less expensive design, development, certification and production enterprise; and examine plans to transform the nuclear weapons production complex to provide a capability to respond promptly to changes in the threat environment with new designs or designs evolved with previously tested nuclear components.

Due to scheduling difficulties, there is insufficient time to provide timely notice required by Section 10(a) of the Federal Advisory Committee Act and Subsection 102–3.150(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR part 102–3.150(b), which further requires publication at least 15 calendar days prior to the meeting.

Jeanette Owings-Ballard,
OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 05–10155 Filed 5–19–05; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.
ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on Force Protection in Urban and Unconventional Environments will meet in closed session on SAI, 3601 Wilson Boulevard, Arlington, VA. June 21–22, 2005; and July 26–27, 2005, at SAI, 3601 Wilson Boulevard, Arlington, VA. This Task Force will review and evaluate force protection capabilities in urban and unconventional environments and provide recommendations to effect change to the future Joint Force.

DATES: June 21–22, 2005, and July 26–27, 2005.

ADDRESSES: SAI, 3601 Wilson Boulevard, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: LTC Scott Dolgoff, USA, Defense Science Board, 3140 Defense Pentagon, Room 3D865, Washington, DC 20301–3140, via e-mail at *scott.dolgoff@osd.mil,* or via phone at (703) 695–4158.

SUPPLEMENTARY INFORMATION: The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. Specifically, the Task Force's focus will be to evaluate force protection in the context of post major combat operations that have been conducted in Iraq and Afghanistan. In the operations, loss of national treasure—military and civilian, U.S. and other nations—has resulted from actions executed by non-state and rogue actors. The threat and capabilities these insurgent, terrorist and criminal actions present post a most serious challenge to our ability to achieve unified action.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. 2), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: May 17, 2005.

Jeannette Owings-Ballard,
OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 05–10156 Filed 5–19–05; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.
ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on Improvised Devices (IEDs) will meet in closed session on June 23–24, 2005; July 26–27, 2005, at Strategic Analysis, Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will explore methods and techniques to significantly reduce the effects of IEDs on U.S. and coalition forces in operations such as are currently being conducted in Operation Iraqi Freedom (OIF). The Task Force should examine ways to counter the use as well as mitigate the consequences of IEDs. The Task Force should examine ways to counter the use as well as mitigate the consequences of IEDs.

DATES: June 23–24, 2005, and July 26–27, 2005.

ADDRESSES: Strategic Analysis, Inc., 3601 Wilson Boulevard, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: LTC Scott Dolgoff, USA, Defense Science Board, 3140 Defense Pentagon, Room 3D865, Washington, DC 20301–3140, via e-mail at *scott.dolgoff@osd.mil,* or via phone at (703) 695–4158.

SUPPLEMENTARY INFORMATION: The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will consider the entire spectrum of intervention objects, including deterrence, dissuasion, remote predetonation, remote disarming, elimination of sources and/or manufacturing facilities, discovery and remove of critical personnel, discovery and removal of employed devices, or anything else that has the end effect of either lowing the value or raising the cost of employing IEDs as an insurgent or terrorist weapons of choice. The Task Force will have four primary objectives: assess the current state of the art of allied forces in countering adversary use of IEDs in operations such as OIF; recommend a mid-to-long term set of integrated activities aimed at improving the state of the art in reducing the effect of IEDs over the next three to ten years; provide recommendations on short term (over the next six months to three years) incremental improvements in U.S. forces' ability to counter or reduce the effectiveness of IEDs, and identify any synergies that may exist between current counter-IED and countermine efforts.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: May 17, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–10157 Filed 5–19–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on Manufacturing Technology will meet in open session on May 24–25, 2005; July 26–27, 2005; September 21–22, 2005; and November 2–3, 2005, at SAI, 3601 Wilson Boulevard, Arlington, VA. This Task Force will review the Department of Defense Manufacturing Technology (ManTech) Program.

DATES: May 24–25, 2005; July 26–27, 2005; September 21–22, 2005; November 2–3, 2005.

ADDRESSES: SAI, 3601 Wilson Boulevard, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: LTC Scott Dolgoff, USA, Defense Science Board, 3140 Defense Pentagon, Room 3D865, Washington, DC 20301–3140, via e-mail at *scott.dolgoff@osd.mil,* or via phone at (703) 695–4158.

SUPPLEMENTARY INFORMATION: The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will review the extent to which ManTech investments and funding plans for each Military Service and the Defense Logistics Agency support near-term, warfighting operations, the industrial base, and long-range/revolutionary technologies. Assess the adequacy of technical investments across manufacturing process disciplines and support for both Joint Warfighting Capabilities and revolutionary technologies. The Task Force will also appraise funding for manufacturing research and development, including mechanisms to support both Service/Agency requirements and cross-cutting initiatives.

Due to scheduling and work burden difficulties, there is insufficient time to provide timely notice required by section 10(a) of the Federal Advisory Committee Act and subsection 102–3.150(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR 102–3.150(b), which further requires publication at least 15 calendar days prior to the meeting.

Dated: May 17, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–10158 Filed 5–19–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 20, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 16, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Annual Report of Children in State Agency and Locally Operated Institutions for Neglected and Delinquent Children.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 3,052.

Burden Hours: 4,224.

Abstract: An annual survey is conducted to collect data on (1) the number of children enrolled in educational programs of State-operated institutions for neglected or delinquent (N or D) children, community day programs for N or D children, and adult correctional institutions and (2) the October caseload of N or D children in local institutions.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2716. When you access the information collection, click on "Download Attachments "to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–10085 Filed 5–19–05; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 20, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 16, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Department of Education

Type of Review: Extension.

Title: Master Plan for Customer Surveys and Focus Groups.

Frequency: One-time.

Affected Public: Individuals or household; businesses or other for-profit; not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 55,000.

Burden Hours: 25,000.

Abstract: Customer satisfaction surveys and focus group discussions will be conducted by the Principal Offices of the Department of Education to measure customer satisfaction and establish and improve customer service standards as required by Executive Order 12862.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2717. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–10086 Filed 5–19–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 19, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 17, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New.

Title: Evaluation of States' Monitoring and Improvement Practices Under the

Individuals with Disabilities Education Act.

Frequency: One time.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; Federal government.

Reporting and Recordkeeping Hour Burden:

Responses: 102.

Burden Hours: 306.

Abstract: States' monitoring and improvement practices under the Individuals with Disabilities Education Act (IDEA) are vital to ensuring that students with disabilities receive a free appropriate public education and that infants and toddlers with disabilities and their families receive early intervention services. The purpose of this study is to evaluate states' monitoring and related improvement practices under IDEA. This study will describe the nature and scope of monitoring as implemented by the 50 states and the District of Columbia for Parts B and C of IDEA, assess the effect of the quality of states' monitoring and related improvement practices on key outcomes of Parts B and C of IDEA, and identify and develop recommendations for potential best practices in monitoring and identify areas for ongoing technical assistance.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2772. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–10087 Filed 5–19–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.358A]

Small, Rural School Achievement Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice announcing application deadline.

SUMMARY: Under the Small, Rural School Achievement (SRSA) program, we award grants on a formula basis to eligible local educational agencies (LEAs) to address the unique needs of small, rural school districts. In this notice, we establish the deadline for submission of the fiscal year (FY) 2005 SRSA grant applications.

As discussed in this notice, if an eligible LEA submitted an application for SRSA grant funds for a prior year, the LEA is considered to have met the FY 2005 application requirement based on its previously submitted application and does not have to submit a new application to the Department to receive its FY 2005 SRSA grant award.

Application Deadline: June 17, 2005, 4:30 p.m. eastern time.

SUPPLEMENTARY INFORMATION:

Which LEAs Are Eligible for An Award Under the SRSA Program?

An LEA is eligible for an award under the SRSA program if —

(a) The total number of students in average daily attendance at all of the schools served by the LEA is fewer than 600, *or* each county in which a school served by the LEA is located has a total population density of fewer than 10 persons per square mile; *and*

(b) All of the schools served by the LEA are designated with a school locale code of 7 or 8 by the Department's National Center for Education Statistics, or the Secretary has determined, based on a demonstration by the LEA and concurrence of the SEA, that the LEA is located in an area defined as rural by a governmental agency of the State.

The SRSA spreadsheets on the Department's Web site at *http://www.ed.gov/programs/reapsrsa/eligibility.html* identify the LEAs that meet these requirements and are eligible to participate in the SRSA program.

Which Eligible LEAs Need Not Submit an Additional Application To Receive a FY 2005 SRSA Grant Award?

Under the regulations in 34 CFR 75.104(a), the Secretary makes a grant only to an eligible party that submits an application. Given the limited purpose served by an application under this program, the Secretary considers this requirement to be met if the LEA submitted an SRSA application for any prior year, even if the LEA has not previously received SRSA funds. In this circumstance, unless the LEA advises the Secretary by the application deadline that it is withdrawing its application, the Secretary deems the application that the LEA previously submitted to remain in effect for FY 2005 funding, and the LEA does not have to submit an additional application. All other eligible LEAs must submit a new application to receive a FY 2005 grant award.

We have provided a list of LEAs eligible for FY 2005 funds on the Department's Web site at *http://www.ed.gov/programs/reapsrsa/eligibility.html.* The Web site also indicates which of these eligible LEAs must submit a new application to the Department to receive their FY 2005 SRSA grant award, and which eligible LEAs are considered already to have met the application requirement.

Eligible LEAs that must submit a new application in order to receive FY 2005 SRSA funding must do so electronically by the deadline established in this notice.

Electronic Submission of Applications: Unless it is listed on the Department's Web site as not required to submit a new application, an eligible LEA that seeks FY 2005 SRSA funding must submit an electronic application by June 17, 2005, 4:30 pm eastern time. Submission of an electronic application involves the use of the Department's Electronic Grant Application System (e-Application) available through the Department's e-Grants system.

You can access the electronic application for the SRSA Program at: *http://e-grants.ed.gov.*

Once you access this site, you will receive specific instructions regarding the information to include in your application.

The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight, Saturday (Washington, DC time). Please note that the system is unavailable on Sundays and Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Schulz or Mr. Robert Hitchcock. Telephone: (202) 401–0039 or via Internet: *reap@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this notice in an alternative

format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document: You may view this document, as well as other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll-free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official version of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 7345–7345b.

Dated: May 16, 2005.

Raymond Simon,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 05–10139 Filed 5–19–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

The Historically Black Colleges and Universities Capital Financing Advisory Board

AGENCY: The Historically Black Colleges and Universities Capital Financing Board, Department of Education.

ACTION: Notice of Meeting.

DATE AND TIME: The meeting will be held from 9 a.m. to 3 p.m., Thursday, May 26, 2005.

LOCATION: The U.S. Department of Education, OPE's Eight Floor Conference Center, 1990 K Street, NW., Washington, DC 20006.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Historically Black Colleges and Universities Capital Financing Advisory Board. The notice also describes the functions of the Board. Notice of this meeting is required by Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

FOR FURTHER INFORMATION CONTACT: Steven Pappas, Executive Director, Historically Black Colleges and Universities Capital Financing Program, 1990 K Street, NW., Washington, DC 20006; telephone (202) 502–7555; fax: (202) 502-7862; e-mail: *Steven.Pappas@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339, between 8 a.m. and 8 p.m., eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Historically Black Colleges and Universities Capital Financing Advisory Board (Board) is authorized by Title III, Part D, Section 347 of the Higher Education Act of 1965, as amended in 1998 (20 U.S.C. 1066F). The Board is established within the Department of Education to provide advice and counsel to the Secretary and the designated bonding authority as to the most effective and efficient means of implementing construction financing on historically black college and university campuses and to advise Congress regarding the progress made in implementing the program. Specifically, the Board will provide advice as to the capital needs of Historically Black Colleges and Universities, how those needs can be met through the program, and what additional steps might be taken to improve the operation and implementation of the construction financing program.

The purpose of this meeting is to review current program activities and to make recommendations to the Secretary on the current capital needs of Historically Black Colleges and Universities.

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.*, interpreting services, assistance listening devices, or materials in alternative format) should notify DaShawn Biddy at (202) 502–7786 no later than May 23, 2005. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Records are kept of all Board proceedings and are available for public inspection at the Office of the Historically Black Colleges and Universities Capital Financing Program, 1990 K Street, NW., Washington, DC 20006, from the hours of 9 a.m. to 5 p.m., Monday through Friday.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 05–10154 Filed 5–19–05; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–131]

ANR Pipeline Company; Notice of Negotiated Rate Filing

May 13, 2005.

Take notice that on May 10, 2005, ANR Pipeline Company (ANR) tendered for filing and approval a negotiated rate service agreement between ANR and Wisconsin Power and Light Company.

ANR requests that the Commission accept and approve the subject negotiated rate agreement to be effective June 1, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2543 Filed 5–19–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–063]

Columbia Gas Transmission Corporation; Notice of Sharing Profit Report

May 13, 2005.

Take notice that on May 10, 2005, Columbia Gas Transmission Corporation (Columbia) filed to report on the sharing with its customers of a portion of the profits from the sale of certain base gas as provided in Columbia's Docket No. RP95–408 rate case settlement. *See* Stipulation II, Article IV, sections A through E, in Docket No. RP95–408 approved at *Columbia Gas Transmission Corp.*, 79 FERC ¶ 61,044 (1997). Sales of base gas have generated additional profits of $8,389,803 (above a $41.5 million threshold) requiring a sharing of 50 percent of the excess profits with customers in accordance with Stipulation II, Article IV, section C.

Columbia states that $4,244,796, inclusive of interest, has been allocated to affected customers and credited to their March invoices, and that these credits remain subject to Commission acceptance of this filing.

Columbia states that copies of the filing have been served on its affected customers, affected state commission's and those parties on the official service list in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC.

There is an "eSubscription" link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on May 20, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2554 Filed 5–19–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–342–003]

Discovery Gas Transmission LLC; Notice of Compliance Filing

May 13, 2005.

Take notice that on May 6, 2005, Discovery Gas Transmission LLC, (Discovery) tendered for filing its initial rates and terms and conditions for service on its Market Expansion facilities as set forth in the tariff sheets in its FERC Gas Tariff, Original Volume No. 1, listed on the attachment to the filing, to be effective June 15, 2005.

Discovery further states that copies of the filing have been mailed to all the parties listed on the official service list in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC.

There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 3, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2544 Filed 5–19–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP04–251–006 and RP04–248–005]

El Paso Natural Gas Company; Notice of Allocated Path Report

May 13, 2005.

Take notice that on May 6, 2005, El Paso Natural Gas Company (EPNG) submitted two Summary of Allocated Path reports pursuant to Article VI, Pathing and Segmentation, of the Stipulation and Agreement filed with the Commission in Docket Nos. RP04–251–000 and RP04–248–000.

EPNG states that copies of the reports were served on parties on the official service list in the above-captioned proceedings.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory

Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on May 20, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2549 Filed 5–19–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–105–000]

Entergy Services, Inc.; Notice of Institution of Proceeding and Refund Effective Date

May 12, 2005.

On May 5, 2005, the Commission issued an order that instituted a proceeding in Docket No. EL05–105–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, to investigate whether Entergy Services, Inc. satisfies the Commission's transmission market power and affiliate abuse or reciprocal dealing standards for the grant of market-based rate authority. *Entergy Services, Inc.*, 111 FERC ¶ 61,145 (2005).

The refund effective date in Docket No. EL05–105–000, established pursuant to section 206(b) of the FPA, will be 60 days from the date of publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2535 Filed 5–19–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–77–000]

Florida Power Corporation, Carolina Power & Light Company; Notice of Institution of Proceeding and Refund Effective Date

May 12, 2005.

On May 5, 2005, the Commission issued an order that instituted a proceeding in Docket No. EL05–77–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. § 824e, to determine whether Florida Power Corporation and Carolina Power & Light Company may continue to charge market-based rates. *Florida Power Corporation and Carolina Power & Light Company*, 111 FERC ¶ 61,154 (2005).

The refund effective date in Docket No. EL05–77–000, established pursuant to section 206(b) of the FPA, will be 60 days from the date of publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2536 Filed 5–19–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–99–000]

LG&E Energy Marketing Inc., Louisville Gas & Electric Company, Kentucky Utilities Company, WKE Station Two Inc., Western Kentucky Energy Corporation; Notice of Institution of Proceeding and Refund Effective Date

May 12, 2005.

On May 5, 2005, the Commission issued an order that instituted a proceeding in Docket No. EL05–99–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, to determine whether LG&E Energy Marketing Inc., Louisville Gas & Electric Company, Kentucky Utilities Company, WKE Station Two Inc., and Western Kentucky Energy Corporation (LG&E Parties) may continue to charge market-based rates pursuant to the provisions of section 206. *LG&E Energy Marketing Inc., et al.*, 111 FERC ¶ 61,153 (2005).

The refund effective date in Docket No. EL05–99–000, established pursuant to section 206(b) of the FPA, will be 60 days from the date of publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2538 Filed 5–19–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05–744–000]

Major Lending, LLC; Notice of Issuance of Order

May 12, 2005.

Major Lending LLC (Major Lending) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for the sales of capacity and energy at market-based rates. Major Lending also requested waiver of various Commission regulations. In particular, Major Lending requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Major Lending.

On May 11, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Major Lending should file a motion to intervene or protest 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, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is June 10, 2005.

Absent a request to be heard in opposition by the deadline above, Major Lending is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Major Lending, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Major Lending's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2540 Filed 5–19–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–6–017, –018, –019, –020, –021, –022; EL04–135–019, –020, –021, –022, –023, –024; EL02–111–037, –038, –039, –040, –041, –042; EL03–212–033, –034, –035, –036, –037, –038]

Midwest Independent Transmission System Operator, Inc.; Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, LLC, et al.; Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, LLC, et al.; Ameren Services Company, et al.; Notice Establishing Common Comment Date

May 13, 2005.

On April 19, 2005, the Commission issued a Notice of Extension of Time establishing a common due date to file comments on the March 31, 2005, filing by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and the Midwest ISO Transmission Owners (collectively, Midwest ISO Applicants). The comment due date was extended to coincide with the comment date established for an anticipated filing that was to be submitted by Midwest ISO Applicants to incorporate lost revenue information that was to be filed by the PJM Interconnection, L.L.C. (PJM) transmission owners.

On May 9, 2005, the Commission issued another notice to establish a common comment due date for further filings that had been submitted that relate to the March 31, 2005 filing by the Midwest ISO Applicants.

Subsequently, Midwest ISO Applicants' anticipated filing to incorporate lost revenue information that was submitted by the PJM transmission owners, was submitted on May 4, 2005, as amended on May 5, 2005. A notice for this filing was issued on May 12, 2005, with a comment due date of May 26, 2005.

Accordingly, in order to ensure consistent comment deadlines on these related filings, notice is hereby given that the due date for comments on the filings submitted in the above captioned dockets is extended to and including May 26, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2545 Filed 5–19–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–339–000]

North Baja Pipeline, LLC; Notice of Limited Case-Specific Waiver

May 13, 2005.

Take notice that on May 10, 2005, North Baja Pipeline, LLC (NBP), Sempra Energy LNG Marketing Corp. (Sempra Marketing) and Termoelectrica de Mexicali, S. de R.L. de C.V. (TDM) tendered for filing a joint petition for limited case-specific waiver.

NBP, TDM and Sempra Marketing are requesting a limited case-specific waiver of the Commission's capacity release regulations in order to allow an assignment of TDM's firm capacity and its negotiated rate contract to Sempra Marketing.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicted below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Intervention and Comment Date: 5 p.m. eastern time on May 19, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2552 Filed 5–19–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–95–000]

PacifiCorp and PPM Energy, Inc.; Notice of Institution of Proceeding and Refund Effective Date

May 12, 2005.

On May 9, 2005, the Commission issued an order that instituted a proceeding in Docket No. EL05–95–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, to determine whether PacifiCorp and PPM Energy, Inc. may continue to charge market-based rates in the PacifiCorp East and Idaho control areas. *PacifiCorp and PPM Energy,* Inc. 111 FERC ¶ 61,205 (2005).

The refund effective date in Docket No. EL05–95–000, established pursuant to section 206(b) of the FPA, will be 60

days from the date of publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2537 Filed 5–19–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–698–000 and ER05–698–001]

San Joaquin Cogen, L.L.C.; Notice of Issuance of Order

May 12, 2005.

San Joaquin Cogen, L.L.C. (San Joaquin) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for the sales of capacity, energy, and ancillary services at market-based rates. San Joaquin also requested waiver of various Commission regulations. In particular, San Joaquin requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by San Joaquin.

On May 11, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by San Joaquin should file a motion to intervene or protest 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, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is June 10, 2005.

Absent a request to be heard in opposition by the deadline above, San Joaquin is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of San Joaquin, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of San Joaquin's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2539 Filed 5–19–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–104–000]

Southern Companies Energy Marketing, Inc. and Southern Companies Services, Inc.; Notice of Institution of Proceeding and Refund Effective Date

May 12, 2005.

On May 5, 2005, the Commission issued an order that instituted a proceeding in Docket No. EL05–104–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, to investigate whether Southern Companies [1] satisfies three parts of the Commission's market-based rate analysis, namely, transmission market power, barriers to entry, and affiliate abuse or reciprocal dealing standards. *Southern Companies Energy Services Marketing, Inc. and Southern Companies Services, Inc.* 111 FERC ¶ 61,144 (2005).

The refund effective date in Docket No. EL05–104–000, established pursuant to section 206(b) of the FPA, will be 60 days from the date of publication of this notice in the **Federal Register**.

[1] Southern Companies include Southern Companies Services, Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company, and Southern Power Company.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2534 Filed 5–19–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–102–000]

Southern Company Services, Inc.; Notice of Institution of Proceeding and Refund Effective Date

May 12, 2005.

On May 5, 2005, the Commission issued an order that instituted a proceeding in Docket No. EL05–102–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, to examine alleged affiliate abuse within the Southern Companies.[1] *Southern Company Services, Inc., et al.*, 111 FERC ¶ 61,146 (2005).

The refund effective date in Docket No. EL05–102–000, established pursuant to section 206(b) of the FPA, will be 60 days from the date of publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2533 Filed 5–19–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–340–000]

TransColorado Gas Transmission Company; Notice of Filing of Request for Waiver of Tariff Provisions

May 13, 2005.

Take notice that on May 11, 2005, TransColorado Gas Transmission Company (TransColorado) tendered for filing a request for waiver of its tariff provisions.

[1] Southern Companies include Southern Company Services, Inc., Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company and Southern Power Company. Southern Power Company is an affiliated merchant generator that does not have retail load or a franchised service territory. Southern Company Services, Inc. is the service company for the Southern system. All of these companies are owned by Southern Company, Inc. a registered public utility holding company. The holding company and affiliates are referred to collectively as Southern Companies.

TransColorado states that it filed the above-referenced request to petition the Commission to allow TransColorado to waive certain force majeure provisions of section 14 of the general terms and conditions of its FERC Gas Tariff.

TransColorado states that copies of its filing have been served upon all of its customers and effected state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2553 Filed 5–19–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–337–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 13, 2005.

Take notice that on May 10, 2005, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective June 9, 2005:

Third Revised Sheet No. 120
Fourth Revised Sheet No.122
Second Revised Sheet No. 122D
Second Revised Sheet No. 122E
Third Revised Sheet No. 122F

Transco states that the purpose of the instant filing is to update and clarify certain provisions included in Rate Schedule LG–A and Rate Schedule LNG of Transco's Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2550 Filed 5–19–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–338–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 13, 2005.

Take notice that on May 10, 2005, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet, to become effective June 9, 2005:

Third Revised Sheet No. 3740.01

Transco states that the purpose of the instant filing is to revise certain provisions included in section 48 of the General Terms and Conditions of Transco's Tariff, Right of First Refusal Procedures to clarify the procedures to be followed in the event no bids are received (or accepted by Transco) in response to a posting under section 48.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and

interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2551 Filed 5–19–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–43–000, et al.]

Exelon Corporation, et al.; Electric Rate and Corporate Filings

May 13, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Exelon Corporation, Public Service Enterprise Group Incorporated

[Docket No. EC05–43–000]

Take notice that on May 10, 2005, Exelon Corporation and its subsidiaries that are PUBLIC utilities subject to the Commission's jurisdiction (collectively, Exelon) and Public Service Enterprise Group Incorporated and its subsidiaries that are public utilities subject to the Commission's jurisdiction (collectively, PSEG) submitted an answer to various motions to intervene, protests and requests for hearing which provides certain additions to their proposal filed on February 4, 2005 as supplemented on February 9, 2005.

Comment Date: 5 p.m. Eastern Time on May 27, 2005.

2. Bonneville Power Administration, PacifiCorp, Idaho Power Company

[Docket No. EL05–106–000]

Take notice that on April 29, 2005, Bonneville Power Administration (Bonneville), PacifiCorp, and Idaho Power Company, pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedures, 18 CFR 385.207(a)(2), filed a petition for a declaratory order on a conceptual proposal in reference to certain issues of importance to the further development of Grid West.

Comment Date: 5 p.m. Eastern Time on May 27, 2005.

3. Coral Power, L.L.C.; Coral Energy Management, LLC

[Docket Nos. ER96–25–027, ER01–1363–005]

Take notice that on May 4, 2005, Coral Power, L.L.C. (Coral Power) and Coral Energy Management, LLC (Coral EM) (together, Coral Entities) submitted a notice of change in status describing a change in the upstream ownership of the Coral Entities. In addition, Coral Power and Coral EM each submitted a revised market-based rate tariff sheet which incorporates the Commission's change in status reporting requirement set forth in Order No. 652. Coral Power and Coral EM requests an effective date of March 21, 2005.

Coral Power and Coral EM state that copies of the filing were served upon all persons listed on the official service lists compiled by the Secretary in the above-captioned dockets.

Comment Date: 5 p.m. Eastern Time on May 25, 2005.

4. Montana-Dakota Utilities Co.

[Docket No. ER98–4289–004]

Take notice that on May 9, 2005, Montana-Dakota Utilities Co. (Montana-Dakota) submitted for filing an amendment to its updated market power analysis filed on October 18, 2004 in Docket No. ER98–4289–003.

Comment Date: 5 p.m. Eastern Time on May 31, 2005.

5. Puget Sound Energy, Inc.

[Docket No. ER99–845–009]

Take notice that on May 4, 2005, Puget Sound Energy, Inc. (Puget) submitted a compliance filing pursuant to the Commission's order issued April 13, 2005 in Docket No. ER99–845–003, *et al.*, 111 FERC ¶ 61,020 (2005).

Comment Date: 5 p.m. Eastern Time on May 25, 2005.

6. Indigo Generation, LLC; Larkspur Energy LLC; Wildflower Energy LP

[Docket No. ER01–1822–004]

Take notice that on May 5, 2005, Indigo Generation LLC, Larkspur Energy LLC and Wildflower Energy LP submitted a compliance filing pursuant to the Commission's order issued April 5, 2005 in Docket No. ER01–1822–003.

Comment Date: 5 p.m. Eastern Time on May 26, 2005.

7. PPL University Park, LLC

[Docket No. ER02–1327–003]

Take notice that on May 9, 2005, PPL University Park, LLC (PPL University Park) submitted an updated market power analysis and updated tariff sheets to incorporate the change in status reporting requirement adopted by the Commission in Order No. 652, *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, 70 FR 8253 (Feb. 18, 2005), FERC Stats. & Regs., Regulations Preambles ¶ 31,175 (2005).

PPL University Park states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. Eastern Time on May 31, 2005.

8. Mirant Oregon, LLC

[Docket No. ER02–1331–007]

Take notice that on May 5, 2005, Mirant Oregon, LLC submitted a compliance filing pursuant to the Commission's letter order issued April 5, 2005 in Docket Nos. ER99–1435–007 and ER02–1331–005.

Comment Date: 5 p.m. Eastern Time on May 26, 2005.

9. Chehalis Power Generating Limited Partnership

[Docket No. ER03–717–002]

Take notice that on May 5, 2005, Chehalis Power Generating Limited Partnership (Chehalis) filed a notification of change in status.

Comment Date: 5 p.m. Eastern Time on May 26, 2005.

10. Pacific Gas and Electric Company

[Docket No. ER04–242–002]

Take notice that on May 5, 2005, Pacific Gas and Electric Company submitted a compliance filing pursuant to the Commission's order issued April 27, 2005 in Docket No. ER04–115–002, *et al.*, 111 FERC ¶ 61,125 (2005).

Pacific Gas and Electric Company states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. Eastern Time on May 26, 2005.

11. California Independent System Operator Corporation

[Docket No. ER05–224–002]

Take notice that on May 9, 2005, the California Independent System Operator Corporation (ISO) submitted a compliance filing pursuant to the Commission's April 8, 2005 order in

Docket Nos. ER05–224–000 and 001, 111 FERC ¶ 61,015. The ISO states that the filing also contains clean-up changes to ISO Tariff sheets.

The ISO states that it has served copies of this filing upon the California Public Utilities Commission, the California Energy Commission, the California Electricity Oversight Board, all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff, and all parties on the official service list for the captioned docket. In addition, the ISO is posting this filing on the ISO Home Page.

Comment Date: 5 p.m. Eastern Time on May 31, 2005.

12. Hot Spring Power Company, LP

[Docket No. ER05–570–003]

Take notice that on May 5, 2005, Hot Spring Power Company, LP (Hot Spring) filed a notification of change in status.

Comment Date: 5 p.m. Eastern Time on May 26, 2005.

13. American Electric Power Service Corporation

[Docket No. ER05–758–001]

Take notice that on May 6, 2005, American Electric Power Service Corporation (AEPSC) on behalf of the AEP operating companies in its East Zone, (namely Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company) submitted an amendment to its March 30, 2005 filing in Docket No. ER05–758–000 regarding an Interconnection and Local Delivery Service Agreement between AEP and Hooiser Energy Rural Electric Cooperative, Inc.

AEPSC states that copies of the filing were served on all parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. Eastern Time on May 31, 2005.

14. American Electric Power Service Corporation

[Docket No. ER05–824–001]

Take notice that on May 6, 2005, American Electric Power Service Corporation (AEPSC) on behalf of the AEP operating companies in its East Zone, (namely Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company) submitted an amendment to its April 13, 2005 filing in Docket No. ER05–824–000.

AEPSC states that copies of the filing were served on all parties on the official service list in the above-captioned proceedings.

Comment Date: 5 p.m. Eastern Time on May 31, 2005.

15. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER05–944–000]

Take notice that on May 9, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted revisions to the Midwest ISO's Open Access Transmission and Energy Markets Tariff, Attachment L (Credit Policy). The Midwest ISO requested an effective date of July 8, 2005.

The Midwest ISO states that it has electronically served a copy of this filing on all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, and all state commissions within the region. In addition, the Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter.

Comment Date: 5 p.m. Eastern Time on May 31, 2005.

16. ISO New England Inc. and New England Power Pool Participants Committee

[Docket No. ER05–945–000]

Take notice that on May 9, 2005, ISO New England Inc. (the ISO) and the New England Power Pool (NEPOOL) Participants Committee submitted a one-year modification of the rating requirement for the insurance company providing credit insurance under the ISO Financial Assurance Policy for Market Participants, which constitutes section IA of the ISO's Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3.

The ISO and NEPOOL state that paper copies of said filing were sent to the New England state governors and regulatory agencies, and electronic copies were sent to all NEPOOL Participants, which constitute the ISO's Governance Participants.

Comment Date: 5 p.m. Eastern Time on May 31, 2005.

17. Golden Spread Electric Cooperative, Inc.

[Docket No. ER05–946–000]

Take notice that on May 9, 2005, Golden Spread Electric Cooperative, Inc. (Golden Spread) tendered for filing with the Commission a Fifth Informational Filing to Golden Spread Rate Schedule No. 35. Golden Spread states that the Fifth Informational Filing updates the formulary fixed costs associated with replacement energy sales by Golden Spread to Southwestern Public Service Company (Southwestern).

Golden Spread states that a copy of this filing has been served upon Southwestern.

Comment Date: 5 p.m. Eastern Time on May 31, 2005.

18. Southern California Edison Company

[Docket No. ER05–947–000]

Take notice that on May 9, 2005, Southern California Edison Company (SCE) submitted the Bear Valley Project Distribution System Facilities Agreement (Facilities Agreement) between SCE and the Southern California Water Company (SCWC). SCE states that the Facilities Agreement specifies the terms and conditions pursuant to which SCE will engineer, design, construct, install, own, operate, and maintain, and SCWC will pay for, the Distribution System Facilities as described in Exhibit A to the Facilities Agreement such that the Bear Valley Project can operate in parallel with SCE's electric system on a permanent basis.

SCE states that copies of the filing were served upon the Public Utilities Commission of the State of California and SCWC.

Comment Date: 5 p.m. Eastern Time on May 31, 2005.

19. StratErgy, Inc.

[Docket No. ER05–948–00]

Take notice that on May 6, 2005, StratErgy, Inc. (StratErgy) filed a notice of cancellation of its market-based rate electric tariff, Rate Schedule FERC No. 1. StratErgy has requested an effective date of May 6, 2005.

StratErgy states that copies of the filing were not served upon any party, because such cancellation affects no purchasers under StratErgy's Rate Schedule FERC No. 1.

Comment Date: 5 p.m. Eastern Time on May 31, 2005.

20. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER05–949–000]

Take notice that on May 9, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a Large Generator Interconnection Agreement among the Power Partners Midwest, LLC; the Midwest ISO and Northern Indiana

Public Service Company. Midwest ISO requests an effective date of April 18, 2005.

Midwest ISO states that a copy of this filing was served on Power Partners Midwest, LLC and Northern Indiana Public Service Company.

Comment Date: 5 p.m. Eastern Time on May 31, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2566 Filed 5–19–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Filing Notices; Notice Announcing New Combined Notice of Filings

May 13, 2005.

Effective May 17, 2005, the Commission will use a new method, Combined Notice of Filings, to issue notices of filings. Initially, this new method will apply only to electric rate filings. In time, the Commission expects to issue the majority of notices of filings using the new method. In the future, the Office of the Secretary will announce by public notice the start-up date for the new notice method with respect to other types of filings.

As a result of this initiative, the Office of the Secretary is making the following changes to the filing procedures for electric rate filings:

1. Filers are no longer required to include draft notices in floppy disk format with the filing.

2. Filers requesting a short comment period for the filing must clearly state such request in the "Re:" section of the filing, for example:

Re: Hot Spring Power Company
Docket No. ER05–___
Request for shortened comment period.

The notices issued under the new method will be added to eLibrary and will be published in the **Federal Register** under the name "Combined Notice of Filings." These new notices will list between 10 and 20 filings already incorporated into eLibrary. Each filing will be listed with its identifying details as follows:

Docket Number—This item will contain a hyperlink to the eLibrary docket sheet for the docket number.

Name of Applicant(s)—This item will show the applicant name as it appears on the filing.

Description—This item will contain a basic description of the filing and a hyperlink that will open the filed document in eLibrary, as stored in eLibrary.

Filing Date—This item will show the date on which the document was filed with the Commission.

Accession Number—This item will contain a hyperlink that will open the "Info" area of eLibrary for the filed document. There may be instances in which the accession number for the particular filing changes after issuance of the combined notice. In this case, the user will have to search eLibrary to access the document.

Comment Date—This item will indicate the comment date for the particular filing.

The "Combined Notice of Filings" will be indexed in eLibrary as follows, for example: "Combined Notice of Filings, May 20, 2005: This notice contains information concerning multiple filings received by FERC." The Commission may issue more than one "Combined Notice of Filings" on any given day. In this case, the eLibrary index will read as follows, for example: "Combined Notice of Filings; May 20, 2005 #2: This notice contains information concerning multiple filings received by FERC."

The Commission first announced the new "Combined Notice of Filings" during the April 13, 2004 open meeting. The "Combined Notice of Filings" is similar to the electric rate group notices that the Commission currently publishes in the **Federal Register.** By this initiative, the Commission seeks to simplify the manner in which the Commission's staff prepares notices and thereby expedite the public issuance of notices.

A sample "Combined Notice of Filings" is attached.

Magalie R. Salas,

Secretary.

Attachment

SAMPLE

United States of America Federal Energy Regulatory Commission

Notice of Filings (Thursday, May 12, 2005)

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER00–2603–003.

Applicants: Trigen-Syracuse Energy Corporation.

Description: Trigen-Syracuse Energy Corp advises FERC of the changes to the Triennial Market Power Update under ER00–2603.

Filed Date: 05/10/2005.

Accession Number: 20050511–0295.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 31, 2005.

Docket Numbers: ER05–952–000.

Applicants: Western Systems Power Pool.

Description: Western Systems Power Pool, Inc requests for FERC to amend the WSPP Agreement to include the City of Corona Department of Water and Power et al as members under ER05–952.

Filed Date: 05/10/2005.

Accession Number: 20050511–0293.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 31, 2005.

Docket Numbers: ER05–953–000.

Applicants: Phelps Dodge Power Marketing, LLC.

Description: Application for market-based rate authorization, certain waivers and blanket authorizations re Phelps Dodge Power Marketing, LLC under ER05–953.

Filed Date: 05/10/2005.

Accession Number: 20050511–0291.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 31, 2005.

Docket Numbers: ER05–954–000.
Applicants: USGen New England, Inc.
Description: USGen New England, Inc submits a notice of cancellation of its FERC Electric Rate Tariff, Original Volume 1 under ER05–954.
Filed Date: 05/10/2005.
Accession Number: 20050511–0298.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 31, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 pm Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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 to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. For filings on or before the comment deadline, it is not necessary to serve copies on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling line to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For Assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

[FR Doc. E5–2546 Filed 5–19–05; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Site Visit, Scoping Meetings, and Soliciting Scoping Comments

May 12, 2005.

Take notice that the following hydroelectric exemption application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption of a Major Hydropower Project 5 MW or Less.

b. *Project:* West Valley A&B Hydro Project No. 12053–001.

c. *Date Filed:* July 18, 2003.

d. *Applicant:* Mr. Nicholas Josten.

e. *Location:* On the South Fork of the Pit River in Modoc County, California. The project would be located on approximated 31 acres of federal lands, managed by Forest Service (FS) and Bureau of Land Management (BLM).

f. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §§ 2705, 2708.

g. *Applicant Contact:* Mr. Nicholas Josten, (208) 528–6152, *gsense@cableone.net*, 2742 St Charles Ave, Idaho Falls, ID 83404.

h. *FERC Contact:* Susan O'Brien, (202) 502–8449 or *susan.obrien@ferc.gov*.

i. *FS Contact:* Jayne Biggerstaff, (530) 283–7768 or *jbiggerstaff@fs.fed.us*.

j. *BLM Contact:* Phil Rhinehart, (530) 233–7907 or *phil_rhinehart@ca.blm.gov*.

k. *Deadline for filing scoping comments:* July 11, 2005.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *(http://www.ferc.gov)* through the Commission's eLibrary using the "Documents & Filing" link.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. This application has been accepted for filing, but is not ready for environmental analysis at this time.

m. The proposed project would consist of two developments, West Valley A and West Valley Alternative B–1. Alternative B–2 has been deleted from the proposed project (applicant's response to deficiencies, filed October 25, 2004).

West Valley A run-of river development would have a capacity of 1.0 MW and consists of: (1) An existing concrete diversion structure; (2) an existing intake structure; (3) 11,600 feet of open canal; (4) a proposed concrete overflow structure; (5) a proposed 2,800 feet of new canal; (6) a proposed penstock; (7) a proposed powerhouse; (8) a proposed tailrace pipe; (9) a proposed transmission line; and (10) appurtenant facilities. The applicant estimates that the total average annual generation would be 3,300,000 kWh.

West Valley Alternative B–1 run-of-river development would have a capacity of 1.36 MW and consists of: (1) The existing West Valley Dam and outlet works; (2) a new bypass valve attached to the existing dam outlet pipe; (3) a proposed penstock; (4) a proposed powerhouse; (5) a proposed tailrace canal; (6) a proposed transmission line; and (7) appurtenant facilities. The applicant estimates that the total average annual generation would be 4,730,000 kWh.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. By Letter of Understanding executed on April 18, 2005, the Forest Service (FS) and Bureau of Land Management (BLM) will be cooperating agencies regarding the Commission's actions on the West Valley Project,

including consultation, submission of additional information requests, and cooperation in the preparation of scoping and environmental documents. The FS and BLM will make independent decisions to determine whether, and under what conditions, to authorize the construction, operation and maintenance of the hydropower project on Federal lands.

This scoping process will also satisfy the scoping responsibilities of the FS and BLM, as required by National Environmental Policy Act (NEPA) and the agencies' regulations. The FS and BLM will conduct ongoing consultation with the affected and interested Indian Tribes in order to meet FS and BLM consultation commitments.

p. *Scoping Process:* The Commission intends to prepare a single environmental document in accordance with NEPA. The environmental assessment (EA) will consider both site-specific and cumulative environmental effects and reasonable alternatives to the proposed action.

Site Visit: Commission staff, along with FS, BLM, and the applicant will conduct a site visit to the proposed project area on Wednesday, June 15, 2005. All interested parties and individuals are invited to attend. Please note that the site visit may involve extensive walking. Participants in the site visit will need to provide their own transportation (carpooling will be encouraged) and bring their own lunch/water. Anyone planning to attend the site visit needs to contact Susan O'Brien at (202) 502–8449 or *susan.obrien@ferc.gov* by June 9, 2005. The time and location of the site visit is as follows:

Public Site Visit

Date: Tuesday, June 14, 2005.
Time: 9 a.m.–3 p.m. (PDT).
Place: Meet at Likely Fire Hall (in parking lot), Route 395, Likely, California.

Scoping Meetings: Commission staff will hold two scoping meetings in the project area to ensure all interested parties have an opportunity to attend. All interested resource agencies, non-governmental organizations, Native American tribes, and individuals are invited to attend one or both of the meetings. The times and locations of these meetings are as follows:

Daytime Public Scoping Meeting

Date: Wednesday, June 15, 2005.
Time: 10 a.m. (PDT).
Place: Likely Fire Hall, Route 395, Likely California.

Evening Pubic Scoping Meeting

Date: Wednesday, June 15, 2005.
Time: 6:30 p.m. (PDT).
Place: Likely Fire Hall, Route 395, Likely California.

Copies of the Scoping Document (SD) outlining the subject areas to be addressed in the EA were mailed to all parties on the Commission's mailing list and will be available at the scoping meetings. Copies may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link [see item (n.) above]. The Scoping meetings and site visit are posted on the Commission's calendar located on the Internet at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Objectives: At the scoping meetings, staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially empirical data, on the resources at issue; (3) encourage statements from experts and participants on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary view; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that do not require a detailed analysis.

Procedures: The meetings will be recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, resource agencies, and Indian tribes with environmental expertise and concerns are encouraged to attend the meetings and to assist Commission staff in defining and clarifying the issues to be addressed in the EA.

q. *Procedural schedule:* The application will be processed according to the following Hydro Exemption Schedule. Revisions to the schedule will be made as appropriate.

Major milestone	Target date
Issue Scoping Document	May 2005.
Site visit and Scoping Meetings	June 14–15, 2005.
Scoping Comments due	July 11, 2005.
Additional Information Request (AIR)	August 2005.
AIR Response due from Applicant	November 2005.
Notice that application is ready for environmental analysis	November 2005.
Comments, Terms and Conditions due	January 2006.
Reply Comments due	March 2006.
Environmental Assessment Issued	April 2006.
Ready for Commission's decision on the application	June 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2532 Filed 5–19–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

May 13, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2219–020.

c. *Date Filed:* April 29, 2005.

d. *Applicant:* Garkane Energy Cooperative, Inc. (Garkane).

e. *Name of Project:* Boulder Creek Hydroelectic Project.

f. *Location:* On Boulder Creek about 6 miles north of the town of Boulder in Garfield County, Utah. About 31.74 acres are located on the Dixie National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John Spendlove, P.E., Jones and DeMille Engineering, 1535 South 100 West, Richfield, UT 84710; (435) 896–8266.

i. *FERC Contact:* Dianne Rodman (202) 502–6077, E-mail: *Dianne.rodman@ferc.gov.*

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. *Deadline for requests for cooperating agency status:* June 28, 2005.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *(http://www.ferc.gov)* under the "e-Filing" link.

l. This application is not ready for environmental analysis at this time.

m. *The existing project consists of:* (1) The West Fork rock-filled 20-foot-high, 30-foot-long diversion dam with ungated spillway and gates on the West Fork of Boulder Creek; (2) a buried 17,600-foot-long, 27-inch-diameter concrete conduit running from the West Fork dam to the East Fork of Boulder Creek; (3) the East Fork earth-filled 29-foot-high, 630-foot-long forebay dam with an ogee concrete spillway on the East Fork of Boulder Creek; (4) a 22,200-foot-long, 31.5 to 34-inch-diameter steel penstock running from the East Fork dam to the Boulder Plant powerhouse; (5) the seasonally-operated Peterson Plant powerhouse located about 17,000 feet below the East Fork dam with an installed capacity of 100 kilowatts (kW); (6) the Boulder Plant powerhouse located at the downstream end of the penstock with an installed capacity of 1,400 kW; (7) an afterbay re-regulating pool formed by a 12-foot-high earth-filled dam with gates and ditches; (8) a 35,000-foot-long, 7.2-kilovolt (kV) distribution and communication line from the West Fork dam to the East Fork dam and on to the Peterson Plant powerhouse; (9) a 4,725-foot-long, 12.47/7.2-kV distribution and communication line from the Peterson Plant powerhouse to the Boulder Plant substation; (10) a 100-foot-long, 2,400-volt transmission line connecting the Boulder Plant powerhouse with the Boulder Plant substation; and (11) other appurtenant structures and equipment.

Garkane proposes to reconstruct the West Fork dam to provide storage for fishery enhancement. Garkane would increase the height of the dam by 12.5 feet to a new height of 36.5 feet, resulting in a surface area of about 4.8 acres and a storage capacity of 54.2 acre-feet. Garkane would continue to operate the project in run-of-river mode.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance or Deficiency Letter—June 2005.

Request Additional Information—June 2005.

Notice Soliciting Final Terms and Conditions—September 2005.

Notice of the Availability of the EA—February 2006.

Ready for Commission's Decision on the Application—April 2006.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2547 Filed 5–19–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD05–11–000 and ER02–1656–000]

Energy Infrastructure and Investment in California, California Independent System Operator Corporation; Notice of Technical Conference

May 13, 2005.

Take notice that the Federal Energy Regulatory Commission in conjunction with California state agencies, will host a technical conference on Thursday, June 2, 2005, to discuss energy infrastructure and investment in California. The conference will be held in San Francisco, California. The conference is scheduled to begin at 9 a.m. (PST) and end at approximately 3 p.m. A separate notice will be issued by the Commission to announce the exact location and final agenda. FERC Commissioners will attend and participate.

The purpose of the conference is for the Commission and state officials to discuss with industry representatives the current and future state of infrastructure development and investment in California. We look forward to an informative discussion of the issues to clarify how we can facilitate and enhance a comprehensive collaborative approach to energy infrastructure development and reliability for California.

The Commission is now soliciting nominations for speakers at the technical conference. Persons wishing to nominate themselves as speakers should do so using this electronic link: *http://www.ferc.gov/whats-new/registration/infra-06-02-speaker-form.asp.* Such nomination must be made before the close of business on May 20, 2005, so that a final agenda for the technical conference can be drafted and published.

Although registration is not a strict requirement, in-person attendees are asked to register for the conference on-line by close of business on May 31, 2005 at *http://www.ferc.gov/whats-new/registration/infra-06-02-form.asp.*

Transcripts of the conference will be immediately available from Ace

Reporting Company (202–347–3700 or 1–800–266–6646) for a fee. They will be available for the public on the Commission's eLibrary system and on the calendar page posting for this event seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity for remote listening of the conference via Real Audio or a Phone Bridge Connection for a fee. Persons interested in making arrangements should contact David Reininger or Julia Morelli at Capitol Connection (703–933–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on "FERC."

As mentioned above, additional details on the conference, including the agenda, will be included in a supplemental notice to be issued at a later date. You are encouraged to watch for additional notices.

For additional information, please contact Sarah McKinley at 202–502–8004, *sarah.mckinley@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2555 Filed 5–19–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–92–000]

Liberty Gas Storage, LLC; Notice of Site Visit for the Proposed Liberty Gas Storage Project

May 12, 2005.

The staff of the Federal Energy Regulatory Commission is issuing this notice to announce the date and location of a site visit for the proposed Liberty Gas Storage Project in Calcasieu and Beauregard Parishes, Louisiana. The project consists of two natural gas storage caverns; four injection and withdrawal wells, two compressor stations, approximately 1.3 miles of 20-inch-diameter pipeline, approximately 23.3 miles of 30-inch-diameter pipeline with associated facilities and four meter/regulator stations.

The site visit will be held on Wednesday May 18, 2005, starting at 7:30 a.m. (CST) from the Best Suites, 401 Lakeshore Drive, Lake Charles, Louisiana. The site visit will include an aerial over flight followed by a ground inspection of the project. Anyone interested in participating in the site visit may attend, but all participants must provide their own transportation.

This event is posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information. For additional information and site visit itinerary, please contact the Commission's Office of External Affairs at 202–502–8004.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2541 Filed 5–19–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR05–8–000]

Northwest Natural Gas Company; Notice of Technical Conference

May 13, 2005.

Take notice that a technical conference will be held on Tuesday, May 24, 2005 at 1 p.m., Eastern Time, in a room to be designated at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The purpose of the conference is to address Northwest Natural Gas Company's (Northwest) section 311 petition for rate approval filed on January 18, 2005. Northwest should be prepared to discuss return on equity and operating statements issues.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

All interested parties and staff are permitted to attend. For further information please contact Aileen Roder at (202) 502–6022 or e-mail *aileen.roder@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2548 Filed 5–19–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2005–0118, FRL–7915–3]

Agency Information Collection Request Activities: Proposed Collection and Comment Request for the Outer Continental Shelf Air Regulation; EPA ICR Number 1601.06, OMB Control Number 2060–0249

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a proposed and continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection which is scheduled to expire on June 30, 2005. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 19, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2005–0118, to EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Sanders, Ozone Policy and Strategies Group, Mail Drop C539–02, Environmental Protection Agency, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3356; fax number: (919) 541–0824; e-mail address: *sanders.dave@epa.gov*.

SUPPLEMENTARY INFORMATION: The EPA has established a public docket for this ICR under Docket ID number OAR–2005–0118, which is available for public viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://*

www.epa.gov/edocket. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. The EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are all outer continental shelf sources except those located in the Gulf of Mexico west of 87.5 degrees longitude (near the border of Florida and Alabama). For sources located within 25 miles of States' seaward boundaries, the requirements are the same as those that would be applicable if the source were located in the corresponding onshore area (COA). In States affected by this rule, State boundaries extend three miles from the coastline, except off the coast of the Florida Panhandle, where the State's boundary extends three leagues (about nine miles) from the coastline.

Title: Outer Continental Shelf Air Regulations, EPA ICR Number 1601.06 and OMB Control Number 2060.0249, expiration date: October 31, 2005.

Abstract: Sources located beyond 25 miles of States' boundaries are subject to Federal requirements (implemented and enforced solely by EPA) for Prevention of Significant Deterioration (PSD), New Source Performance Standards (NSPS), National Emissions Standards for Hazardous Air Pollutants Standards (NESHAPS), the Federal operating permit program, and the enhanced compliance and monitoring regulations. Before any agency, department, or instrumentality of the Federal Government engages in, supports in any way, provides financial assistance for, licenses, permits, approves any activity, that agency has the affirmative responsibility to ensure that such action conforms to the State implementation plan (SIP) for the attainment and maintenance of the national ambient air quality standards (NAAQS). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information request unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and 48 CFR chapter 15. Section 176(c) of the Clean Air Act (42 U.S.C. 7401 *et seq.*) requires that all Federal actions conform with the SIPs to attain and maintain the NAAQS. Depending on the type of action, the Federal entities must collect information themselves, hire consultants to collect the information or require applicants/sponsors of the Federal action to provide the information.

The type and quantity of information required will depend on the circumstances surrounding the action. First, the entity must make an applicability determination. If the source is located within 25 miles of the State's seaward boundaries as established in the regulations, the requirements are the same as those that would be applicable if the source were located in the COA. State and local air pollution control agencies are usually requested to provide information concerning regulation of offshore sources and are provided opportunities to comment on the proposed determinations. The public is also provided an opportunity to comment on the proposed determinations.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement

Total Industry Respondent Burden and Costs

The estimated industry respondent burden for total labor hours and costs associated with one-time/periodic activities are estimated to be 30,791 hours and $2,129,966, respectively. Total labor hours and costs associated with annual activities are estimated to be 30,645 hours and $2,121,633, respectively. Total industry respondent costs annualized over the 3-year time period are estimated to be $2,098,753 per year.

Total State and Local Agency Burden and Costs

The estimated State and local agency burden for total labor hours and costs associated with one-time/periodic activities are estimated to be 4,812 hours and $259,879, respectively. Total labor hours and costs associated with annual activities for that time period are estimated to be 4,788 hours and $258,578, respectively. Total costs annualized over the 3-year time period are estimated to be $255,006 per year.

Total EPA Burden and Costs

The estimated EPA burden for total labor hours and costs associated with one-time only activities are estimated to be 1,537 hours and $102,000, respectively. Total labor hours and costs associated with annual activities are estimated to be 1,528 hours and $101,586, respectively. Total costs annualized over the 3-year time period are estimated to be $100,448 per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

information; and transmit or otherwise disclose the information.

Dated: May 16, 2005.

Mary E. Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 05–10145 Filed 5–19–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6663–5]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements.

Filed 05/09/2005 through 05/13/2005.

Pursuant to 40 CFR 1506.9.

EIS No. 20050191, Final EIS, AFS, ID, Meadows Slope Wildland Fire Protection Project, Proposes To Create and Maintain a Fuelbreak of Reduced Crown Fire Hazard, Payette National Forest, New Meadows Rangers District, Adams and Valley Counties, ID, Wait Period Ends: 06/20/2005, Contact: Sylvia Clark 208–347–0300.

EIS No. 20050192, Draft EIS, AFS, CA, Empire Vegetation Management Project, Reducing Fire Hazards, Harvesting of Trees Using Group-Selection (GS) and Individual Trees Selection (ITS) Methods, Mt. Hough Ranger District, Plumas National Forest, Plumas County, CA, Comment Period Ends: 07/05/2005, Contact: Merri Carol Martens 530–283–7689.

EIS No. 20050193, Final EIS, BIA, NV, Weber Dam Repair and Modification Project, Propose To Repair and Modify Dam, Walker River Paiute Tribe, Right-of-Way Grant and U.S. Army COE Section 404 Permit, Walker River Valley, Lyon and Mineral Counties, NV, Wait Period Ends: 06/20/2005, Contact: Amy Heuslein 602–379–6750.

EIS No. 20050194, Final EIS, AFS, PA, Martin Run Project, To Implement Management Direction as Outlined in Allegheny National Forest Plan, Bradford Ranger District, Allegheny National Forest, Warren and McKean Counties, PA, Wait Period Ends: 06/20/2005, Contact: Heather Luczak 814–723–5150.

EIS No. 20050195, Draft EIS, BLM, NV, North Valleys Rights-of-Way Projects, Proposed Construction and Operation of Water Transmission Pipelines, Washoe County, NV, Comment Period Ends: 07/20/2005, Contact: Terri Knutson 775–885–6156.

EIS No. 20050196, Draft EIS, NPS, UT, Burr Trail Modification Project, Proposed Road Modification Within Capitol Reef National Park, Garfield County, UT, Comment Period Ends: 07/20/2005, Contact: Chris Turk 303–969–2832.

EIS No. 20050197, Draft EIS, TVA, TN, Watts Bar Reservoir Land Management Plan, Update 1988 Plan To Reflect Changing Community Needs, Loudon, Meigs, Rhea and Roane Counties, TN, Comment Period Ends: 07/05/2005, Contact: Richard L. Toennisson 865–632–8517.

EIS No. 20050198, Draft EIS, AFS, WA, Growden Dam Sherman Creek Restoration Project, and Forest Plan Amendment #28, Implementation, Colville National Forest, Ferry County, WA, Comment Period Ends: 07/05/2005, Contact: Karen Honeycutt 509–684–7224.

EIS No. 20050199, Draft EIS, DOD, DC, Armed Forces Retirement Home (AFRH–W), Proposed Master Plan for Campus Located 3700 North Capitol Street, NW, AFRH Trust Fund, Washington, DC, Comment Period Ends: 07/05/2005, Contact: Craig Wallwork 202–730–3038.

Amended Notices

EIS No. 20050107, Draft EIS, AFS, IL, Shawnee National Forest Proposed Land and Resource Management Plan Revision, Implementation, Alexander, Gallatin, Hardin, Jackson, Johnson, Massac, Pope, Union and Williamson Counties, IL, Comment Period Ends: 06/20/2005, Contact: Stephen Hupe 618–253–7114. Revision of FR Notice Published on 03/18/2005: CEQ Comment Period Ending on 06/16/2005 Has Been Extended to 06/20/2005.

EIS No. 20050117, Draft EIS, BLM, NV, Emigrant Mine Project, Develop and Operate an Open Pit Mine, Construct a Waste Rock Disposal Facility, South of Carlin in Elko County, NV, Comment Period Ends: 06/24/2005, Contact: Tom Schmidt 775–753–0200. Revision of FR Notice Published on 03/25/05: CEQ Comment Period Ending 05/25/2005 has been Extended to 06/24/2005.

Dated: May 17, 2005.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 05–10110 Filed 5–19–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6663–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 1, 2005 (70 FR 16815).

Draft EISs

EIS No. 20050037, ERP No. D–AFS–H65022–MO, Mark Twain National Forest Land and Resource Management Plan, Implementation, Revise to the 1986 Land and Resource Management Plan, Several Counties, MO.

Summary: EPA expressed environmental concerns about air quality, cumulative impacts assessment, and the adaptive management process. The significant increase in prescribed burning realtive to the 1986 Forest Plan supports the need for a detailed pre-burn analysis. Rating EC2.

EIS No. 20050038, ERP No. D–BLM–G65096–NM, McGregor Range Resource Management Plan Amendment (RMPA), Implementation, Otero County, NM.

Summary: EPA expressed lack of objections for the proposed action. Rating LO.

EIS No. 20050049, ERP No. D–NOA–L91026–00, Pacific Coast Groundfish Fishery Management Plan, To Conserve and Enhance Essential Fish Habitat Designation and Minimization of Adverse Impacts, Pacific Coast Exclusive Economic Zone, WA, OR, and CA.

Summary: EPA supports the Habitat Suitability Probability modeling approach used by NMFS, but has concerns about inaccuracies and limitations with the data used in the model, as acknowledged by NMFS. Additional information is also needed on the Fisheries Economic Assessment Model and Environmental Justice analyses. Rating EC2.

EIS No. 20050089, ERP No. D–FHW–K40257–CA, Los Banos Bypass Project, Construct from CA–152 in Merced County beginning near Volta

Road west to Los Banos, bypassing Los Banos, ending near the Santa Fe Grade Road, U.S. Army COE Section 404 Permit, Merced County, CA.

Summary: EPA has environmental concerns with the proposed project regarding impacts to waters of the U.S., the scope of action, and the analysis of indirect impacts. EPA recommends that Alternative 3M be selected as the preferred alternative as it avoids permanent impacts to wetlands and the Gadwall Wildlife Area. Rating EC2.

EIS No. 20050110, ERP No. D–AFS–K65279–CA, Freds Fire Restoration Project, To Reduce Long-Term Fuel Loading for the Purpose of Reducing Future Fire Severity and Resistance to Control, Eldorado National Forest, El Dorado County, CA.

Summary: EPA expressed environmental concerns about impacts to drinking water supplies and air quality, and the use of herbicides. EPA also requested additional information be provided on Clean Air Act requirements, consultation with tribal governments, and the analysis of environmental justice issues. Rating EC2.

EIS No. 20050116, ERP No. D–COE–G39042–TX, PROGRAMMATIC—Lower Colorado River Basin Study, Provide Flood Damage Reduction and Ecosystem Restoration, Colorado River, TX.

Summary: EPA had no objections to the proposed action. Rating LO.

EIS No. 20050090, ERP No. DS–IBR–K64023–CA, Battle Creek Salmon and Steelhead Restoration Project, To Address New Significant Information, Habitat Restoration in Battle Creek and Tributaries, License Amendment Issuance, Implementation, Tehama and Shasta Counties, CA.

Summary: EPA had no objections to the proposed project. Rating LO.

Final EISs

EIS No. 20050100, ERP No. F–HUD–K60034–CA, Marysville Hotel Demolition Project, Proposed Acquisition and Demolition of Building, City of Marysville, Yuba County, CA.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20050122, ERP No. F–DOE–K08025–00, Sahuarita-Nogales Transmission Line, Construction and Operation of a 345,00-volt (345 kV) Electric Transmission Line across the United States Border with Mexico, Application for Presidential Permit, Tucson Electric Power (TEP), Nogales, AZ.

Summary: EPA previous issues have been resolved, therefore EPA has no objection to the action as proposed.

EIS No. 20050152, ERP No. F–AFS–J65411–MT, Snow Talon Fire Salvage Project, Proposes to Salvage Harvest Trees Burned in the Fire, Helena National Forest, Lincoln Ranger District, Lewis and Clark County, MT.

Summary: EPA expressed concerns about salvage logging on severely burned soils, however supports project planning and design that appears to minimize sediment production, and included restoration work to reduce existing sources of sediment. EPA reiterates the importance that the selected alternative avoid sediment delivery to streams, including 303(d) listed Blackfoot River and Copper Creek, a critical bull trout spawning stream.

Dated: May 17, 2005.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 05–10111 Filed 5–19–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7915–5]

Availability of FY 04 Grant Performance Reports for States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee; All Local Agencies Within the States of Alabama, Florida, Kentucky, North Carolina and Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.115) require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency (40 CFR 56.7) require that the Agency notify the public of the availability of the reports of such evaluations. EPA performed end-of-year evaluations of 8 state air pollution control programs (Alabama Department of Environmental Management; Florida Department of Environmental Protection; Georgia Department of Natural Resources; Kentucky Environmental & Public Protection Cabinet; Mississippi Department of Environmental Quality; North Carolina Department of Environment and Natural Resources; South Carolina Department of Health and Environmental Control; and Tennessee Department of Environment and Conservation) and 16 local programs (City of Huntsville Division of Natural Resources, AL; Jefferson County Department of Health, AL; Broward County Environmental Protection Department, FL; City of Jacksonville Environmental Quality Division, FL; Hillsborough County Environmental Protection Commission, FL; Miami-Dade County Air Quality Management Division, FL; Palm Beach County Health Department Division of Environmental Health, FL; Pinellas County Department of Environmental Management, FL; Louisville Metro Air Pollution Control District, KY; Forsyth County Environmental Affairs Department, NC; Mecklenburg County Land Use and Environmental Services Agency, NC; Western North Carolina Regional Air Quality Agency, NC; Chattanooga-Hamilton County Air Pollution Control Bureau, TN; Knox County Department of Air Quality Management, TN; Memphis-Shelby County Health Department, TN and Nashville-Davidson County Metropolitan Public Health Department, TN). The 24 evaluations were conducted to assess the agencies' performance under the grants awarded by EPA under authority of section 105 of the Clean Air Act. EPA Region 4 has prepared reports for each agency identified above and these reports are now available for public inspection.

ADDRESSES: The reports may be examined at the EPA's Region 4 office, 61 Forsyth Street, SW., Atlanta, Georgia 30303, in the Air, Pesticides, and Toxics Management Division.

FOR FURTHER INFORMATION CONTACT: Marie Persinger (404) 562–9048 for information concerning the State and local agencies of Alabama; Miya Smith (404) 562–9091 for the State and local agencies of Florida, Sean Flynn (404) 562–9064 for the State of Mississippi and for the State and local agency of Kentucky; Mary Echols (404) 562–9053 for the State of Georgia and for the State and local agencies of North Carolina; and Rayna Brown (404) 562–9093 for the State of South Carolina and for the State and local agencies of Tennessee. They may be contacted at the above Region 4 address.

Dated: May 10, 2005.

A. Stanley Meiburg,

Deputy Regional Administrator, Region 4.

[FR Doc. 05–10146 Filed 5–19–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2005–0028; FRL–7715–1]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will be held on June 13-15, 2005, in Washington, DC. At this meeting, the NAC/AEGL Committee will address, as time permits, the various aspects of the acute toxicity and the development of Acute Exposure Guideline Levels (AEGLs) for the following chemicals: 1,1,1-trichloroethane, allyl alcohol, bis-chloromethyl ether, bromine, calcium phosphide, carbon tetrachloride, chloroform, chloromethyl methyl ether, dimethylamine, ethylamine, ethylene oxide, hexafluoroacetone, magnesium aluminum phosphide, magnesium phosphide, methanol, methylamine, methyl ethyl ketone, potassium phosphide, propylenimine, sodium phosphide, strontium phosphide, sulfur dioxide, toluene, trimethylamine, xylene and zinc phosphide.

DATES: A meeting of the NAC/AEGL Committee will be held from 10:00 a.m. to 5 p.m. on June 13, 2005; 8:30 a.m. to 5:30 p.m. on June 14, 2005 and from 8:00 AM to 12 noon on June 15, 2005.

ADDRESSES: The meeting will be held at the U.S. Department of Labor (Francis Perkins Building) 200 Constitution Avenue, N.W.,Washington, D.C. 20210, Rooms 3437 A, B and C (Judiciary Square Metrostop).

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Risk Assessment Division (7403M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address:*TSCA-Hotline@epa.gov*.

For technical information contact: Paul S. Tobin, Designated Federal Officer (DFO), Risk Assessment Division (7403M), Office of Pollution Prevention and Toxics, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8557; e-mail address: *tobin.paul@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2005–0028. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102 Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

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

II. Meeting Procedures

For additional information on the scheduled meeting, the agenda of the NAC/AEGL Committee, or the submission of information on chemicals to be discussed at the meeting, contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

The meeting of the NAC/AEGL Committee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical-specific information should be directed to the DFO.

III. Future Meetings

Another meeting of the NAC/AEGL Committee is scheduled for September 2005 in Washington, DC.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Health.

Dated: May 12, 2005.

Wendy C. Hamnett,

Acting Director, Office of Pollution Prevention and Toxics

[FR Doc. 05–10131 Filed 5–19–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0100; FRL–7709–5]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any currently registered products pursuant to the provisions of section 3(c)(4) of the

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket identification (ID) number OPP–2005–0100, must be received on or before June 20, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: The Regulatory Action Leader, Registration Division (7505C), listed in the table in this unit:

File Symbol	Regulatory Action-Leader	Mailing Address	Telephone number/E-mail Address
42882–E	John Hebert	Environmental Protection Agency 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001	*hebert.john@epa.gov* (703) 308–6249
71768–E 71768–G	Daniel Peacock	Do.	*peacock.dan@epa.gov* (703) 305–5407

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2005–0100. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that

is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2005–0100. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0100. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0100.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0100. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any currently registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included in Any Currently Registered Products

1. *File symbol*: 42882–E. *Applicant*: Gametrics Limited HC 69, Box 50, Alzada, MT 59311. *Product name*: Epibloc. *Type of product*: Rodenticide/chemosterilant. *Active ingredient*: Alpha-chlorohydrin (3-chloro-1,2-propanediol) at 1%. *Proposed classification/Use*: Restricted use--for the control of Norway rats in and around homes, industrial and agricultural buildings, similar man-made structures, dumps, and in sewers.

2. *File symbols*: 71768–E and 71768–G. *Applicant*: ChemArmor Inc., 6142 Nancy Ridge Drive, Suite 101, San Diego, CA 92121. *Product names*: Bear Pause II and CapSynth. *Type of product*: Bear deterrent. *Active ingredient*: Nonivamide at 2% and 98%. *Proposed classification/Use*: Unclassified--to deter bear attacks for 2% Bear Pause II product and classification not applicable for 98% Technical Active Ingredient.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: May 9, 2005.

Betty Shackleford,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 05–10133 Filed 5–19–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7915–2]

Proposed CERCLA Section 122(g) *de minimis* Administrative Agreement Regarding the Li Tungsten Superfund Site, Located in Glen Cove, Nassau County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency ("EPA"), Region II, of a proposed *de minimis* administrative agreement pursuant to section 122(g) of CERCLA, 42 U.S.C. 9622(g), pertaining to the Li Tungsten Site ("Site") located in Glen Cove, Nassau County, New York. The settlement requires that 22 settling parties, identified by EPA as having contributed a minimal volume of hazardous substances, pay a total of $210,970 into a special account which has been established for the Site. This amount is considered to be their fair share of cleanup costs incurred and anticipated to be incurred in the future, plus a "premium" that accounts for, among other things, uncertainties associated with the costs of that future work at the Site. The settlement includes a covenant not to sue the settling parties for claims pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), in exchange for their payment of monies. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before June 20, 2005.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the Li Tungsten Site located in Glen Cove, Nassau County, New York, Index No. CERCLA–02–2005–2003. To request a copy of the proposed settlement agreement, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT: James F. Doyle, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: (212) 637–3165.

Dated: May 4, 2005.

William McCabe,

Acting Division Director, Emergency Remedial Response Division, Region 2.

[FR Doc. 05–10144 Filed 5–19–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7915–4]

Proposed Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act Regarding the Pittsburgh Metal and Equipment Superfund Site, Jersey City, NJ

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and request for public comment.

SUMMARY: In accordance with section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(g)(4), to reach settlements with *de minimis* parties in actions under section 106 or 107 of CERCLA, 42 U.S.C. 9606 or 9607, *et seq.*, the U.S. Environmental Protection Agency ("EPA") announces a proposed administrative settlement to resolve claims under CERCLA at the Pittsburgh Metal & Equipment Superfund Site. This settlement among the *de minimis* Settling Parties with respect to the Site pursuant to section 122(g) of CERCLA, 42 U.S.C. 9622(g), allows Parties to make a cash payment to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site. By this notice, EPA is informing the public of the proposed settlement and of the opportunity to comment.

The Site is a former smelting facility that operated for approximately thirty-five years. It received used metal and dross from a number of clients, including those in the printing industries. EPA confirmed contamination at the Site as high as 15% lead in the top two feet of soil. Other hazardous substances at the site include cadmium, antimony, beryllium, copper, nickel, silver, zinc, and PCBs.

As a result of the release or threatened release of hazardous substances, EPA has undertaken response actions at or in connection with the Site under section 104 of CERCLA, 42 U.S.C. 9604.

Section 122(g) of CERCLA authorizes EPA to consider, compromise and settle certain claims incurred by the United States. Under the terms of the Agreement, the *de minimis* Settling Parties will pay a total of approximately $370,000.00 to reimburse EPA for certain response costs incurred at the Site. In exchange, EPA will grant a covenant not to sue or take administrative action against the Parties for reimbursement of past-response costs pursuant to section 107(a) of CERCLA. The Attorney General has approved this settlement.

EPA will consider any comments received during the comment period and may withdraw or withhold consent to the proposed settlement if comments disclose facts or considerations that indicate the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, New York 10007–1866, Telephone: (212) 637–3111.

DATES: Comments must be provided within June 20, 2005.

ADDRESSES: Comments should be sent to the U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007–1866 and should refer to: Pittsburgh Metal and Equipment Superfund Site, U.S. EPA Index No. CERCLA–02–2005–2007.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, New York 10007–1866. Telephone: (212) 637–3111.

SUPPLEMENTARY INFORMATION: A copy of the proposed administrative settlement may be obtained in person or by mail from Sonia Malone-Ayala, U.S. Environmental Protection Agency, 290 Broadway—17th Floor, New York, NY 10007–1866. Telephone: (212) 637–3126.

Dated: May 2, 2005.

William J. McCabe,

Acting Director, Emergency and Remedial Response Division, Region 2.

[FR Doc. 05–10147 Filed 5–19–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2703]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

April 25, 2005.

Petitions for Reconsideration and Clarification have been filed in the Commission's Rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by June 6, 2005. *See* section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: Federal-State Joint Board on Universal Service (CC Docket No. 96–45).

Number of Petitions Filed: 1.

Subject: In the Matter of Presubscribed Interexchange Carrier Charges (CC Docket No. 02–53).

In the Matter of Unbundled Access to Network Elements (WC Docket No. 04–313).

Number of Petitions Filed: 3.

Subject: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01–338).

Number of Petitions Filed: 7.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–9108 Filed 5–19–05; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10151, CMS–10152, and CMS–R–220]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request*: New Collection; *Title of Information Collection*: Data Collection for Medicare Beneficiaries Receiving Implantable Cardioverter-defibrillators for Primary Prevention of Sudden Cardiac Death; *Form Nos.*: CMS–10151 (OMB # 0938–NEW); *Use*: CMS provides coverage for implantable cardioverter-defibrillators (ICDs) for secondary prevention of sudden cardiac death based on extensive evidence showing that use of ICDs among patients with a certain set of physiologic conditions are effective. Accordingly, CMS considers coverage for ICDs reasonable and necessary under Section 1862(a)(1)(A) of the Social Security Act. However, evidence for use of ICDs for primary prevention of sudden cardiac death is less compelling for certain patients. To encourage responsible and appropriate use of ICDs, CMS issued a Decision Memo for Implantable Defibrillators on January 27, 2005, indicating that ICDs will be covered for primary prevention of sudden cardiac death if the beneficiary is enrolled in either an FDA-approved category B Investigational Device Exemption (IDE) clinical trial (see 42 CFR § 405.201), a trial under the CMS Clinical Trial Policy (see NCD Manual § 310.1) or a qualifying prospective data collection system (either a practical clinical trial or prospective systematic data collection, which is sometimes referred to as a registry); *Frequency*: Other—as needed; *Affected Public*: Business or other for-profit, Individuals or Households, and Not-for-profit institutions; *Number of Respondents*: 1217; *Total Annual Responses*: 50,000; *Total Annual Hours*: 4167.

2. *Type of Information Collection Request*: New Collection; *Title of Information Collection*: Data Collection for Medicare Beneficiaries Receiving FDG Positron Emissions Tomography (PET) for Brain, Cervical, Ovarian, Pancreatic, Small Cell Lung and Testicular Cancers; *Form Nos.*: CMS–10152 (OMB # 0938–NEW); *Use*: In the Decision Memo #CAG–00181N issued on January 27, 2005, CMS determined that the evidence is sufficient to conclude that for Medicare beneficiaries receiving FDG positron emission tomography (PET) for brain, cervical, ovarian, pancreatic, small cell lung, and testicular cancers is reasonable and necessary only when the provider is participating in and patients are enrolled in a systematic data collection project. CMS will consider prospective data collection systems to be qualified if they provide assurance that specific hypotheses are addressed and they collect appropriate data elements. The data collection should include baseline patient characteristics; indications for the PET scan; PET scan type and characteristics; FDG PET results; results of all other imaging studies; facility and provider characteristics; cancer type, grade, and stage; long-term patient outcomes; disease management changes; and anti-cancer treatment received; *Frequency*: Other—as needed; *Affected Public*: Business or other for-profit, Individuals or Households, and Not-for-profit institutions; *Number of Respondents*: 2,000; *Total Annual Responses*: 50,000; *Total Annual Hours*: 4167.

3. *Type of Information Collection Request*: Extension of a currently approved collection; *Title of Information Collection*: HIPAA Standard Unique Employer Identifier and Supporting Regulations in 45 CFR Parts 160 and 162; *Form Nos.*: CMS–R–220 (OMB # 0938–0874); *Use*: Section 1173b of Subtitle F of Title II of the Health Insurance Portability and Accountability Act of 1996 (P.L. 104–191) requires the Secretary of the Department of Health and Human Services to adopt standards for unique health identifiers for individuals, employers, health plans, and health care

providers. The use of this standard improves the Medicare and Medicaid programs, other Federal health programs and private health programs, by simplifying the administration of the system and enabling the efficient electronic transmission of certain health information; *Frequency*: Other—one-time; *Affected Public*: Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents*: 2,550,000; *Total Annual Responses*: 2,550,000; *Total Annual Hours*: 1.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/regulations/pra/*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice to the address below: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: William N. Parham, III, PRA Analyst, Room C5–13–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 2, 2005.

Michelle Shortt,

Acting Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–9642 Filed 5–19–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–37]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request*: Revision of a currently approved collection; *Title of Information Collection*: Medicaid Program Budget Report; *Form Nos.*: CMS–37 (OMB # 0938–0101); *Use*: The Medicaid Program Budget Report is prepared by the State Medicaid Agencies and is used by the Centers for Medicare & Medicaid Services (CMS) for (1) developing National Medicaid Budget estimates, (2) qualification of Budget Estimate Changes, and (3) the issuance of quarterly Medicaid Grant Awards. The structure of the currently approved CMS–37 was revised based on CMS experience with budget information provided by the States. (Note: Details are outlined in the Addendum which can be found on the CMS Web site address below.) *Frequency*: Quarterly; *Affected Public*: State, Local or Tribal Government; *Number of Respondents*: 56; *Total Annual Responses*: 224; *Total Annual Hours*: 7,616.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/regulations/pra/*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice to the address below: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Melissa Musotto, PRA Analyst, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 12, 2005.

Michelle Shortt,

Acting Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–10054 Filed 5–19–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: LIHEAP Quarterly Allocation Estimates Form ACF–535.

OMB No.: 0970–0037

Description: The Low Income Home Energy Assistance Program (LIHEAP) Quarterly Allocation Estimates Form–535 is a one-page form that is sent to 50 State grantees and to the District of Columbia. It is also sent to Tribal Government grantees that receive over $1 million annually for LIHEAP. Grantees are asked to complete and submit the form in the 4th quarter of each fiscal year. The data collected on the form are grantees' estimates of obligations they expect to make each quarter of the upcoming fiscal year for the LIHEAP program. This is the only method used to request anticipated distributions of the grantee's LIHEAP funds. The information is used to develop apportionment requests to OMB and to make grant awards based on grantee anticipated needs. Information collected on this form is not available through any other Federal source. Submission of the form is voluntary.

Respondents: 50 States, the District of Columbia and those Tribal governments that receive over $1 million annually.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–535	55	1	.25	13.75

Estimated Total Annual Burden Hours: 13.75.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447. Attn: ACF Reports Clearance Officer. E-mail: *grjohnson@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF. E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: May 16, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–10121 Filed 5–19–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Employment Retention and Advancement (ERA) Evaluation 42-Month Survey.

OMB No.: New Collection.

Description: The proposed information collection is for follow-up information within the Employment Retention and Advancement (ERA) Evaluation that is sponsored by the Administration for Children and Families (ACF) of the U.S. Department of Health and Human Services.[1] The ERA project is a multi-year evaluation that is designed to study the net impact and cost-benefits of programs designed to help Temporary Assistance for Needy Families (TANF) recipients, former recipients, or families at-risk of needing TANF retain and advance in employment.[2] The ERA Evaluation involves 15 random assigment experiments in eight states, testing a diverse set of strategies. The ERA project will generate rigorous data on the implementation, effects, and costs of these alternative approaches. The data collected as part of the 42-month survey will be used for the purposes described below.

- The survey data will allow for the analysis of ERA programs' impacts on a wider range of outcome measures than is available through welfare or Unemployment Insurance administrative records in order to more fully understand how individuals were affected by such programs. This will include outcomes such as length of job retention; job quality; educational attainment; household composition; employment barriers (such as child care, health status, and transportation); health insurance coverage; income; wealth, debt, and consumption; hardship (such as food insecurity); and children well-being.
- The data will allow for the conduct of non-experimental analyses to explain participation decisions and provide a descriptive picture of the circumstances of low-wage workers.
- The survey will address participation information important to the evaluation's cost-benefit component.

Respondents: The respondents of the 42-month survey are TANF applicants, current and former TANF recipients, or individuals in families at-risk of needing TANF benefits (working poor and hard-to-employ) who are in the research sample in a subset of the 15 programs participating in the ERA Evaluation. Survey participants will be administered a telephone survey approximately 42 months after the date they were enrolled in the research sample and randomly assigned to the treatment or control group. For those individuals who cannot be reached by phone, survey firm staff will attempt to contact them in person. A total of approximately 3,500 participants wi complete the survey over a 2-year period (1,750 respondents annually).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
42-Month Survey	1,750	1	30 minutes (or .50 hrs)	875.0.

Estimated Total Annual Burden Hours: 875.0.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *grjohnson@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF. E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: May 16, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–10122 Filed 5–19–05; 8:45 am]

BILLING CODE 4184–01–M

[1] The U.S. Department of Labor has also provided funding to support the ERA project.

[2] From the Department of Health and Human Services RFP No.: 105–99–8100.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Temporary Assistance for Needy Families (TANF) State Plan Guidance.

OMB No.: 0970–0145.

Description: The State plan is a mandatory statement submitted to the Secretary of the Department of Health and Human Services by the State. It consists of an outline of how the State's TANF program will be administered and operated and certain required certifications by the State's Chief Executive Officer. Its submittal triggers the State's family assistance grant funding and it is used to provide the public with information about the program. If a State makes changes in its program, it must submit a State plan amendment.

Respondents: The 50 States, the District of Columbia, Guam, Puerto Rico and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Temporary Assistance for Needy Families (TANF) State Plan Guidance	54	1	33	1,782

Estimated Total Annual Burden Hours: 1,782.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 16, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–10123 Filed 5–19–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child and Family Services Plan, Annual Progresss and Services Report, and the CFS–101, Parts I and II.

OMB No. 0980–0047.

Description: Under title IV–B, subparts 1 and 2, of the Social Security Act, States and Indian Tribes are to submit a five-year Child and Family Services Plan (CFSP) or an Annual Progresss and Services Report (APSR), and an annual budget request and estimated expenditure report (CFS–101). The CFS–101 is submitted annually with the CFSP or the APSR to apply for appropriated funds for the next fiscal year. The CFSP also includes the required State plans under section 106 of the Child Abuse Prevention and Treatment Act (CAPTA) and section 477 of title IV–E, the Chafee Foster Care Independence Program (CFCIP), of the Social Security Act (the Act).

Congress has now appropriated funds for payments to States to implement the Educational and Training Vouchers program (ETV) under section 477(a)(6) and 477(i) of the Act. The ETV program is integrated into the overall purpose and framework of the Chafee program; however, the program has a separate budget authorization and appropriation and has a Catalog of Federal Domestic Assistance (CFDA) number of 93.599. If a State does not apply for funds for the ETV program for a fiscal year by July 31 of that year, the funds will be reallocatd to other States on the basis of their relative need for funds as requested.

The CFSP and the APSR are being renewed and the CFS–101 is being updated to include the request for ETV funds and to either request or release funds for reallocation.

Respondents: 275 (50 States, the District of Columbia, Puerto Rico, and approximately 223 possible Tribal entities).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
CFSP	275	1	240	66,000/5 = 13,200
APSR	275	1	180	49,500
CFS–101	275	1	5	1,375

Estimated Total Annual Burden Hours: 64,075.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 16, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–10124 Filed 5–19–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Evaluation of the Refugee Social Service (RSS) and Targeted Assistance Formula Grant (TAB) Programs: Data Collection.

OMB No.: New Collection.

Description: The Office of Refugee Resettlement (ORR) within the U.S. Department of Health and Human Services (HHS) funds the Refugee Social Services (RSS) and Targeted Assistance Formula Grant (TAG) programs, which are designed to help refugees achieve economic success quickly following their arrival in the U.S. through employment services, English-language instruction, vocational training, and other social services. ORR is sponsoring a project to (1) conduct a comprehensive evaluation of the effectiveness of ORR employability services through RSS and TAG, and (2) propose options for institutionalizing ongoing evaluation and performance assessment into the programs.

ORR is requesting OMB clearance for three methods of information collection: (1) Interviews with state and local refugee program administrators and service providers in three sites to learn about service delivery and organizational arrangements, and with a small number of local employers who work with RSS- and TAG-funded service providers to learn about their experiences with the programs; (2) A sample of 1,125 refugees to collect data on refugees' employment and earnings outcomes; (3) Two to three focus groups with seven to ten program clients in each of the three sites to obtain customer perspectives of the services they received and their adjustment experiences.

Respondents: (1) Interviews will be conducted with three state refugee coordinators, voluntary agency (VOLAG) and Mutual Assistance Association (MAA) staff, local RSS and TAG service providers, and employers who employ significant numbers of refugees. (2) The respondents of the survey are refugees who have been in the United States for fewer than five years, and, thus, are eligible for RSS and TAG services. The survey relies on a mixed-mode data collection method that involves both telephone and in-person interviews. If individuals cannot be reached by phone, an attempt will be made to contact them in person. Approximately 900 of the 1,125 refugees sampled will complete the survey over a nine-week period.

(3) Respondents of the focus groups will include refugees who have received RSS-and TAG-funded services. Approximately 70 refugees will participate in the focus groups.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Interviews with program staff	60	1	1	60
Interviews with employers	12	1	2	24
Survey of refugees	900	1	0.5	450
Focus group with program clients	70	1	2	140

Estimated Total Annual Burden Hours: 674.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to

comments and suggestions submitted within 60 days of this publication.

Dated: May 16, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–10125 Filed 5–19–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Form ACF–IV–E–1: Title IV–E Foster Care and Adoption Assistance Financial Report.

OMB No.: 0970–0205.

Description: State agencies administer the Foster Care and Adoption Assistance Programs under Title IV–E of the Social Security Act. The Administration for Children and Families provides Federal funding at the rate of 50 percent for most of the administrative costs and at other rates for other specific categories of costs as detailed in Federal statute and regulations. This form is submitted quarterly by each State to estimate the funding needs for the upcoming fiscal quarter and to report expenditures for the fiscal quarter just ended. This form is also used to provide annual budget projections from each State. The information collected in this report is used by this agency to calculate quarterly Federal grant awards and to enable this agency to submit budget requests to Congress through the Department and to enable oversight of the financial management of the programs.

Respondents: State agencies (including the District of Columbia and Puerto Rico) administering the Foster Care and Adoption Assistance programs under Title IV–E of the Social Security Act.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Form ACF–IV–E–1	52	4	17	3,536.

Estimated Total Annual Burden Hours: 3,536.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collection; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 16, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–10126 Filed 5–19–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Family and Youth Services Bureau Administration on Children, Youth and Families

Funding Opportunity Title: Community-Based Abstinence Education.

Announcement Type: Initial.

Funding Opportunity Number: HHS–2005–ACF–ACYF–AE–0099.

CFDA Number: 93.010.

Due Date for Applications: June 20, 2005.

Executive Summary: The Family and Youth Services Bureau (FYSB) is accepting applications to provide support to public and private entities for the development and implementation of the Community-Based Abstinence Education Program for adolescents, ages 12 through 18, in communities across the country. This funding opportunity targets the implementation of community-based abstinence educational programs designed to: (a) Reduce the proportion of adolescents who engage in premarital sexual activity, including but not limited to sexual intercourse; (b) reduce the incidence of out-of-wedlock pregnancies among adolescents; and (c) reduce the incidence of sexually transmitted diseases among adolescents. Priority funding will be given to those entities that demonstrate a strong record of providing abstinence education among adolescents as defined by Section 510(b)(2) of Title V of the Social Security Act, which promotes a strong abstinence until marriage message to youth.

Priority Area 1

I. Funding Opportunity Description

The Family and Youth Services Bureau (FYSB) is accepting applications to provide support to public and private entities for the development and implementation of the Community-Based Abstinence Education Program for adolescents, ages 12 through 18, in communities across the country. This funding opportunity targets the implementation of community-based abstinence educational programs designed to: (a) Reduce the proportion of adolescents who engage in premarital sexual activity, including but not limited to sexual intercourse; (b) reduce

the incidence of out-of-wedlock pregnancies among adolescents; and (c) reduce the incidence of sexually transmitted diseases among adolescents. Priority funding will be given to those entities that demonstrate a strong record of providing abstinence education among adolescents as defined by Section 510(b)(2) of Title V of the Social Security Act, which promotes a strong abstinence until marriage message to youth.

Background

This program, in addition to the mandatory formula Title V Section 510 Abstinence Education Program, has been reassigned from the Health Resources and Services Administration, Maternal and Child Health Bureau, to the Administration for Children and Families, Family and Youth Services Bureau to further fulfill the President's commitment to enhance and coordinate similar youth programs across the Federal government. In addition to supporting the President's goals of enhancing and coordinating similar youth programs across the Federal government, this reassignment closely aligns the abstinence program with comprehensive Positive Youth Development efforts in ACF already underway as well as coordinated welfare reform efforts.

Funding for the Community-Based Abstinence Education Program was appropriated to the Administration for Children and Families (ACF) in the FY 2005 Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (Consolidated Appropriation Act) of 2005.

The Community-Based Abstinence Education Program is authorized by Title XI, Section 1110 of the Social Security Act (using the definitions contained in Title V, Section 510(b)(2) of the Act).

Background on the Administration for Children and Families (ACF)

Administration for Children and Families (ACF)

The Administration for Children and Families (ACF), within the Department of Health and Human Services (HHS), is responsible for Federal programs that promote the economic and social well-being of families, children, individuals, and communities. ACF programs aim to:

Empower families and individuals to increase their own economic independence and productivity; build strong, healthy, supportive communities that have a positive impact on the quality of life and the development of children; build partnerships with individuals, front-line service providers, communities, American Indian tribes, Native communities, States, and Congress that enable solutions which transcend traditional agency boundaries; ensure that services are planned, reformed, and integrated to improve needed access; and support a strong commitment to working with people with developmental disabilities, refugees, and migrants to address their needs, strengths, and abilities.

Administration on Children, Youth and Families (ACYF)

The Administration on Children, Youth and Families (ACYF) is one of several primary agencies within the Federal government with the responsibility for serving children and families. ACYF administers national programs for children and youth, provides information and other assistance to parents, works with States and local communities to develop services that support and strengthen family life, and seeks joint ventures with the private sector. The concerns of ACYF extend to all children from birth to adolescence, with a particular emphasis on children with special needs.

Family and Youth Services Bureau (FYSB)

The Family and Youth Services Bureau (FYSB) within ACF will administer the Community-Based Abstinence Education grants, in addition to the Section 510 Abstinence Education mandatory formula grants to States. The mission of FYSB is to provide national leadership on youth issues and to assist individuals and organizations in providing effective, comprehensive services for youth in at-risk situations and their families. The goals of FYSB programs are to provide positive alternatives for youth, ensure their safety, and maximize their potential to take advantage of available opportunities. FYSB encourages communities to support young people through a Positive Youth Development approach. This approach suggests that the best way to prevent young people's involvement in risky behavior is to help them achieve their full potential. As the lead office for the promotion of the Positive Youth Development Strategy within HHS, FYSB administers programs that provide youth with healthy messages about their bodies, their behaviors, and their interactions; provide safe and structured places for youth to study, recreate, and socialize; support positive adult role models such as parents, mentors, coaches or community leaders; promote youth skill development in literacy, competence, work readiness and social and emotional skills; and provide youth with increased opportunities to serve others and build self-esteem. For additional information regarding FYSB programs and initiatives, please visit: *http://www.acf.dhhs.gov/programs/fysb/* or the National Clearinghouse on Families and Youth (NCFY) at: *http://www.ncfy.com/.*

Program Purpose and Scope

The purpose of the Community-Based Abstinence Education Program is to provide support to public and private entities for the development and implementation of abstinence education programs for adolescents, ages 12 through 18, in communities across the country.

The specific objectives of the Community-Based Abstinence Education Program are to:

- Support programmatic efforts that foster the development of abstinence-only education for adolescents, ages 12 through 18, in communities across the country.
- Develop and implement abstinence-only programs that target the prevention of teenage pregnancy and premarital sexual activity.
- Develop abstinence education approaches that are culturally sensitive and age-appropriate to meet the needs of a diverse audience of adolescents, ages 12 through 18.
- Implement community-based educational programs that promote abstinence-until-marriage decisions to adolescents, ages 12 through 18.

Grantees are expected to work closely with ACF to ensure that Community-Based Abstinence Education programs support these objectives. ACF encourages but does not require coordination and collaboration between potential and existing grantees and the State agencies administering a Section 510 Abstinence Education grant. Such coordination and collaboration is considered beneficial in promoting complementary efforts between State and community agencies and advancing positive youth development. A list of Section 510 State Abstinence Education Coordinators is available at *http://www.ncfy.com.*

A key component of promoting Positive Youth Development is encouraging youth to make the healthiest choice regarding their sexual behavior by abstaining from sexual activity, included but not limited to sexual intercourse, before marriage. Since communicating abstinence education to various target populations

requires a number of different approaches, activities may include mentoring, counseling, and adult supervision to promote abstinence from sexual activity. Programs funded through the Community-Based Abstinence Education Program must promote abstinence education as defined by Section 510(b)(2) of Title V of the Social Security Act (for a copy of Sec. 510(b)(2), please see Appendix A). Programs that utilize this definition promote "abstinence Sex education programs that promote the use of contraceptives are not eligible for funding under this announcement.

For purposes of this program, the term "abstinence education" means an educational or motivational program which—

(A) has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity;

(B) teaches abstinence from sexual activity outside marriage as the expected standard for all school age children;

(C) teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems;

(D) teaches that a mutually faithful monogamous relationship in the context of marriage is the expected standard of human sexual activity;

(E) teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;

(F) teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child's parents, and society;

(G) teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and

(H) teaches the importance of attaining self-sufficiency before engaging in sexual activity.

Curricula developed or selected for implementation in the Community-Based Abstinence Education grant program must be responsive to the eight elements of the Section 510 abstinence education definition and may not be inconsistent with any aspect of this definition. Curriculum must emphasize the importance of abstaining from sexual activity, included but not limited to sexual intercourse, before marriage and that the healthiest life outcomes are obtained if an individual abstains from sexual activity before marriage. In their Curriculum Summary/Summaries, the applicant must demonstrate that the selected curricula are consistent with each of the eight elements of the Section 510 abstinence education definition. Applicants are required to provide a Curriculum Summary for every curriculum that is to be used in the proposed project. Please see Section IV.2 Content and Form of Application Submission Section for a detailed description. ACF encourages but does not require consultation and collaboration between grantees and the State agencies throughout the life of the project.

In order to ensure access and cultural competence, it is expected that projects will involve individuals from the populations to be served in the planning and implementation of the project. ACF's intent is to ensure that project interventions are responsive to the different needs of special populations, that services are accessible to consumers, and that the broadest possible representation of culturally distinct and historically under represented groups is supported through programs and projects sponsored by ACF.

Grants under this program shall be made to entities which agree that, with respect to an adolescent to whom the entities provide abstinence education under such grant, the entities will not provide to that adolescent any other education regarding sexual conduct, except in the case of an entity expressly required by law to provide health information or services. Each adolescent shall not be precluded from seeking health information or services from the entity in a different setting—either in time or place—than the setting in which abstinence education was provided. Nothing shall preclude entities that have a public health mandate from discussing other forms of sexual conduct or providing services, as long as this is conducted in a different setting—either in time or place—than where and when the abstinence-only course is being conducted. ACF strongly encourages grantees to sign and submit with their applications the voluntary assurance that speaks to this separation of Federal abstinence education services and private abstinence and/or sex education services. Please see Section IV. 2 Content and Form of Application Submission and Appendix B for a full description.

In order to ensure that grantees are geographically well distributed, special consideration may be given to highly ranked applications in States (and territories) that do not have a currently funded Community-Based Abstinence Education grant or where the State's only Community-Based grantee is in its last year of funding.

Legislative Authority: The Community-Based Abstinence Education Program is authorized by Title XI, Section 1110 of the Social Security Act (using the definitions contained in Title V, Section 510(b)(2) of the Act).

II. Award Information

Funding Instrument Type: Service Grants.

Anticipated Total Priority Area Funding: $36,823,000.

Anticipated Number of Awards: 60 to 70.

Ceiling on Amount of Individual Awards per Budget Period: $800,000.

Floor on Amount of Individual Awards per Budget Period: $200,000.

Average Projected Award Amount Per Budget Period: $459,000.

III. Eligibility Information

1. Eligible Applicants

State governments, County governments, City or township governments, Independent school districts, Hospitals and Clinics, State controlled institutions of higher education, Native American tribal governments (Federally recognized), Public Housing authorities/Indian housing authorities, Native American tribal organizations (other than Federally recognized tribal governments), Non-profits having a 501(c)(3) status with the IRS, other than institutions of higher education, Private institutions of higher education, and For-profit organizations other than small businesses.

Additional Information on Eligibility

Faith-based and community organizations are eligible to apply.

These grants must be made only to public and private entities who agree that, with respect to an adolescent to whom the entities provide abstinence education under such grant, the entities will not provide to that adolescent any other education regarding sexual conduct, except, in the case of an entity expressly required by law to provide health information or services. ACF strongly encourages applicants to sign and submit with their applications the voluntary assurance that speaks to this requirement. Please see Section IV.2 Content and Form of Application Submission and Appendix B for a detailed description.

ACF strongly encourages and will grant preference to those applicants that demonstrate they have extensive previous experience providing Abstinence Education Services that conform to the eight criteria defined by

Section 510(b)(2) of Title V of the Social Security Act. Sex education programs that promote the use of contraceptives are not eligible for funding under this announcement; however, this eligibility criterion will not be used as a disqualification factor in the initial review of applications.

2. Cost Sharing/Matching

None.

3. Other

All applicants must have a Dun & Bradstreet number. On June 27, 2003 the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a Dun & Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number online at *http://www.dnb.com.*

Non-profit organizations applying for funding are required to submit proof of their non-profit status.

Proof of non-profit status is any one of the following:

- A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code.
- A copy of a currently valid IRS tax exemption certificate.
- A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earning accrue to any private shareholders or individuals.
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.
- Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

When applying electronically we strongly suggest you attach your proof of non-profit status with your electronic application.

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," "Survey for Private, Non-Profit Grant Applicants," titled, "Survey on Ensuring Equal Opportunity for Applicants," at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Disqualification Factors

Applications that exceed the ceiling amount will be considered non-responsive and will not be considered for funding under this announcement.

Any application that fails to satisfy the deadline requirements referenced in Section IV.3 Submission Dates and Times will be considered non-responsive and will not be considered for funding under this announcement.

IV. Application and Submission Information

1. Address to Request Application Package

ACYF Operations Center, c/o The Dixon Group, Attn: Community-Based Abstinence Education Program Funding, 118 Q Street NE., Washington, DC 20002–2132. Phone: 866–796–1591.

2. Content and Form of Application Submission

Each application package should include an original and two copies. Do not staple the applications.

The length of the entire application package should not exceed 80 pages. This includes the required Federal forms/certifications (424, 424a, 424b, Lobbying and Smoke Free Workplace certification), table of contents, project summary, curricula summaries, project description, budget/budget justification, supplemental documentation, proof of non-profit status, third party agreement summaries and letters of support or agreement. All pages of the application package should be sequentially numbered beginning with page one. The required Federal forms will be counted towards the total number of pages. Each application will be counted to determine the total length. Cover letters are not required. Applicants are reminded that if a cover letter is submitted, it will count towards the 80 page limit.

The project description should be typed and double-spaced on a single-side of 8½ x 11 plain white paper with at least 1 inch margins on all sides, using black print Times New Roman, with 12 pitch or 12 point size font. For charts, budget tables, supplemental letters and support documents, applicants may use a different pitch or size font, not less than 10 pitch or size font, or single-space. Please see Section V.1 Criteria, for instructions on preparing the full project description.

Curricula Summaries

Curricula developed or selected for implementation in the Community-Based Abstinence Education grant program must be responsive to the eight elements of the Section 510 abstinence education definition and may not be inconsistent with any aspect of that definition. Curriculum must emphasize the importance of abstaining from sexual activity before marriage and that the healthiest life outcomes are obtained if an individual abstains from sexual activity before marriage. In their Curriculum Summary/Summaries, the applicant must demonstrate that the selected curricula are consistent with each of the eight elements of the Section 510 abstinence education definition. Applicants are required to provide a Curriculum Summary for every curriculum that is to be used in the proposed project.

Direct Federal grants, sub-award funds, or contracts under this Community-Based Abstinence Education Program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this Program. Regulations pertaining to the Equal Treatment for Faith-based Organizations, which includes the prohibition against Federal funding of inherently religious activities, can be found at either 45 CFR 87.1 or the HHS Web site at *http://www.os.dhhs.gov/fbci/waisgate21.pdf.*

Appendices

Appendices should include all supporting documentation, such as: Position descriptions, curricula vitae (CVs), letters of agreement and support, evaluation tools, protocols and tables and graphs. Job descriptions and CV's should not exceed two pages each. Spacing will vary depending on the nature of the appendix, but only one-sided pages are acceptable. Appendices should be brief and supplemental in nature. Do not include pamphlets or brochures in the application package

unless they were specifically created for the project. Refer to style and format section of this guidance for specific conventions to be followed in formatting appendices.

The appendices should be brief and should be limited to the items listed below, in the following order:

i. Descriptions of committees/consortia which are a part of or related to the basic program, including the composition, function, and responsibilities of each.

ii. Copies of agreements/commitments, letters of understanding or similar documents defining the relationships between the proposed program and affiliated departments, institutions or agencies, and the responsibilities of each. Pro-forma letters of endorsement should not be included.

iii. Position descriptions for all professional and technical positions for which grant support is requested, and for similar positions with significant roles in the program, even though supported from other sources.

iv. Biographical sketches, such as resumes or CVs, for each incumbent in a position for which a job description is submitted.

You may submit your application to us in either electronic or paper format. To submit an application electronically, please use the *http://www.Grants.gov/Apply* site. If you use *Grants.gov*, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the *Grants.gov* site. ACF will not accept grant applications via email or facsimile transmission.

Please note the following if you plan to submit your application electronically via *Grants.gov:*

- Electronic submission is voluntary.
- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through *Grants.gov*.
- We recommend you visit *Grants.gov* at least 30 days prior to filing your application to fully understand the process and requirements. We encourage applicants who submit electronically to submit well before the closing date and time so that if difficulties are encountered an applicant can still send in a hard copy overnight. If you encounter difficulties, please contact the *Grants.gov* Help Desk at 1–800–518–4276 to report the problem and obtain assistance with the system.
- To use *Grants.gov*, you, as the applicant, must have a DUNS number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application should comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from *Grants.gov* that contains a *Grants.gov* tracking number. The Administration for Children and Families will retrieve your application from *Grants.gov*.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov*.
- You must search for the downloadable application package by the CFDA number.

An original and two copies of the complete application are required. The original and each of the two copies should include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, have original signatures, and be submitted unbound.

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," "Survey for Private, Non-Profit Grant Applicants," titled, "Survey on Ensuring Equal Opportunity for Applicants," at: *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

Standard Forms and Certifications: The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Section V. Application Review Information. In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under this announcement.

Applicants seeking financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF–424A, Budget Information—Non-Construction Programs; SF–424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. Applicants must sign and return the standard forms with their application.

Applicants must furnish prior to award an executed copy of the Standard Form LLL, Certification Regarding Lobbying, when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must also understand they will be held accountable for the smoking prohibition included within Public Law 103–227, Title XII Environmental Tobacco Smoke (also known as the PRO–KIDS Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification form. Complete the standard forms and the associated certifications and assurances based on the instructions on the forms. The forms and certifications may be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

Voluntary Assurance

ACF strongly encourages grantees to sign and submit with their applications the voluntary assurance that prohibits Community-Based Abstinence Education grantees from providing to an adolescent and/or adolescents any other education regarding sexual conduct—either in time or place—except, in the case of an entity expressly required by law to provide health information or services. Please see Section I. Funding Opportunity Description and Appendix B for a full description.

Logic Model: A logic model is a tool that presents the conceptual framework for a proposed project and explains the linkages among program elements. While there are many versions of the logic model, they generally summarize the logical connections among the needs

that are the focus of the project, project goals and objectives, the target population, project inputs (resources), the proposed activities/processes/outputs directed toward the target population, the expected short- and long-term outcomes the initiative is designed to achieve, and the evaluation plan for measuring the extent to which proposed processes and outcomes actually occur. Information on the development of logic models is available on the Internet at *http://www.uwex.edu/ces/pdande/* or *http://www.extension.iastate.edu/cyfar/capbuilding/outcome/outcome_logicmdir.html.*

ACF encourages applicant organizations to use a logic model in developing their applications.

Those organizations required to provide proof of non-profit status, please refer to Section III.3.

3. Submission Dates and Times

The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on the date noted above. Mailed or hand carried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Family and Youth Services Bureau, Community-Based Abstinence Education Program Funding 118 Q Street NE., Washington, DC 20002–2132. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand-carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Family and Youth Services Bureau, Community-Based Abstinence Education Program Funding, 118 Q Street NE., Washington, DC 20002–2132, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition. Any application received after 4:30 pm on the deadline date will not be considered for competition. Applicants using express/overnight mail services should allow two working days prior to the deadline date for receipt of applications. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed).

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service, or in other rare cases. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

Checklist: You may use the checklist below as a guide when preparing your application package.

What to submit	Required content	Required form or format	When to submit
Project Abstract	See Sections IV.2 and V	Found in Sections IV.2 and V	By application due date.
Project Description	See Sections IV.2 and V	Found in Sections IV.2 and V	By application due date.
Curriculum Summaries	See Section I and IV.2	Found in Sections I and IV.2	By application due date.
Budget Narrative/Justification.	See Sections IV.2 and V	Found in Sections IV.2 and V	By application due date.
SF 424	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.
SF 424 A	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.
SF 424 B	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.
SF–LLL Certification Regarding Lobbying.	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By date of award.
Certification Regarding Environmental Tobacco Smoke.	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By date of award.
Voluntary Assurance	See Section I, III, and IV.2	Found in Section I, III, and IV.2	By application due date.
Table of Contents	See Section IV.2	Found in Section IV.2	By application due date.
Support Letters (if applicable).	See Sections IV.2 and V.1	Found in Section IV.2 and V.1	By date of award.
Other: 3rd Party Agreements.	See Sections IV.2 and V.1	Found in Section IV.2 and V.1	By date of award.
Proof of Non-Profit Status	See Section III.3	Found in Section III.3	By date of award.
Appendices (if applicable)	See Section IV.2	Found in Section IV.2	By date of award.

Additional Forms

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," "Survey for Private, Non-Profit Grant Applicants," titled, "Survey on Ensuring Equal Opportunity for Applicants," at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

What to submit	Required content	Location	When to submit
Survey for Private, Non-Profit Grant Applicants.	See form	Found in *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

4. Intergovernmental Review

This program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs," or 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities".

5. Funding Restrictions

Grant awards will not allow reimbursement of pre-award costs.

Construction is not an allowable activity or expenditure under this solicitation.

Applicants should note that grants to be awarded under this program announcement are subject to the availability of funds. The size of the actual awards will vary.

Sex education programs that promote the use of contraceptives are not eligible for funding under this announcement.

In order to ensure that grantees are geographically well distributed, special consideration may be given to highly ranked applications in States (and territories) that do not have a currently funded Community-Based Abstinence Education grant, or, where the State's only Community-Based grantee is in its last year of funding.

6. Other Submission Requirements

Submission by Mail: An applicant must provide an original application with all attachments, signed by an authorized representative and two copies. Please see Section IV.3 Submission Dates and Times for an explanation of due dates. Applications should be mailed to: ACYF Operations Center, c/o The Dixon Group, Attn: Community-Based Abstinence Education Program Funding, 118 Q Street NE., Washington, DC 20002–2132.

Hand Delivery: An applicant must provide an original application with all attachments signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m. eastern time, Monday through Friday. Applications should be delivered to: ACYF Operations Center, c/o The Dixon Group, Attn: Community-Based Abstinence Education Program Funding, 118 Q Street NE., Washington, DC 20002–2132.

Electronic Submission: *http://www.Grants.gov*. Please see Section IV.2 Content and Form of Application Submission for guidelines and requirements when submitting applications electronically.

V. Application Review Information

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 40 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under OMB control number 0970–0139 which expires 4/30/2007.

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.

1. Criteria

The following are instructions and guidelines on how to prepare the "project summary/abstract" and "full project description" sections of the application. Under the evaluation criteria section, note that each criterion is preceded by the generic evaluation requirement under the ACF Uniform Project Description (UPD).

Part I—The Project Description Overview

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, information responsive to each of the requested evaluation criteria must be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application in a manner that is clear and complete.

General Instructions

ACF is particularly interested in specific project descriptions that focus on outcomes and convey strategies for achieving intended performance. Project descriptions are evaluated on the basis of substance and measurable outcomes, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix. Pages should be numbered and a table of contents should be included for easy reference.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions while being aware of the specified evaluation criteria. The text options give a broad overview of what your project description should include while the evaluation criteria identifies the measures that will be used to evaluate applications.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived.

Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in

cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished.

Evaluation

Provide a narrative addressing how the conduct of the project and the results of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

Geographic Location

Describe the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

Staff and Position Data

Provide a biographical sketch and job description for each key person appointed. Job descriptions for each vacant key position should be included as well. As new key staff is appointed, biographical sketches will also be required.

Plan for Project Continuance Beyond Grant Support

Provide a plan for securing resources and continuing project activities after Federal assistance has ended.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners, such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. If the applicant is a non-profit organization, submit proof of non-profit status in its application.

The non-profit agency can accomplish this by providing: (a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; (b) a copy of a currently valid IRS tax exemption certificate; (c) a statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals; (d) a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; (e) any of the items immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Third-Party Agreements

Provide written and signed agreements between grantees and sub grantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Letters of Support

Provide statements from community, public and commercial leaders that support the project proposed for funding. All submissions should be included in the application OR by application deadline.

Budget and Budget Justification

Provide a budget with line-item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. Also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs. The Project Director is required to attend an annual grantees meeting in Washington, DC for three days and two nights. The applicant's project budget should reflect this requirement.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel). This budget line item should only include travel outside the State and should not include local travel.

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category. Only equipment greater than $5,000 should be included in this section. All items under $5,000 per unit are not considered equipment and should be placed under line item supplies.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Include third party evaluation contracts

(if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant.

Justification: Demonstrate that all procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and sub recipients, other than States that are required to use CFR Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000).

Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency. Copies of any indirect cost agreements should be included with the application.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, upon notification that an award will be made, it should immediately develop a tentative indirect cost rate proposal based on its most recently completed fiscal year, in accordance with the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. When an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information.

Total Direct Charges, Total Indirect Charges, Total Project Costs

Evaluation Criteria

The following evaluation criteria appear in weighted descending order. The corresponding score values indicate the relative importance that ACF places on each evaluation criterion; however, applicants need not develop their applications precisely according to the order presented. Application components may be organized such that a reviewer will be able to follow a seamless and logical flow of information (i.e., from a broad overview of the project to more detailed information about how it will be conducted).

In considering how applicants will carry out the responsibilities addressed under this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

Objectives and Need for Assistance
30 Points

- The extent to which the application describes the current physical, economic, social, financial, governmental, and institutional challenges and problems that support the funding request. The extent to which the application describes how the project addresses the needs of youth in the proposed area(s). Statistical data and other information should be provided to support the need. The extent to which the application describes the proposed project objectives, goals, and strategies and that objectives are measurable and support the identified need. The extent to which the objectives, goals, and strategies are related to the overall FYSB goals and objectives as stated in Section I. Funding Opportunity Description Section.
- The extent to which the application is responsive to all eight elements of the legislative definition, as defined in Section 510 of Title V of the Social Security Act, and the extent to which the proposed project methodology describes a community-based educational intervention to promote abstinence education to adolescents ages 12 through 18. The extent to which the proposed project activities address the specific objectives listed in Section I. Funding Opportunity Description.
- The extent to which the application describes the target population and subsets (if applicable), as well as their relative needs and culture. The extent to which the proposed activities are sensitive to the age and cultural needs of the specified population(s).
- The extent to which the project describes adolescent and consumer/family participation in the planning and implementation of proposed program activities.
- The extent to which the application describes the agency's positive youth development philosophy and approach and how it integrates that approach into all proposed activities and services provided by the agency. The extent to which specific information on how the youth and the community will be involved in evaluating the project.
- The extent to which the application describes how this project will be structured and managed and defines how the project is being conducted in a manner consistent with FYSB goals and objectives. The extent to which the application describes contributions of organizations, cooperating entities, consultants, or other key individuals who will work on the project.
- The extent to which the application describes a project implementation plan and the methodology or models to be used for the abstinence education services. The extent to which the plan is results oriented and relates to the goals and objectives in Section I. Funding Opportunity Description The extent to which the plan indicates how the project will expand opportunities for skill-development and describes the safety precautions that will be in place to prevent incidents which may pose a health or safety risk.
- The extent to which the application describes how the project will form collaborations among private, non-profit, community, state, local, and Federal entities necessary to carry out the project.
- The extent to which the application provides third party agreement summaries or letters of agreement (as appropriate) that detail the scope of the work to be performed and any other terms and conditions that structure or define the relationship. If written agreements do not exist, sample or draft agreements may be submitted.
- The extent to which the application describes potential barriers that may affect project implementation and possible resolution of these difficulties.

Approach 25 Points

The extent to which activities or steps proposed will accomplish the specified goals and objectives of the proposed project.

The extent to which the application provides a detailed description of the mechanisms to be used, the specific activities to be conducted, and clearly indicates how these will lead to the accomplishment of the intended goals and objectives, as they were stated in Section I. Funding Opportunity Description. The extent to which the applicant demonstrates that proposed activities are age-appropriate and culturally sensitive to the age, race and culture of the target population.

The extent to which the application includes a timeline that describes each activity and identifies responsible staff that will work to support these activities.

Budget and Budget Justification 15 Points

1. The extent to which the application describes how the funds requested, which may include Federal and non-Federal funds, will be used for abstinence education services that are allowed under this announcement. The extent to which the budget items show how the expenditures will assist the applicant in achieving the project goals.

2. The extent to which the applicant's budget describes detailed calculations that show how the line-item costs are derived. These costs should include quantities, unit costs, and other similar quantitative detail. If applicable, sub-contractor budgets for third party agreements are provided in the budget detail. The sub-contractor budget should provide the same quantitative detail as the applicant.

3. The extent to which the application describes the fiscal controls and accounting procedures. The extent to which the application describes how the controls and procedures will be used to ensure prudent use, proper disbursement and accurate accounting of funds received as well as accounts for non-Federal resources.

Results or Benefits Expected 15 Points

1. The extent to which the application describes specific measurable outcomes and how they will be achieved.

2. The extent to which the application describes how the intended audience will be impacted and describes the extent to which improvements in youth development will occur.

Staff and Position Data 15 Points

The extent to which the application provides information on the applicant agency's current mission and structure, the cope of current activities, and an organizational chart, and describes how these all contribute to the ability of the organization to conduct the Community-Based Abstinence Education Program Grant requirements and meet program expectations. The extent to which the application describes the administrative and organizational structure within which the project will function. The extent to which the application includes organizational charts that outlining the structure. The extent to which the application demonstrates that project staff will be supervised and project contracts and activities will be monitored. The extent to which the application provides a biographical sketch and job description for each key person appointed, showing how each person has a demonstrated history of experience providing abstinence until marriage education. The extent to which job descriptions for each vacant key position are included in the application. The extent to which the application includes biographical sketches as new and/or key staff are appointed.

The extent to which the application demonstrates organizational experience in working with adolescents to promote abstinence education.

Additional Bonus Points 5 Points

The extent to which the application demonstrates that the applicant has extensive previous experience in providing abstinence education among adolescents as defined by Section 510(b)(2) of the Social Security Act, which promotes a strong "abstinence" until marriage youth message.

2. Review and Selection Process

Since ACF will be using non-Federal reviewers in the review process, applicants have the option of omitting from the application copies (not the original) of specific salary rates or amounts for individuals specified in the application budget.

No grant award will be made under this announcement on the basis of an incomplete application.

All applications which are complete and conform to the requirements of this program announcement will be subject to a competitive review and evaluation based on the specific competitive evaluation criteria. This review will be conducted in Washington, DC by a panel of experts knowledgeable in the areas of abstinence education, youth development, and social/human services.

ACF strongly encourages and will grant preference to those applicants that demonstrate they have extensive previous experience providing Abstinence Education Services that conform to the eight criteria defined by Section 510(b)(2) of Title V of the Social Security Act.

Application review panels will assign a score (maximum score of 105) to each application. The panel will identify the application's strengths and weaknesses based on the application's responsiveness to the evaluation criteria.

In order to ensure that grantees are geographically well distributed, special consideration may be given to highly ranked applications in States (and territories) that do not have a currently funded Community-Based Abstinence Education grant, or, where the State's only Community-Based grantee is in its last year of funding.

Approved but Unfunded Applications

Applications that are approved but unfunded may be held over for funding in the next funding cycle, pending the availability of funds, for a period not to exceed one year.

3. Anticipated Announcement and Award Dates

Applications will be reviewed in the Spring of 2005. Grant awards will have a start date no later than September 30, 2005.

VI. Award Administration Information

1. Award Notices

The successful applicants will be notified through the issuance of a Financial Assistance Award document which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail.

Organizations whose applications will not be funded will be notified in writing.

2. Administrative and National Policy Requirements

Direct Federal grants, sub-award funds, or contracts under this Community-Based Abstinence Education Program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this Program. Regulations pertaining to the Equal

Treatment for Faith-based Organizations, which includes the prohibition against Federal funding of inherently religious activities, can be found at either 45 CFR 87.1 or the HHS web site at *http://www.os.dhhs.gov/fbci/waisgate21.pdf.*

45 CFR Part 74

45 CFR Part 92

Grantees are subject to the requirements in 45 CFR Part 74 (non-governmental) or 45 CFR Part 92 (governmental) organizations.

Grantees may be asked to participate in a national evaluation of the Community-Based Abstinence Education program. The grantee will cooperate with any research or evaluation efforts sponsored by the Administration for Children and Families (ACF).

3. Reporting Requirements

All grantees are required to submit semi-annual (quarterly or annual) program reports; grantees are also required to submit semi-annual expenditure reports using the required financial standard form (SF–269) which can be found at the following URL: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Final reports are due 90 days after the end of the grant period.

Programmatic Reports: Semi-Annually.

Financial Reports: Semi-Annually.

VII. Agency Contacts

Program Office Contact

Jeffrey Trimbath, Family and Youth Services Bureau, 118 Q Street, NW., Washington, DC 20002–2132. Phone: 1–866–796–1591. E-mail: *fysb@dixongroup.com.*

Grants Management Office Contact

Peter Thompson, Grants Officer, ACYF Grants Office, 118 Q Street, NW., Washington, DC 20002–2132. Phone: 1–866–796–1591. E-mail: *fysb@dixongroup.com.*

VIII. Other Information

Notice: Beginning with FY 2006, the Administration for Children and Families (ACF) will no longer publish grant announcements in the **Federal Register.** Beginning October 1, 2005 applicants will be able to find a synopsis of all ACF grant opportunities and apply electronically for opportunities via: *http://www.Grants.gov.* Applicants will also be able to find the complete text of all ACF grant announcements on the ACF Web site located at: *http://www.acf.hhs.gov/grants/index.html.*

Applicants will be sent acknowledgements of received applications.

Dated: May 16, 2005.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

Appendix A—Section 510 of Title V of the Social Security Act

SEC. 510. [42 U.S.C. 710] (a) For the purpose described in subsection (b), the Secretary shall, for fiscal year 1998 and each subsequent fiscal year, allot to each State which has transmitted an application for the fiscal year under section 505(a) an amount equal to the product of:

(1) The amount appropriated in subsection (d) for the fiscal year; and

(2) The percentage determined for the State under section 502(c)(1)(B)(ii).

(b)(1) The purpose of an allotment under subsection (a) to a State is to enable the State to provide abstinence education, and at the option of the State, where appropriate, mentoring, counseling, and adult supervision to promote abstinence from sexual activity, with a focus on those groups which are most likely to bear children out-of-wedlock.

(2) For purposes of this section, the term "Abstinence Education" means an educational or motivational program which:

(A) Has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity;

(B) Teaches abstinence from sexual activity outside marriage as the expected standard for all school age children;

(C) Teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems;

(D) Teaches that a mutually faithful monogamous relationship in the context of marriage is the expected standard of human sexual activity;

(E) Teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;

(F) Teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child. the child's parents, and society;

(G) Teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and

(H) The importance of attaining self-sufficiency before engaging in sexual activity.

(c)(1) Sections 503, 507, and 508 apply to allotments under subsection (a) to the same extent and in the same manner as such sections apply to allotments under section 502(c).

(2) Sections 505 and 506 apply to allotments under subsection (a) to the extent determined by the Secretary to be appropriate.

(d) For the purpose of allotments under subsection (a), there is appropriated, out of any money in the Treasury not otherwise appropriated, an additional $50,000,000 for each of the fiscal years 1998 through 2002.

The appropriation under the preceding sentence for a fiscal year is made on October 1 of the fiscal year.

Appendix B—Voluntary Assurance

As the authorized individual signing this grant application on behalf of (name of applicant), I hereby attest and certify that (name of applicant organization), while administering Federal and/or non-Federal funds under the Community-Based Abstinence Education Program, will not provide to an adolescent and/or adolescents any other education regarding sexual conduct, except that, in the case of an entity expressly required by law to provide health information or services. In this circumstance, health information or services (expressly required by law) must be conducted in a different setting—either in time or place—than where and when the abstinence-only course is being conducted.

Date

Printed Name of Authorized Individual

Signature of Authorized Individual

[FR Doc. 05–10105 Filed 5–19–05; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1998N–0359 (formerly Docket No. 98N–0359)]

Program Priorities in the Center for Food Safety and Applied Nutrition; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is requesting comments concerning the establishment of program priorities in the Center for Food Safety and Applied Nutrition (CFSAN) for fiscal year (FY) 2006. As part of its annual planning, budgeting, and resource allocation process, CFSAN is reviewing its programs to set priorities and establish work product expectations. This notice is being published to give the public an opportunity to provide input into the priority-setting process.

DATES: Submit written or electronic comments by July 19, 2005.

ADDRESSES: Submit written comments concerning this document to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments

to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Donald J. Carrington, Center for Food Safety and Applied Nutrition (HFS–666), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1697, or e-mail: *dcarring@cfsan.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 1, 2004, CFSAN released a document entitled "FY 2005 CFSAN Program Priorities." The document, a copy of which is available on CFSAN's Web site (*www.cfsan.fda.gov*) or from the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section, constitutes the Center's priority workplan for FY 2005 (i.e., October 1, 2004, through September 30, 2005). The FY 2005 workplan is based on input we received from our stakeholders (see 69 FR 35380, June 24, 2004), as well as input generated internally. The primary focus is: "Where do we do the most good for consumers?"

The FY 2005 workplan contained three lists of activities, as follows: The "A-list," the "B-list," and a "Priority Ongoing Activities" list. Our goal is to complete fully at least 90 percent of the "A-list" activities by the end of the fiscal year, September 30, 2005. Activities on the "B-list" are those we plan to make progress on, but may not complete before the end of the fiscal year. Items in the "Priority Ongoing Activities" list illustrate some of the many priority activities the Center performs on a regular basis in addition to those identified on our "A" and "B" lists.

CFSAN intends to issue a progress report on what program priority activities already have been completed to date in the summer of FY 2005, as well as any adjustments in the workplan (i.e., additions or deletions) for the balance of the fiscal year.

II. 2006 CFSAN Program Priorities

FDA is requesting comments on what program priorities CFSAN should consider establishing for FY 2006. The input will be used to develop CFSAN's FY 2006 workplan. The workplan will set forth the Center's program priorities for the period of October 1, 2005, through September 30, 2006. FDA intends to make the FY 2006 workplan available in the fall of 2005.

The format of the FY 2006 workplan will be identical to the FY 2005 plan, and it will be formatted into the following five sections:

(1) Ensuring Food Defense and Security,

(2) Improving Nutrition and Dietary Supplement Safety,

(3) Ensuring Food/Color Additives and Cosmetic Safety,

(4) Ensuring Food Safety: Crosscutting Areas, and

(5) Priority Ongoing Activities.

FDA expects there will be considerable continuity and followthrough between the 2005 and 2006 workplans. For example, initiatives aimed at increasing the security of our country's food supply will continue to be a high priority in FY 2006. FDA requests comments on other broad program areas that should continue to be a priority, as well as new program areas or activities that should be added as a high priority, for FY 2006.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 12, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–10033 Filed 5–19–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket 2004P–0220]

Determination That ZITHROMAX (Azithromycin) 250-Milligram Oral Capsules Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that ZITHROMAX (azithromycin) 250-milligram (mg) oral capsules were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for azithromycin 250-mg oral capsules.

FOR FURTHER INFORMATION CONTACT: Elizabeth Sadove, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: 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 typically a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (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 (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 21 CFR 314.161(a)(1), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

ZITHROMAX (azithromycin) 250-mg oral capsules are the subject of NDA 50–670 held by Pfizer, Inc. (Pfizer). FDA approved NDA 50–670 on November 1, 1991. In February 1994, Pfizer submitted NDA 50–711 for ZITHROMAX (azithromycin) 250-mg tablets. Pfizer explained that the new dosage form was intended to replace the capsule formulation. Pfizer decided to change the dosage form from capsules to tablets because tablets do not have a

food effect. In its February 15, 1994, letter accompanying NDA 50–711, Pfizer explained that the tablets are bioequivalent to the capsule formulation and "* * * unlike the capsule, can be taken without regard to meals." After NDA 50–711 was approved, Pfizer decided not to market the capsule formulation and ZITHROMAX (azithromycin) 250-mg oral capsules were moved from the prescription drug product list to the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

In a citizen petition submitted under 21 CFR 10.30 dated May 4, 2004 (Docket No. 2004P–0220), as amended by a letter dated May 17, 2004, Wapner, Newman, Wigrizer & Brecher requested that FDA determine whether ZITHROMAX (azithromycin) 250-mg oral capsules were withdrawn from sale for reasons of safety or effectiveness. The agency has determined that ZITHROMAX (azithromycin) 250-mg oral capsules were not withdrawn from sale for reasons of safety or effectiveness. The petitioners identified no data or other information suggesting that ZITHROMAX (azithromycin) 250-mg oral capsules were withdrawn from sale as a result of safety or effectiveness concerns. FDA has independently evaluated relevant literature and data and has found no information that would indicate this product was withdrawn for reasons of safety or effectiveness.

After considering the citizen petition and reviewing agency records, FDA determines that, for the reasons outlined in this document, ZITHROMAX (azithromycin) 250-mg oral capsules, approved under NDA 50–670, were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list ZITHROMAX (azithromycin) 250-mg oral capsules in the "Discontinued Drug Product List" section of the Orange Book. As a result, ANDAs that refer to ZITHROMAX (azithromycin) 250-mg oral capsules may be approved by the agency.

Dated: May 12, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–10032 Filed 5–19–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Committee on Rural Health and Human Services; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the following committee will convene its fiftieth meeting:

Name: National Advisory Committee on Rural Health and Human Services.

Dates and Times: June 12, 2005, 1:30 p.m.–5:15 p.m., June 13, 2005, 8:45 a.m.–5 p.m., June 14, 2005, 9 a.m.–10:45 a.m.

Place: Carnegie Hotel, 1216 W State of Franklin Road, Johnson City, TN 37604, Phone: 423–979–6400, Fax: 423–979–6424.

Status: The meeting will be open to the public.

Purpose: The National Advisory Committee on Rural Health and Human Services provides advice and recommendations to the Secretary with respect to the delivery, research, development, and administration of health and human services in rural areas.

Agenda: Sunday afternoon, June 12, at 1:30 p.m., the Chairperson, the Honorable David Beasley, will open the meeting and welcome the Committee. There will be a brief discussion of Committee business and updates by Federal staff. The first session will open with an overview of East Tennessee by Dr. Paul Stanton, President of East Tennessee State University. The remainder of the day's meeting will be devoted to panel discussions on the three topics for the 2006 workplan: Pharmacy Access, Health Information Technology (HIT), and Elderly Caregiver Support. The Sunday meeting will close at 5:15 p.m.

Monday morning, June 13, at 8:45 a.m., the Committee will break into Subcommittees and conduct site visits to local health and human services facilities. Transportation to these sites will not be provided to the general public. The Pharmacy Access Subcommittee will visit Wilson Pharmacy in Johnson City; the HIT Subcommittee will visit Central Appalachian Health Information Partnership in Mountain City; and the Elderly Caregiver Support Subcommittee will visit the Mountain Empire Older Citizens Area Agency on Aging in Big Stone Gap. The Subcommittees will reconvene at 1:45 p.m. at the Carnegie Hotel to continue discussions on the workplan. The Committee of the whole will reconvene at 4:30 p.m. for a brief discussion of the workplan. The Monday meeting will close at 5 p.m.

The final session will be convened Tuesday morning, June 14, at 9 a.m. The Committee will review the discussion of the 2006 Workplan and have updates on the Subcommittees site visits. The meeting will conclude with a discussion of the September meeting. The meeting will be adjourned at 10:45 a.m.

For Further Information Contact: Anyone requiring information regarding the Committee should contact Tom Morris, M.P.A., Executive Secretary, National Advisory Committee on Rural Health and Human Services, Health Resources and Services Administration, Parklawn Building, Room 9A–55, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443–0835, Fax (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Michele Pray-Gibson, Office of Rural Health Policy (ORHP), telephone (301) 443–0835. The Committee meeting agenda will be posted on ORHP's Web site *http://www.ruralhealth.hrsa.gov.*

Dated: May 13, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05–10098 Filed 5–19–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Opportunity for a Cooperative Research and Development Agreement (CRADA) for Research and Development of Vigabatrin as a Potential Pharmacotherapy for the Treatment of Cocaine and Methamphetamine Dependence

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Institute on Drug Abuse, a component of the National Institutes of Health, Department of Health and Human Services (DHHS) seeks an agreement with a pharmaceutical or biotechnology company to test the hypotheses that vigabatrin may be a safe and effective medication for the treatment of cocaine and methamphetamine dependence.

A body of literature relevant to preclinical studies of vigabatrin as a potential treatment agent for various types of substance dependence (including cocaine and methamphetamine) and a more limited body of literature concerning clinical results exists. As there are currently no medications approved by the U. S. Food and Drug Administration (FDA) for the treatment of cocaine and/or methamphetamine dependence, and cocaine and methamphetamine dependence have substantial negative public health impacts, the National Institute on Drug Abuse is interested in evaluating the safety and efficacy of vigabatrin for the treatment of cocaine and methamphetamine dependence.

Rationale for Studying Vigabatrin in Stimulant(s) Dependence

The dependence-producing properties of stimulants have been associated with their pharmacological actions on the mesolimbic dopamine reward pathways in the central nervous system (CNS). Gamma-amino butyric acid (GABA) inhibits striatal dopamine release, and attenuates cocaine-induced increases in extracellular dopamine in the striatum and nucleus accumbens (Molina *et. al.*, 1999). Selective increases in GABAergic tone attenuate cocaine-induced dopamine release without the apparent side effects typically associated with GABA agonists. Therefore, targeting brain GABAergic systems is a potentially effective pharmacologic treatment strategy for cocaine and methamphetamine dependence (Molina *et. al.*, 1999). Data from proof of concept clinical trials of similar GABAergic medications *e.g.* topiramate, baclofen, and tiagabine show efficacy in reducing cocaine use or in preventing relapse to use. These data suggest that vigabatrin, which possesses more potent GABAergic action, may be more efficacious than these medications. Preclinical studies in animal models have confirmed that dosing with vigabatrin can block the manifestations of consumption of cocaine typically seen in these models (Stromberg *et. al.*, 2001), without impairing the usual dopamine mechanisms necessary to maintain a stable equilibrium. In rodent models, vigabatrin has been shown to reduce self-administration of cocaine and alcohol (Stromberg *et. al.*; 2001; Kushner *et al.*, 1999), and to block conditioned place preference induced by cocaine (Dewey *et. al*, 1998), nicotine (Dewey *et. al.*, 1999), and heroin (Paul, *et. al.*, 2001). Further, vigabatrin can reduce the increases in nucleus accumbens dopamine induced by cocaine (Schiffer *et. al.*, 2003), as well as methamphetamine, heroin, and ethanol (Gerasimov *et. al.*, 1999).

Vigabatrin (GVG) is an irreversible gamma-amino butyric acid (GABA) transaminase inhibitor that produces a two to three fold rise in brain GABA concentrations (Guberman *et. al.*, 2000). Following oral administration, vigabatrin readily crosses the blood-brain barrier and is active within the central nervous system. It has been shown to be effective, both as an add-on agent and in monotherapy in resistant and newly-diagnosed epilepsy (Guberman *et. al.*, 2000) and as first line monotherapy in the treatment of infantile spasms (West syndrome) (Hancock *et. al.*, 1999). After oral dosing, vigabatrin is well absorbed (bioavailability c. 75%) and widely distributed. The drug is eliminated primarily by the renal route and is not significantly bound to plasma proteins. The elimination half-life is approximately 5–9 hours in healthy subjects and may be prolonged in elderly patients or those with impaired renal function (Rey *et. al.*, 1992). The usual adult dose of vigabatrin for epilepsy is 1–3 g/day: There is no evidence that plasma concentrations of vigabatrin correlate closely with therapeutic effects (Brodie *et. al.*, 2003).

There are anecdotal reports that dosing with vigabatrin prevents the "high" associated with cocaine intake in humans dependent on cocaine and can, therefore, result in decreased cocaine consumption. Two open label pilot studies suggest a therapeutic effect in most patients recruited in abstaining from cocaine or methamphetamine (Brodie *et. al.*, 2005) use (Brodie *et. al.*, 2003; Brodie *et. al.*, 2005).

Therefore, it may be predicted that dosing with vigabatrin in a cocaine dependent population might prevent the cocaine "high" and the subsequent "craving", and possibly reduce the perceived need for repeated use, and often higher, drug doses (Dewey *et. al.*, 1999).

As an initial step in the clinical development of vigabatrin for stimulants dependence, it is important to assess the potential efficacy and safety of this compound in cocaine and methamphetamine dependent subjects.

References

Brodie JD, Figueroa E, Dewey SL (2003). Treating cocaine addiction: From preclinical to clinical experience with gamma-vinyl GABA. Synapse 50: 261–265.

Brodie JD, Figueroa E, Lasha EM, Dewey SL (2005). Safety and efficacy of gamma-vinyl GABA (GVG) for the treatment of methamphetamine and cocaine addiction. Synapse 55(2): 122–125.

Dewey SL, Brodie JD, Gerasimov M, Horan B, Gardner EL, Ashby CR (1999). A pharmacological strategy for the treatment of nicotine addiction. Synapse 31: 76–86.

Dewey SL, Morgan SE, Ashby CR, Horan B, Gardner EL, Brodie JD (1998). A novel strategy for the treatment of cocaine addiction. Synapse 30: 119–129.

Gerasimov MR, Ashby CR, Gardner EL, Mills MJ, Brodie JD, Dewey SL (1999). Gamma-Vinyl GABA inhibits methamphetamine, heroin, or ethanol-induced increases in nucleus accumbens dopamine. Synapse 34: 11–19.

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Guberman A, Bruni J & The Canadian Vigabatrin Study Group (2000). Long-term open multicentre, add-on trial of vigabatrin in adult resistant partial epilepsy. Seizure 9:112–118.

Hancock E, Osborne JP (1999). Vigabatrin in the treatment of infantile spasms in tuberous sclerosis. J Child Neurol 14:71–74.

Kushner SA, Dewey SL, Kornetsky C (1999). The irreversible gamma-amino butyric acid (GABA) transaminase inhibitor gamma vinyl-GABA blocks cocaine self-administration in rats. J.Pharmacol ExpTher 290(2): 797–802.

Molina PE, Ahmed N, Ajmal M, Dewey S, Volkow N, Fowler J, Abumrad N (1999). Co-administration of Gamma-Vinyl GABA and Cocaine: Preclinical Assessment of Safety. Life Sciences 11:1175–1182.

Rey E, Pons G, Olive G (1992). Vigabatrin. Clinical pharmacokinetics. Clin Pharmacokinet 23:267–278.

Schiffer WK, Martsteller D, Dewey SL (2003). Sub-chronic low dose gamma vinyl GABA (vigabatrin) inhibits cocaine-induced increases in nucleus accumbens dopamine. Psychopharmacology 168: 339–343.

Stromberg MF, Mackler SA, Volpicelli JR, O'Brien CP, Dewey SL (2001). The effect of gamma-vinyl-GABA on the consumption of concurrently available oral cocaine and ethanol in the rat. Pharmacol Biochem Behav 68:291–299.

DATES: NIDA will consider all proposals received within 45 days of the date of publication of this notice. This notice is active until July 5, 2005.

ADDRESSES: Proposals and questions about this opportunity may be addressed to Frank Vocci, Ph.D., Division of Pharmacotherapy and Medical Consequences of Drug Abuse, National Institute on Drug Abuse, 6001 Executive Blvd., MSC 9551, Bethesda, Maryland 20892–9551. For overnight mail service, 6001 Executive Blvd., Room 4123, Rockville, Maryland 20852. Tel: (301) 443–2711, Fax: (301) 443–2599.

SUPPLEMENTARY INFORMATION: NIDA will consider proposals from all qualified entities and will, subject to negotiation of the details of a mutually agreed upon Research Plan, provide the CRADA Collaborator access to its comprehensive preclinical and clinical trials resources with the understanding that the CRADA Collaborator will be able to utilize data derived from the CRADA to pursue regulatory filings in the U.S. and abroad. NIDA's Medications Development Program possesses the capacity to perform chemical synthesis, dosage form development, pharmacokinetics, pharmacodynamics, toxicology, regulatory management, and clinical testing (Phase I through Phase III) meeting FDA requirements for Good Manufacturing, Good Laboratory Procedures, and Good Clinical Practices standards. NIDA may apply these capacities in the assessment of vigabatrin, as may be warranted based

on NIDA's evaluation of the information, capacities, and plans provided by potential Collaborator(s).

NIDA follows stepwise development processes and procedures common to the medications development paradigm, *i.e.*, a candidate compound must successfully complete each necessary pre-requisite step prior to being advanced for further testing and development. It is NIDA's intention to provide, assuming pre-requisite preclinical and clinical safety, preclinical and clinical trials services sufficient to permit the completion of Phase II hypothesis testing trials for cocaine and methamphetamine dependence indications. Assuming demonstration and review of safety and efficacy at the conclusion of Phase II trials and subject to negotiation, NIDA will consider undertaking Phase III trials sufficient to permit Collaborator to seek a U.S. New Drug Application (NDA).

Please note that a CRADA is not a funding mechanism. No NIH funding may be provided to a Collaborator under a CRADA. All assistance is provided "in-kind". Therefore the Collaborator will bear the financial and organizational costs of meeting its share of obligations under any Research Plan that may be negotiated in connection with the CRADA.

"Cooperative Research and Development Agreement" or "CRADA" means the anticipated joint agreement to be entered into by NIDA pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of October 10, 1987 to collaborate on the specific research project described below.

The National Institute on Drug Abuse seeks an agreement with a pharmaceutical or biotechnology company for joint research, development, evaluation, and potential commercialization of vigabatrin for the treatment of cocaine and methamphetamine dependence.

The CRADA aims include the rapid publication of research results and the timely exploitation of commercial opportunities. The CRADA partner will enjoy rights of first negotiation for licensing Government rights to any inventions arising under the agreement and will advance funds payable upon signing the CRADA to help defray Government expenses for patenting such inventions and other CRADA-related costs.

The expected duration of the CRADA will be 3 to 5 years.

Selection criteria for choosing the CRADA partner will include but not be limited to:

1. Ability to collaborate with NIDA on further research and development of this technology in Phase I and Phase II clinical studies. All such studies will occur in the United States and under FDA IND rules. Demonstration of experience and expertise in this or related areas of technology and the ability to provide intellectual contribution to the ongoing research and development. Ability to accomplish objectives according to an appropriate timetable to be outlined in the Collaborator's proposal. At an absolute minimum, Collaborator must be able to provide vigabatrin and placebo sufficient to complete all clinical and preclinical studies required in the Research Plan.

2. Demonstration of the resources (facilities, personnel and expertise) necessary to perform research, development and commercialization of this technology.

3. Commitment of reasonable effort and resources on research, development and commercialization of this technology.

4. Expertise in the commercial development, production, marketing and sales of products related to this area of technology .

5. The level of financial support, if any, the Collaborator will supply for CRADA-related Government activities.

6. A willingness to cooperate with the National Institute on Drug Abuse in the publication of research results.

7. An agreement to be bound by the DHHS rules involving human subjects, patent rights and ethical treatment of animals.

8. A willingness to accept the legal provisions and language of the CRADA with only minor modifications (if any).

9. Provisions for equitable distribution of patent rights to any inventions made during the course of the subject CRADA research. Generally, the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, nonexclusive, royalty-free license to the Government (when a company employee is the sole inventor) or (2) an option to negotiate an exclusive or nonexclusive license to the company on terms that are appropriate (when a Government employee is an inventor).

Dated: May 11, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–10066 Filed 5–19–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Synthesis of Phosphocholine Ester Derivatives and Conjugates Thereof

Louis J. Rezanka (NIA), U.S. Provisional Application No. 60/623,762 filed 29 Oct 2004 (DHHS Reference No. E–330–2004/0–US–01)

Licensing Contact: Michael Shmilovich; (301) 435–5019; *shmilovm@mail.nih.gov.*

Available for licensing and commercial development is a method of synthesizing EPC (4-Nitrophenyl-6-(O-phosphocholine) hydroxyhexanoate) and methods of synthesizing phosphocholine analogues and the phosphocholine conjugates formed therefrom. These molecules have clinical and research applications as anti-microbial agents. Specifically, EPC conjugated to protein carriers has been demonstrated to generate a protective immune response to Streptococcus pneumoniae. The invention provides a process for EPC synthesis as well as for its reaction intermediates for use in synthesis.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Methods and Compositions for the ex vivo High-Throughput Detection of Protein/Protein Interactions

Sankar Adhya and Amos Oppenheim (NCI), U.S. Provisional Application No. 60/629,933 filed 23 Nov 2004 (DHHS Reference No. E–264–2004/0–US–01)

Licensing Contact: Cristina Thalhammer-Reyero; (301) 435–4507; *thalhamc@mail.nih.gov.*

This invention relates to methods and compositions for the high-throughput detection of protein-protein interactions using a lambda phage display system. One of the central challenges in systems biology is defining the interactome, or set of all protein-protein interactions within a living cell, as a basis for understanding biological processes for early diagnosis of disease and for drug development. The invention provides a novel proteomic toolbox for high-throughput medical research based in combining phage lambda protein display and recent advances in manipulation of the phage's genome. The method uses the bacteriophage lambda vector to express proteins on its surface, and is based on the use of mutant phage vectors such that only interacting phages will be able to reproduce and co-infect an otherwise non-permissive host and produce plaques. The invention allows for the characterization of bacteriophage display libraries that could be easily adapted to be used in large-scale functional protein chip assays.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Coacervate Microparticles Useful for the Sustained Release Administration of Therapeutics Agents

Phillip Heller (NIA), U.S. Provisional Application No. 60/602,651 filed 19 Aug 2004 (DHHS Reference No. E–116–2004/0–US–01)

Licensing Contact: Susan O. Ano; (301) 435–5515; *anos@mail.nih.gov.*

The described technology is a biodegradable microbead or microparticle, useful for the sustained localized delivery of biologically active proteins or other molecules of pharmaceutical interest. The microbeads are produced from several USP grade materials, a cationic polymer, an anionic polymer and a binding component (*e.g.*, gelatin, chondroitin sulfate and avidin), in predetermined ratios.) Biologically active proteins are incorporated into preformed microbeads via an introduced binding moiety under nondenaturing conditions.

Proteins or other biologically active molecules are easily denatured, and once introduced into the body, rapidly cleared. These problems are circumvented by first incorporating the protein into the microbead. Microbeads with protein payloads are then introduced into the tissue of interest, where the microbeads remain while degrading into biologically innocuous materials while delivering the protein/drug payload for adjustable periods of time ranging from hours to weeks. This technology is an improvement of the microbead technology described in U.S. Patent No. 5,759,582.

This technology has two commercial applications. The first is a pharmaceutical drug delivery application. The bead allows the incorporated protein or drug to be delivered locally at high concentration, ensuring that therapeutic levels are reached at the target site while reducing side effects by keeping systemic concentration low. The microbead accomplishes this while protecting the biologically active protein from harsh conditions traditionally encountered during microbead formation/drug formulation.

The microbeads are inert, biodegradable, and allow a sustained release or multiple-release profile of treatment with various active agents without major side effects. In addition, the bead maintains functionality under physiological conditions.

Second, the microbeads and microparticles can be used in various research assays, such as isolation and separation assays, to bind target proteins from biological samples. A disadvantage of the conventional methods is that the proteins become denatured. The denaturation results in incorrect binding studies or inappropriate binding complexes being formed. The instant technology corrects this disadvantage by using a bead created in a more neutral pH environment. It is this same environment that is used for the binding of the protein of interest as well.

Lepirudin Adsorbed to Catheter

McDonald Horne (CC), U.S. Provisional Application No. 60/436,439 filed 23 Dec 2002 (DHHS Reference No. E–295–2002/0–US–01); PCT Application No. PCT/US03/40888 filed 22 Dec 2003, which published as WO 2004/058324 A2 on 15 Jul 2004 (DHHS Reference No. E–295–2002/0–PCT–02)

Licensing Contact: Michael Shmilovich; (301) 435–5018; *shmilovm@mail.nih.gov.*

The invention is a method for preventing venous access device (VAD) thrombosis by coating the VAD catheter with lepirudin, which has been found to be readily adsorbed by the silicone rubber of the VADs, and is expected to have good retention properties. VADs typically remain in place for weeks or months and sometimes cause clotting (thrombosis) of the veins. Accordingly, the simple technique of soaking a silicone catheter in lepirudin before venous insertion is the gist of the invention. Chronically ill patients who must be catheterized for long periods of time will benefit particularly from this technique which promises to reduce swelling and pain associated with VAD-induced thrombosis.

Reference: Horne, MK, Brokaw, KJ. Antithrombin activity of lepirudin adsorbed to silicone (polydimethylsiloxane) tubing. Thrombosis Research 2003; 112:111–115.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

VAC–BAC Shuttle Vector System

Bernard Moss, Arban Domi (NIAID), U.S. Provisional Application No. 60/371,840 filed 10 Apr 2002 (DHHS Reference No. E–355–2001/0–US–01); U.S. Provisional Application No. 60/402,824 filed 09 Aug 2002 (DHHS Reference No. E–355–2001/1–US–01); International Patent Application No. PCT/US03/11183 filed 10 Apr 2003, which published as WO 03/087330 A2 on 23 Oct 2003 (DHHS Reference No. E–355–2001/2–PCT–01); U.S. Patent Application No. 10/959,392 filed 05 Oct 2004 (DHHS Reference No. E–355–2001/2–US–02); European Patent Application No. 037183431 filed 10 Apr 2003 (DHHS Reference No. E–355–2001/2–EP–03)

Licensing Contact: Robert M. Joynes; (301) 594–6565; *joynesr@mail.nih.gov.*

This invention relates to a VAC–BAC shuttle vector system for the creation of recombinant poxviruses from DNA cloned in a bacterial artificial chromosome. A VAC–BAC is a bacterial artificial chromosome (BAC) containing a vaccinia virus genome (VAC) that can replicate in bacteria and produce infectious virus in mammalian cells.

The following are some of the uses for a VAC–BAC:

1. VAC–BACs can be used to modify vaccinia virus DNA by deletion, insertion or point mutation or add new DNA to the VAC genome with methods developed for bacterial plasmids, rather

than by recombination in mammalian cells.

2. It can be used to produce recombinant vaccinia viruses for gene expression.

3. It can be used for the production of modified vaccinia viruses that have improved safety or immunogenicity.

Advantages of the VAC–BAC shuttle system:

1. VAC–BACs are clonally purified from bacterial colonies before virus reconstitution in mammalian cells.

2. Manipulation of DNA is much simpler and faster in bacteria than in mammalian cells.

3. Modified genomes can be characterized prior to virus reconstitution.

4. Only virus with modified genomes will be produced so that virus plaque isolations are not needed.

5. Generation of a stock of virus from a VAC–BAC is accomplished within a week rather than many weeks.

6. Multiple viruses can be generated at the same time since plaque purification is unnecessary.

References:

1. Domi, A., and B. Moss. 2002. Cloning the vaccinia virus genome as a bacterial artificial chromosome in Escherichia coli and recovery of infectious virus in mammalian cells. Proc. Natl. Acad. Sci. USA 99:12415–12420.

2. Domi, A., and B. Moss. 2005. Engineering of a vaccinia virus bacterial artificial chromosome in Escherichia coli by bacteriophage lambda-based recombination. Nature Methods 2:95–97.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Dated: May 12, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–10064 Filed 5–19–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

DU145 Camptothecin (CPT)-Resistant Cell Line

Dr. Yves Pommier (NCI)
DHHS Reference No. E–159–2005/0—Research Tool
Licensing Contact: John Stansberry; 301/435–5236; *stansbej@mail.nih.gov*

Drug resistance is a major limitation of chemotherapy. Understanding how drug resistance develops may lead to more effective treatments. This invention describes the DU145 Camptothecin (CPT)-resistant prostate cancer cell line that can be used to study mechanisms of drug resistance. For more details see Pommier et al., Cancer Research 61, 1964–1969, March 1, 2001.

Mammary Gland Differentiation by 2-Methoxyestradiol

Jeffrey E. Green et al. (NCI)
DHHS Ref. No. E–069–2005/0–US–01
Licensing Contact: Thomas P. Clouse; 301/435–4076; *clouset@mail.nih.gov*

This invention is based on the discovery that administration of 2-Methoxyestradiol (2-ME2) to female mice at various developmental stages will result in the differentiation of mammary epithelial cells to form rudimentary alveolar structures and to produce milk proteins. This effect has also been demonstrated in an in vitro experimental system. Since 2-ME2 is highly expressed during late stages of human pregnancy and pregnancy is known to reduce the risk of human bresat cancer, possibly due to differentiating effects on the mammary gland, 2ME2 may be developed into a preventive agent against breast cancer in women. Additionally, 2-ME2 may be useful in augmenting mammary gland differentiation and milk production under circumstances where normal differentiation is compromised.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Methods for Detecting Progression of Low Grade Cervical Dysplasia

Thomas Ried et al. (NCI)
DHHS Reference No. E–041–2005/0–US–01
Licensing Contact: Thomas P. Clouse; 301/435–4076; *clouset@mail.nih.gov*

This invention describes a test that can be applied to Pap smears to differentiate low-grade dysplastic lesions that are likely to progress to higher-grade dysplasia and cervical cancer from those that are likely to regress. The differentiating factor is the presence of genetic gain on the long arm of chromosome 3. The inventors have shown that low grade Pap smears that progress already exhibit extra copies of 3q, while those that do not show the 3q gain spontaneously regress.

Around 10–15% of the 3 million Pap smears with low-grade dysplasia each year in the United States progress to higher grade lesions. Currently, HPV testing is used to stratify these low grade disease Pap smears, but as the majority of these Pap smears are already HPV infected, the test has very low specificity. The instant 3q test, which targets the human telomerase gene, TERC, is a significant improvement in sensitivity and specificity over the current methods used for the detection of progressing versus regressing lesions.

Antibodies to Rheb, a Ras-Related Protein

Geoffrey J. Clark and Michele Vos (NCI)
DHHS Reference No. E–351–2004—Research Tool.
Licensing Contact: Mojdeh Bahar; 301/435–2950; *baharm@mail.nih.gov*

The invention relates to polyclonal antibodies that recognize the protein Rheb, a key player in protein biosynthesis. Rheb is a small GTP-binding protein that is structurally related to the oncoprotein Ras, but Rheb does not activate the same pathways as Ras. Instead, Rheb binds to the tumor suppressor TSC2 (Tuberin) and causes activation of the S6 kinase in a TOR (Target of Rapamycin) dependent manner. Rheb likely plays roles in the response to insulin and the development of human tumors. Thus, the antibodies could provide useful reagents to investigate the functions of Rheb in these and other biological processes.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Methods of Reducing the Activity and Concentration of an Eph Receptor Tyrosine Kinase

Jennifer Isaacs and Leonard Neckers (NCI)

U.S. Provisional Application No. 60/591,986 filed 29 Jul 2004 (DHHS Reference No. E–245–2004/0–US–01)

Licensing Contact: George Pipia; 301/435–5560; *pipiag@mail.nih.gov*

The Eph receptors comprise a family of 14 members and as such, they carry out diverse functions, including embryonic patterning, migration, and the formation of neural networks. Recently, it was discovered that a subset of these proteins play an integral role in the formation of blood vessels, or angiogenesis, which is a process essential to tumor development. In fact, several of these proteins have the capacity to transform normal cells, when overexpressed. We have discovered that the HSP90 inhibitor 17-Allylamino-17-demethoxygeldanamycin (17–AAG) effectively downregulates the level of several angiogenic Eph receptors and impairs their oncogenic signaling. This suggests that it maybe possible treat cancers overexpressing these oncogenes, by selectively inhibiting HSP90 with 17–AAG and its derivatives.

Retinal Pigment Epithelial Cells Immortalized with TERT and Expressing the Adenoviral E1A Oncoprotein

Karen Vousden *et al.* (NCI)

DHHS Reference No. E–135–2004/0—Research Tool

Licensing Contact: Thomas P. Clouse; 301/435–4076; *clouset@mail.nih.gov*

This invention describes human retinal pigment epithelial cells immortalized with telomerase reverse transcriptase (TERT). Some of these cells express the adenoviral E1A oncoprotein, while others do not. The E1A expressing cells serve as a model for cancerous cells. Those that do not express E1A behave like normal cells. As such these immortalized cells can be used to compare the behavior of normal and cancer cells in vitro.

Analogs of Thalidomide as Potential Angiogenesis Inhibitors

William D. Figg, Erin Lepper (NCI)

U.S. Provisional Application No. 60/486,515 filed 11 Jul 2003 (DHHS Reference No. E–272–2003/0–US–01); PCT Application No. PCT/US04/22242 filed 09 Jul 2004 (DHHS Reference No. E–272–2003/0–PCT–02)

Licensing Contact: Jesse Kindra; 301/435–5559; *kindraj@mail.nih.gov*

The present disclosure relates to anti-angiogenesis compositions and methods, and particularly thalidomide analogs that actively inhibit angiogenesis in humans and animals.

Angiogenesis is the formation of new blood vessels from pre-existing vessels. Angiogenesis is prominent in solid tumor formation and metastasis. A tumor requires formation of a network of blood vessels to sustain the nutrient and oxygen supply for continued growth. Some tumors in which angiogenesis is important include most solid tumors and benign tumors, such as acoustic neuroma, neurofibroma, trachoma, and pyogenic granulomas. Prevention of angiogenesis could halt the growth of these tumors and the resultant damage due to the presence of the tumor.

The subject application discloses active thalidomide analogs that exhibit enhanced potency in the inhibition of undesirable angiogenesis, and methods for using these compounds to treat angiogenesis and solid tumors. In particular, the presently disclosed method provides for inhibiting unwanted angiogenesis in a human or animal by administering to the human or animal with the undesired angiogenesis a composition comprising an effective amount of the active thalidomide analogs. According to a more specific aspect, the method involves inhibiting angiogenesis by exposing a mass having the undesirable angiogenesis to an angiogenesis inhibiting amount of one or more compounds, or pharmaceutically acceptable salts of such compounds.

Mycolactone and Related Compounds

Pamela L. Small and Kathleen M. George (NIAID)

U.S. Patent 6,680,055 issued 20 Jan 2004 (DHHS Reference No. E–199–1999/0–US–06)

Licensing Contact: John Stansberry; 301/435–5236; *stansbej@mail.nih.gov*

This application describes and claims novel pharmocoactive compounds which belong to the class of compounds known as polyketide macrolides. These compounds have been isolated from *M. ulcerans* the causative agent of buruli ulcers. Early work with these compounds suggests that the principle compound, mycolactone, or mixtures of mycolactone with other isolated polyketide macrolides or other agents may be useful in treating cancer or suppressing an inflammatory response.

In addition to the novel polyketide macrolide compounds the application also describes compositions derived from a non-virulent strain of *M. ulcerans*. These compositions may be useful in inducing an immune response (vaccines) which could be useful in providing subjects with resistance to the development of buruli ulcers. Antibodies against mycolactone are being developed. These antibodies could be used for diagnostic purposes.

Some early publications which describe this work are KM George et al. Science 283(5403): 854–7 (Feb. 5, 1999) and KM George et al. Infect. Immun. 66(2): 587–93 (Feb. 1998). More recently, novel mycolactones have been isolated and characterized from Australian isolates of *M. ulcerans* (Judd et al. Organic Lett. 6: 4901–4904 (2004)) as well as from the frog pathogen *M. liflandii* (Mve-Obiang, A. et al. Infect. Immun. (In Press)).

Spatial and Temporal Control of Gene Expression Using a Heat Shock Protein Promoter in Combination with Local Heat

Chrit T. Moonen (ORS)

U.S. Patent Application No. 10/864,102 filed 09 Jun 2004, claiming priority to 15 Aug 1996 (DHHS Reference No. E–235–1995/0–US–09); Foreign rights available

Licensing Contact: George Pipia; 301/435–5560; *pipiag@mail.nih.gov*

In many instances, it is desirable to express exogenous genes only in certain tissues, and/or at will at certain times, and/or only to a certain degree. However, current gene transfer and exogenous gene expression protocols do not provide adequate means of simultaneously controlling which cells in a heterogeneous population are transformed and when, where, and to what degree the transferred genes are expressed. The invention provides methods for using local heat to control gene expression. The heat shock protein (hsp) gene promoter is recombined with a selected therapeutic gene and expressed in selected cells. Local controlled heating is used to activate the hsp promoter, for example by using focused ultrasound controlled by MRI.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Dated: May 11, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–10065 Filed 5–19–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Board of Scientific Advisors.

Date: June 27–28, 2005.

Time: June 27, 2005, 8 a.m. to 6 p.m.

Agenda: Director's Report; Ongoing and New Business; Reports of Program Review Group(s); and Budget Presentation; Reports of Special Initiatives; RFA and RFP Concept Review; and Scientific Presentations.

Place: National Institutes of Health, Building 31, C Wing, 6 Floor, Conference Rm. 10, 9000 Rockville Pike, Bethesda, MD 20892.

Time: June 28, 2005, 8:30 a.m. to 1 p.m.

Agenda: Ongoing and New Business; Reports of Program Review Group(s); and Budget Presentation; Reports of Special Initiatives; RFA and RFP Concept Review; and Scientific Presentations.

Place: National Institutes of Health, Building 31, C Wing, 6 Floor, Conference Rm. 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, PhD, Executive Secretary, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Rm. 8001, Bethesda, MD 20892, (301) 496–5147.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/bsa.htm,* where an agenda any any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: May 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10070 Filed 5–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with theprovisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee F—Manpower & Training.

Date: June 14–15, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Lynn M. Amende, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8105, Bethesda, MD 20892, 301–451–4759, *amendel@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: May 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10071 Filed 5–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board Subcommittee on Planning and Budget.

Open: June 6, 2005, 6:30 p.m. to 9 p.m.

Agenda: To discuss activities related to the Subcommittee on Planning and Budget.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Ms. Cherie Nichols, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 2nd Floor, Room 205, Bethesda, MD 20892–2590, (301) 496–5515.

Name of Committee: National Cancer Advisory Board.

Open: June 7, 2005, 8:30 a.m. to 4:30 p.m.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer

Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Closed: June 7, 2005, 4:30 p.m. to 5:30 p.m.

Agenda: Review of grant applications.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Open: June 8, 2005, 8:30 a.m. to 12 p.m.

Agenda: Program reports and presentations; Business of the Board.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/ncab.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10073 Filed 5–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, DB–20 International Centers for Research in CAM.

Date: June 14–16, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Dale L. Birkle, PhD, Scientific Review Administrator, NIH/NCCAM, 6707 Democracy Blvd., Democracy Two Building, Suite 401, Bethesda, MD 20892, (301) 451–6570, *birkled@mail.nih.gov.*

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, Basic Science.

Date: June 20–21, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Dale L. Birkle, PhD, Scientific Review Administrator, NIH/NCCAM, 6707 Democracy Blvd., Democracy Two Building, Suite 401, Bethesda, MD 20892, (301) 451–6570, *birkled@mail.nih.gov.*

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, Clinical Science.

Date: June 23–24, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Jeanette M. Hosseini, Scientific Review Administrator, National Center for Complementary and Alternative Medicine, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 451–9096.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, CERC.

Date: July 12–13, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Martin H. Goldrosen, PhD, Chief, Office of Scientific Review, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 106, Bethesda, MD 20892–5475, (301) 451–6331.

Dated: May 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10075 Filed 5–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Center for HIV/AIDS Vaccine Immunology, (CHAVI).

Date: June 22, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Cheryl K. Lapham, PhD, Scientific Review Administrator, NIH/NIAID, Scientific Review Program, Room 2217, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *clapham@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10067 Filed 5–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6). Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Treatment for Children.

Date: June 14–15, 2005.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Christopher S. Sarampote, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892–9608, 301–443–1959, *csarampo@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Questionnaire Development.

Date: June 16, 2005.

Time: 1:30 p.m. to 2:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10068 Filed 5–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Review of an unsolicited M. tuberculosis P01 Application.

Date: June 15, 2005.

Time: 2 p.m. 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive 3123, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Alec Ritchie, Phd, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700 B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–435–1614, *aritchie@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10072 Filed 5–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Contract Innovative Therapies for Rheumatic and Skin Diseases.

Date: June 8–9, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Eric H. Brown, MS, PhD, Scientific Review Administrator, National Institute of Arthritis, Musculoskeletal & Skin Diseases, National Institutes of Health, 6701 Democracy Blvd., Room 824, MSC 4872, Bethesda, MD 20892–4872, (301) 594–4955, *browneri@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10069 Filed 5–19–05; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Modeling Infectious Disease Agents Systems.

Date: June 6–7, 2005.

Time: 7 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Arthur L Zachary, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12, Bethesda, MD 20892, (301) 594–2886, *zacharya@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10074 Filed 5–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Communication Disorders Review Committee.

Date: June 15–16, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Melissa J. Stick, PhD., MPH, Chief, Scientific Review Branch, Scientific Review Branch, Division of Extramural Research, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683,

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: May 12, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10076 Filed 5–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–21201]

Commercial Fishing Industry Vessel Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Commercial Fishing Industry Vessel Safety Advisory Committee (CFIVSAC). CFIVSAC advises and makes recommendations to the Coast Guard for improving commercial fishing industry safety practices.

DATES: Application forms should reach the Coast Guard at the location noted in **ADDRESSES** on or before July 1, 2005.

ADDRESSES: You may request an application form by writing to Commandant (G–MOC–3), U.S. Coast Guard, 2100 Second Street, SW., Room 1116, Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Captain Michael B. Karr, Executive Director of CFIVSAC, or Lieutenant Kenneth Vazquez, Assistant to the Executive Director, by telephone at 202–267–0478, fax 202–267–0506, e-mail: *KVazquez@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: The Commercial Fishing Industry Vessel Safety Advisory Committee (CFIVSAC) is a Federal advisory committee under 5 U.S.C. App. 2 as required by the Commercial Fishing Industry Vessel Safety Act of 1988. The Coast Guard established CFIVSAC to provide advice to the Coast Guard on issues related to the safety of commercial fishing vessels regulated under Chapter 45 of Title 46, United States Code, which includes uninspected fishing vessels, fish processing vessels, and fish tender vessels. (See 46 U.S.C. 4508.)

CFIVSAC consists of 17 members as follows: (a) Ten members from the commercial fishing industry who reflect a regional and representational balance and have experience in the operation of vessels to which Chapter 45 of Title 46, United States Code applies, or as a crew member or processing line member on an uninspected fish processing vessel; (b) one member representing naval architects or marine surveyors; (c) one member representing manufacturers of vessel equipment to which Chapter 45 applies; (d) one member representing education or training professionals related to fishing vessel, fish processing vessels, or fish tender vessel safety, or personnel qualifications; (e) one member representing underwriters that insure vessels to which Chapter 45 applies; (f) and three members representing the general public including, whenever possible, an independent expert or consultant in maritime safety and a member of a national organization composed of persons representing the marine insurance industry.

CFIVSAC generally meets once a year. It may also meet for extraordinary purposes. Its subcommittees and working groups may meet intersessionally to prepare for meetings or develop proposals for the committee as a whole to address specific problems.

We will consider applications for six positions that expire or become vacant in October 2005 in the following categories: (a) Commercial Fishing Industry (four positions); (b) Equipment Manufacturer (one position); (c) General Public (one position).

Each member serves a 3-year term. Members may serve consecutive terms. All members serve at their own expense and receive no salary from the Federal Government, although travel reimbursement and per diem are provided.

In support of the policy of the Department of Homeland Security on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

You may request an application form by writing to Commandant (G–MOC–3), U.S. Coast Guard, 2100 Second Street, SW., Room 1116, Washington, DC 20593–0001; by calling 202–267–2854; by faxing 202–267–0506; or by e-mailing *RTrevino@comdt.uscg.mil.* This notice and the application are also available on the Internet at *http://www.uscg.mil/hq/g-m/cfvs.*

If you are selected as a member representing the general public, you are

required to complete a Confidential Financial Disclosure Report (OGE Form 450). We may not release the report or the information in it to the public, except under an order issued by a Federal Court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: May 12, 2005.

B. Emond,

Commander, U.S. Coast Guard, Acting Director of Standards, Marine Safety, Security & Environmental Protection, By Direction.

[FR Doc. 05–10142 Filed 5–19–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[CBP Decision 05–17]

Recordation of Trade Name: "JOY ENTERPRISES"

AGENCY: Customs and Border Protection (CBP).

ACTION: Notice of final action.

SUMMARY: This document gives notice that "JOY ENTERPRISES" has been recorded with CBP as a trade name by Shell Stores Corporation d/b/a Joy Enterprises, a Florida corporation organized under the laws of the State of Florida, 1862 M.L. King Blvd., Riviera Beach, Florida 33404–7105.

The application for trade name recordation was properly submitted to CBP and published in the **Federal Register**. As no public comments in opposition to the recordation of this trade name were received by CBP within the 60-day comment period, the trade name has been duly recorded with CBP and will remain in force as long as this trade name is in use by this manufacture, unless the recordant requests cancellation of the recordation or any other provision of law so requires.

EFFECTIVE DATE: November 12, 2004

FOR FURTHER INFORMATION CONTACT: La Verne Watkins, Paralegal Specialist, Intellectual Property Rights Branch, Office of Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Mint Annex, Washington, DC 20229; (202) 572–8710.

SUPPLEMENTARY INFORMATION: Trade names that are being used by manufacturers or traders may be recorded with Customs and Border Protection (CBP) to afford the particular business entity with increased commercial protection. CBP procedures for recording trade names are provided at § 133.11 *et seq.*, of the Customs Regulations (19 CFR parts 1–140). Pursuant to this regulatory provision, Shell Stores Corporation d/b/a Joy Enterprises, a Florida corporation organized under the laws of the State of Florida, 1862 M.L. King Blvd., Riviera, Florida 33404–7105, applied to CBP for protection of its manufacturer's trade name, "JOY ENTERPRISES."

On Friday, November 12, 2004, CBP published a notice of application for the recordation of the trade name "JOY ENTERPRISES" in the **Federal Register** (69 FR 65445). The application advised that before final action would be taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing in opposition of the recordation of this trade name. The closing day for the comment period was January 11, 2005.

As of the end of the comment period, January 11, 2005, no comments were received. Accordingly, as provided by § 133.14, of the Customs Regulations, "JOY ENTERPRISES" is recorded with CBP as the trade name used by the manufacturer, Shell Stores Corporation d/b/a Joy Enterprises, and will remain in force as long as this trade name is in use by this manufacturer unless the recordant requests cancellation of the recordation or any other provision of law so requires.

Dated: May 11, 2005.

George Frederick McCray,

Esq. Chief, Intellectual Property Rights Branch.

[FR Doc. 05–10079 Filed 5–19–05; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1561–DR]

Florida; Amendment No. 10 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1561–DR), dated September 26, 2004, and related determinations.

EFFECTIVE DATE: May 15, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Scott R. Morris, of FEMA is appointed to act as the Director of Florida Long-term Recovery for this declared disaster.

This action terminates my appointment of William L. Carwile, III as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–10080 Filed 5–19–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1551–DR]

Florida; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1551–DR), dated September 16, 2004, and related determinations.

EFFECTIVE DATE: May 15, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that

pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Scott R. Morris, of FEMA is appointed to act as the Director of Florida Long-term Recovery for this declared disaster.

This action terminates my appointment of William L. Carwile, III as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–10081 Filed 5–19–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1545–DR]

Florida; Amendment No. 14 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1545–DR), dated September 4, 2004, and related determinations.

EFFECTIVE DATE: May 15, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Scott R. Morris, of FEMA is appointed to act as the Director of Florida Long-term Recovery for this declared disaster.

This action terminates my appointment of William L. Carwile, III as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–10082 Filed 5–19–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1539–DR]

Florida; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1539–DR), dated August 13, 2004, and related determinations.

EFFECTIVE DATE: May 15, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Scott R. Morris, of FEMA is appointed to act as the Director of Florida Long-term Recovery for this declared disaster.

This action terminates my appointment of William L. Carwile, III as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–10083 Filed 5–19–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4975–N–15]

Notice of Proposed Information Collection: Comment Request; Lender Insurance Certification

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, 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:* July 17, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Wayne_@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

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 affected agencies concerning the proposed collection of information to: (1) Evaluation whether the proposed collection 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 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: Lender Insurance Certification.

OMB Control Number, if applicable: New collection.

Description of the need for the information and proposed use: HUD's Lender Insurance (LI) program allows eligible Direct Endorsement mortgagees to submit loan-level data to HUD and receive the benefit of immediate mortgage insurance endorsement without the necessity of HUD reviewing the individual case binder prior to insuring the loan. While existing statute and regulations describe lender eligibility, FHA believes it prudent to require participating lenders to self-certify electronically that each is eligible under the LI program, and that they will abide by all regulations, handbooks, mortgagees letters, and other appropriate notifications regarding the LI program.

Agency form numbers, if applicable: Yes.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 24. The number of respondents is 300, the frequency of response is quarterly, and the burden hour per response is 1 minute.

Status of the proposed information collection: This is a new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: May 12, 2005.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 05–10039 Filed 5–19–05; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4975–N–14]

Notice of Proposed Information Collection: Comment Request; Loss Mitigation Evaluation

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, 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:* July 19, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Laurie Maggiano, Deputy Director, Single Family Asset Management and Disposition Division, Room 9176, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708-1672 (this is not a toll free number) for copies of the proposed forms and other available information.

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 affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 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: Loss Mitigation Evaluation.

OMB Control Number, if applicable: 2502–0523.

Description of the need for the information and proposed use: Mortgagees are required by 24 CFR 203.605 to evaluate what (if any) loss mitigation initiatives are appropriate, and must maintain documentation of this evaluation.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 116,784 hours; the number of respondents is 600, the total annual number of responses is approximately 467,135, the frequency of response is on occasion, and the estimated time per response is estimated to be 15 minutes.

Status of the proposed information collection: Currently approved.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: May 12, 2005.

Frank L. Davis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 05–10040 Filed 5–19–05; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–25]

Notice of Submission of Proposed Information Collection to OMB; Interstate Land Sales Full Disclosure Requirements

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.

The Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701, *et seq.*, requires developers to register subdivisions of 100 or more non-exempt lots with HID. The developer must give each purchaser a property report that meets HUD's requirements before the purchaser signs the sales contract or agreement for sale or lease.

DATES: *Comments Due Date:* June 20, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0243) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. 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: Interstate Land Sales Full Disclosure Requirements.

OMB Approval Number: 2502–0243.

Form Numbers: None.

Description Of The Need For The Information And Its Proposed Use:

The Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701, *et seq.*, requires developers to register subdivisions of 100 or more non-exempt lots with HID. The developer must give each purchaser a property report that meets HUD's requirements before the purchaser signs the sales contract or agreement for sale or lease.

Frequency Of Submission: On occasion, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	1,104	23.99		0.935		24,776

Total Estimated Burden Hours: 24,776.

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: May 13, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E5–2524 Filed 5–19–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4890–N–02]

America's Affordable Communities Initiative HUD's Initiative on Removal of Regulatory Barriers: Identification of HUD Regulations That Present Barriers to Affordable Housing

AGENCY: Office of General Counsel, HUD.

ACTION: Notice.

SUMMARY: On November 25, 2003, HUD published a **Federal Register** notice seeking comments from HUD's program partners and participants, as well as other interested members of the public, on HUD regulations that address the production and rehabilitation of affordable housing and that present or appear to present barriers to the production and rehabilitation of affordable housing. The November 25, 2003, notice seeking public comment on regulatory barriers is one of several efforts being undertaken as part of America's Affordable Communities Initiative, a HUD initiative that focuses on removing regulatory barriers that impede the production or rehabilitation of affordable housing. This notice responds to the public comments that were submitted in response to the November 25, 2003, notice, and advises of actions taken by HUD since November 2003 to remove HUD regulatory barriers to affordable housing or increase flexibility in program administration of those HUD programs that address affordable housing.

FOR FURTHER INFORMATION CONTACT: Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Office of General Counsel, Room 10282, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500, telephone (202) 708–1793 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

In June 2003, HUD announced America's Affordable Communities Initiative (the Initiative). This departmentwide initiative is devoted to harnessing existing HUD resources to develop tools to measure and ultimately mitigate the harmful effects of excessive barriers to affordable housing, at all levels of government. The Initiative has its roots in the Department's renewed emphasis to increase the stock of affordable housing to meet America's growing housing needs. Another element of that renewed emphasis was the creation, in 2001, of the Regulatory Barriers Clearinghouse, a central, web-based repository of successful affordable housing endeavors. The Regulatory Barriers Clearinghouse offers state and local governments, nonprofits, builders, and developers alike the opportunity to not only share ideas, but also share

solutions to overcome state and local regulatory barriers to affordable housing. The Regulatory Barriers Clearinghouse, like the Initiative, presents a public forum to facilitate the identification of barriers to affordable housing and solutions to their removal. The Regulatory Barriers Clearinghouse can be found at *http://www.regbarriers.org*.

One of the primary tasks of the Initiative is to examine federal, state, and local regulatory barriers to affordable housing and determine the feasibility of removing these barriers or, at a minimum, reducing the burden created by the barriers. HUD, as the federal agency charged with promoting and facilitating the production and rehabilitation of affordable housing, commenced a review of its own regulations. HUD's review involves identifying HUD regulations that may adversely impact the production and rehabilitation of affordable housing, and therefore constitute unnecessary, excessive, cumbersome, or duplicative departmental regulatory requirements. HUD's review is targeting those regulations that raise costs substantially or significantly impede the development or rehabilitation of America's affordable housing stock.

II. Inviting the Public To Identify HUD Regulatory Barriers

In reviewing its own regulations, HUD sought the assistance of its current and former program participants and partners, which include state and local governments, public housing agencies, state finance agencies, nonprofit and for-profit organizations, and also the general public. This assistance was sought through the notice published on November 25, 2003 (68 FR 66294).

In response to this notice, HUD received 33 public comments. The commenters included units of state and local governments, organizations representative of various private industries involved in housing or HUD programs, as well as nonprofit organizations. The comments covered a broad range of HUD programs. HUD has reviewed all the comments responding to the November 25, 2003, notice and in this notice responds to the recommendations and issues raised by the commenters concerning reduction of HUD regulatory barriers. Several of the commenters responding to the November 25, 2003, notice raised issues about HUD regulations that do not pertain to the production or rehabilitation of affordable housing. Although the issues raised by these comments were not the focus of the November 25, 2003, notice, HUD has attempted to respond to these issues in this notice.

III. Regulatory Reform Already Underway at HUD

Under Secretary Alphonso Jackson, the charge of the Department to meet the strategic goals of increasing homeownership and promoting decent affordable housing has been reinforced. The Secretary recognizes that HUD's and the Administration's proposals to increase the availability of affordable rental and homeownership housing, such as the American Dream Downpayment Initiative implemented in 2004, will not gain significant ground if at the same time HUD is issuing regulations that present barriers to affordable housing. The charge of the Initiative, indeed the entire Department, is to identify barriers to affordable housing and remove the barriers if possible or reduce the burden to the extent feasible.

Rulemaking Directed at Removing and Reducing Barriers

Since publication of the November 25, 2003, notice HUD has issued, or will soon be issuing, several rules directed to promoting the availability of affordable housing or removing or reducing regulatory burdens to affordable housing, as reflected by the following examples (listed in chronological order).

On March 10, 2004, HUD published a final rule (69 FR 11500) that made available a new adjustable rate mortgage (ARM) product for HUD-insured single family housing that can be better tailored to the needs of borrowers. This rule provides for seven- and ten-year ARMs adjustable annually by up to two percentage points, and for one-, three-, and five-year ARMs adjustable annually by up to one percentage point.

HUD issued its regulations to implement the American Dream Downpayment Initiative (ADDI) on March 30, 2004 (69 FR 16758). Under ADDI, HUD makes formula grants to participating jurisdictions under the HOME Investment Partnerships Program (HOME program) for the purpose of assisting low-income families achieve homeownership.

By notice issued on November 8, 2004 (69 FR 64826), HUD further simplified the annual plan that must be submitted by public housing agencies (PHAs) in accordance with the U.S. Housing Act of 1937 (see 42 U.S.C. 1437c–1) and HUD's implementing regulations in 24 CFR part 903. The annual plan is the mechanism by which PHAs advise HUD, its residents and members of the public of its strategy, among other things, of serving low-income and very low-income families. The November 2004 notice streamlined the requirements for high-performing PHAs.

HUD published an interim rule on November 22, 2004 (69 FR 68050) that amends its HOME program regulations to give participating jurisdictions the flexibility to invest additional HOME funds to preserve homebuyer housing for which HOME funds have already been expended.

HUD published its final rule on the Federal Housing Administration (FHA) TOTAL Mortgage Scorecard on November 26, 2004 (69 FR 68784). This final rule adopted a November 21, 2003, interim rule (68 FR 65824), which launched the use of the TOTAL Mortgage Scorecard. The FHA TOTAL Mortgage Scorecard is an empirically-derived, statistically proven mortgage scorecard for installation in various automated underwriting systems. By using automated underwriting systems that employ the TOTAL (Technology Open to Approved Lenders) mortgage scorecard, lenders are able to dramatically reduce the paperwork associated with underwriting FHA insured mortgages, and reduce underwriting staff costs as well. In addition, some borrowers, previously thought to represent too great of an insurance risk to subjective underwriting requirements, may now have their mortgages approved by an objective electronic system.

HUD is working with the Manufactured Housing Consensus Committee (MHCC) to review and propose changes to HUD's manufactured housing safety standards and regulations. The first proposed rule resulting from this collaborative work was issued on December 1, 2004 (69 FR 70016). This December 1, 2004, proposed rule recommends changes to the following manufactured housing standards: Whole-house ventilation, firestopping, body and frame requirements, thermal protection, plumbing systems, and electrical, heating, cooling and fuel burning systems.

On December 15, 2004 (69 FR 75204), HUD issued regulations that provide for a reduced mortgage insurance premium for its Home Equity Conversion Mortgage (HECM) program. HUD's HECM program enables homeowners 62 years or age or older who have paid off their mortgages or have small mortgage balances to stay in their homes while using some of their equity as income.

HUD issued a rule on December 23, 2004 (69 FR 77114), that provided two additional exceptions to the time resale restrictions in HUD's "Prohibition on Property Flipping" regulations

promulgated on May 1, 2003 (69 FR 77114). The December 23, 2004, rule allows two additional categories of properties to be more quickly marketed and sold, thereby removing a regulatory barrier to affordable housing.

On December 30, 2004 (69 FR 78830), HUD issued a proposed rule for public comment to clarify and streamline the consolidated plan, the planning document that states and local jurisdictions receiving funding under HUD's community planning and development formula grant programs must submit to HUD. The consolidated plan serves as the jurisdiction's planning document for the use of the funds received under these programs. Consistent with efforts of the Initiative, the proposed rule would require each jurisdiction to describe specific actions it plans to take during the year addressed by the plan to address public policies and procedures that impact the cost of developing, maintaining, or improving affordable housing.

HUD issued an interim rule on March 29, 2005 (70 FR 16080) that makes available a new ARM product. The rule enables FHA to insure five-year hybrid ARMs with interest rates adjustable up to two percentage points annually. This type of mortgage is known as a 5/1 ARM. The lifetime cap on annual interest rate adjustments for five-year ARMs is set at six percentage points.

On April 26, 2005 (70 FR 21498), HUD issued its second proposed rule developed in consultation with the MHCC. This proposed rule addresses model manufactured home installation standards.

These are a few of the rules issued by HUD that reflect it's efforts to remove barriers to affordable housing and increase flexibility in program administration of those HUD programs that address affordable housing. In addition to rules already issued, HUD expects to soon finalize its rule on Mixed-Finance Development for Supportive Housing for the Elderly or Persons with Disabilities, for which an interim rule was published on December 1, 2003. The interim rule enables the use of mixed-finance and for-profit participation in HUD's Section 202 Supportive Housing programs for the elderly and HUD's Section 811 Supportive Housing program for persons with disabilities. The use of a mixed-finance development in these programs allows for leveraging the capital and expertise of the private developer to create attractive and affordable supportive housing developments for the elderly and persons with disabilities.

In addition to the issuance of rules, HUD also has reduced certain barriers through notices related to regulatory policies. For example, in late 2002, the FHA Commissioner issued a mortgagee letter that announced an alternative to existing HUD requirements where state and local statutes differ from FHA guidelines with respect to the distance between domestic wells and septic drain tanks. The mortgagee letter reduces regulatory burden by allowing less onerous state and local standards to prevail over more burdensome HUD requirements.

In early 2003, FHA issued a mortgagee letter that eliminated policies and procedures for approving planned unit developments (PUDs). Based on FHA's experience with PUDs and the role that state and local officials play in the development of PUD projects, HUD abolished its requirement for a detailed examination of the legal and budget documents associated with PUDs. The elimination of this requirement reduces costs to lenders and developers, and possible delays to the mortgage closing.

In June 2004, FHA issued a mortgagee letter announcing that FHA would no longer issue, and lenders need no longer keep copies of, paper mortgage insurance certificates. By relying on FHA's electronic records and data submission systems, the mortgage letter significantly reduced the paperwork and custodial requirements of issuing and maintaining this document, as well as the related costs incurred by lenders.

Internal Rulemaking Procedures

HUD's internal rulemaking procedures continue to include, as part of the development of new rules, a review to ensure that new regulations do not present new barriers to affordable housing. This procedure was put in place at the commencement of the Initiative and continues as part of HUD's regular internal rulemaking procedures.

New Regulatory Review

As part of its continuing review of its existing regulations, in 2005, the Initiative has targeted for enhanced review and assessment HUD's regulations governing financing of condominiums, minimum property standards, and its environmental regulations.

Legislation Directed at Removing or Reducing Barriers

Rulemaking activity is one avenue by which HUD strives to address barriers to affordable housing. Legislation provides another avenue. The President's Fiscal Year (FY) 2006 Budget presented to Congress on February 7, 2005, includes several legislative proposals directed to removing barriers to affordable housing. The FHA Zero Downpayment and Payment Incentives legislative proposals would remove two larger barriers to homeownership—the downpayment and impaired credit. The Zero Downpayment legislative proposal allows first-time buyers with a strong credit record to finance 100 percent of the home purchase price and closing costs. For borrowers with limited or weak credit histories, the Payment Incentives legislative proposal provides for an initial charge of a higher insurance premium and then reduces the premium after a period of on-time payments. These two legislative proposals, if enacted, would assist more than 250,000 families achieve homeownership. (*See* page 170 of the FY2006 Budget of the U.S. Government, available at *http://www.whitehouse.gov/omb/budget/fy2006/budget.html.*)

The Single Family Homeownership Tax Credit legislative proposal in the President's FY2006 budget proposes a new homeownership tax credit that will increase the supply of single family affordable homes by up to an additional 50,000 homes annually. Under this proposal, builders of affordable homes for middle-income purchasers will receive a tax credit. State housing finance agencies will award tax credits to single family developments located in a census tract with median income equal to 80 percent or less of area median income and will be limited to homebuyers in the same income range. The credits may not exceed 50 percent of the cost of constructing a new home or rehabilitating an existing property. Each state would have a homeownership credit ceiling adjusted for inflation each year and equal to the greater of $1.75 times the state population or $2 million. (*See* page 170 of the FY2006 Budget of the U.S. Government, available at *http://www.whitehouse.gov/omb/budget/fy2006/budget.html.*)

The prior year's budget, the President's FY2005 Budget announced a HUD legislative proposal that is designed to provide flexibility in administering HUD's Housing Choice Voucher program. (The FY2005 Budget of the U.S. Government can be found at *http://www.gpoaccess.gov/usbudget/fy05/browse.html.*) The Housing Choice Voucher program provides two million low-income families with help to afford a decent place to live. These families contribute 30 percent of their income towards their rent and the government pays the rest. In the past, funds have been appropriated for a specific number

of units each year. These funds were given to PHAs based on the number of vouchers they were awarded. Over the years, HUD and Congress have expressed concern with this program because voucher costs have increased at a rate of more than double the average increase in the private rental market for the past two years. The Administration's proposal is to simplify this program and give more flexibility to PHAs to administer the program to better address local needs. On April 13, 2005, Senator Wayne Allard of Colorado introduced legislation, the State and Local Housing Flexibility Act of 2005 (S.771) that is similar to the Administration's legislative proposal.

Recognizing Successful Efforts at the State and Local Level in Reducing Barriers

With respect to HUD's funding opportunities, HUD continues to place a premium on funding local communities and organizations that are working toward removing excessive and burdensome regulations that restrict the development of affordable housing at the local level. As HUD provided in FY2004, HUD will continue to award priority points to certain applicants in communities that can demonstrate successful efforts to reduce regulatory barriers that prevent many families from living in the communities where they work. More information about the priority points for reducing regulatory barriers can be found in the **Federal Register** notices published on November 25, 2003 (68 FR 66288), March 22, 2004 (69 FR 13450), April 21, 2005 (69 FR 21664), and also in HUD's FY2004 Super Notice of Funding Availability (NOFA), published on May 14, 2004 (69 FR 26942) and HUD's FY2005 SuperNOFA, published on March 21, 2005 (70 FR 13576).

HUD also seeks to recognize the successful efforts of state and local governments in reducing regulatory barriers to affordable housing through an awards program. On November 17, 2004, Secretary Jackson announced the Affordable Communities Awards program, a new national awards program designed to recognize local governments for reducing regulatory barriers to affordable housing. Interested individuals or groups were invited to nominate either a state or local government that demonstrated extraordinary achievements in eliminating regulatory barriers to housing affordability. State and local governments were also invited to nominate themselves or other local units of government for awards. Submissions will be evaluated and selected by a diverse group of senior-level HUD staff who comprise the Initiative Team. HUD intends to recognize local governments for their outstanding work to encourage the production of homes affordable to working families. HUD expects to announce the award winners in June 2005. Secretary Jackson recently announced that the Affordable Communities Awards would be named the Robert L. Woodson, Jr. Award, in memory of HUD's former chief of staff.

Reducing Regulatory Barriers Through Information Sharing and Education

HUD's efforts to reduce regulatory barriers also include information sharing and education. HUD's Regulatory Barriers Clearinghouse (*http://www.regbarriers.org*), a national web-based forum established in 2001 gives state and local governments the ability to share ideas and develop solutions to address unique housing challenges. This website is a primary vehicle for information sharing on reducing regulatory barriers. In July 2004, Secretary Jackson hosted an affordable housing roundtable at HUD Headquarters entitled "Affordable Housing: Confronting Regulatory Barriers Together." The panel that led the discussion of regulatory barriers facing the nation included representatives from nonprofit organizations, industry groups, and government associations from across the country. In February 2005, Secretary Jackson released a major report on affordable housing in America entitled "Why Not in Our Community?" This report constitutes HUD's first substantive examination of the impact of regulatory barriers on affordable housing since the Department's report in 1991 entitled "Not in My Backyard." Like the 1991 report, the 2005 report found that outdated, exclusionary, and unnecessary regulations continue to block the construction or rehabilitation of affordable housing in some parts of America. The 2005 report, however, also found that many communities are actively removing these barriers and promoting the production of housing that was formerly beyond the reach of many working families.

The activities described above constitute a few of the efforts that HUD has taken, through the Initiative, to reduce regulatory barriers to affordable housing. More details about these activities can be found at HUD's Web site at *http://www.hud.gov/initiatives/affordablecom.cfm.*

IV. Discussion of Public Comments

This section provides response to the public comments received in response to the November 25, 2003, notice. The discussion of public comments is organized in accordance with HUD program area jurisdiction. As will be evident in the discussion that follows, many HUD regulations reflect statutory requirements and therefore HUD has no authority to change these regulations as requested by commenters. Other HUD regulations reflect statutory requirements under which HUD was authorized to exercise discretion, but only within the parameters set by the statute, and therefore, HUD is also unable to revise these regulations through rulemaking. However, in several cases where a specific statute may pose a barrier to affordable housing, the discussion notes that the issue of legislative relief will be taken under advisement.

As noted earlier in this notice, several commenters raised issues about regulations that do not pertain to the production or rehabilitation of affordable housing. HUD recognizes that while certain of its regulations may not directly address the production or rehabilitation of affordable housing, they may nevertheless relate in some way to HUD programs directed to promoting affordable housing or increasing homeownership, and may be found to be administratively burdensome. HUD has included those comments in this notice and has strived to be responsive to the commenters' questions or concerns about such regulations. Other commenters raised questions about activities or procedures, beneficial to the production or rehabilitation of affordable housing, which appeared prohibited or restricted by HUD regulations but, in fact, were not prohibited or restricted. While HUD was pleased to be able to respond positively to the commenters' concerns, the fact that there was ambiguity about a HUD regulation is equally important information to HUD. HUD will review these regulations to determine if they should be revised for clarity or user friendliness.

As highlighted in Section III of this notice, HUD has published rules or proposed legislation to address existing regulatory barriers in response to public comments and its own review of regulations. Finally, some comments addressed governmentwide regulations for which HUD does not have jurisdictional responsibility, such as regulations under the National Historic Preservation Act, the Davis-Bacon Act, or the Uniform Relocation Assistance

and Real Property Acquisition Policies Act. Since HUD is not the lead agency for these authorities, HUD did not include a discussion of comments pertaining to these statutes in this notice.

A. Office of Community Planning and Development (CPD)

1. Community Development Block Grant (CDBG) Program

Comment. One commenter requested that HUD make direct homeownership assistance, such as subsidizing principal and interest rates, a permanent eligible activity under the CDBG program.

Response. HUD is pleased to advise that direct homeownership assistance, such as subsidizing principal and interest rates, is a permanent eligible activity under the CDBG program. HUD's regulations at 24 CFR 570.201(n) provide that CDBG funds may be used to provide direct homeownership assistance to low or moderate-income households in accordance with section 105(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)). Direct homeownership assistance was made a permanent eligibility category in the CDBG program by the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–136), which was enacted April 26, 1996. Direct homeownership assistance may be used to: (1) Subsidize interest rates and mortgage principal amounts for low- and moderate-income homebuyers; (2) finance the acquisition by low- and moderate-income homebuyers of housing that is occupied by the homebuyers; (3) acquire guarantees for mortgage financing obtained by low- and moderate-income homebuyers from private lenders (except that amounts received may not be used to directly guarantee such mortgage financing and grantees may not directly provide such guarantees); (4) provide up to 50 percent of any downpayment required from low- or moderate-income homebuyers; or (5) pay reasonable closing costs (normally associated with the purchase of a home) incurred by low-or moderate-income homebuyers.

Comment. One commenter stated that CDBG funds should be allowed to be used for emergency repairs and operating assistance in buildings where a court has seized control and appointed an administrator (for example, as in New York City's 7A Program). The commenter further wrote that, where tax foreclosure has not occurred, HUD should urge Congress to amend section 105(a) of the Housing and Community Development Act (42 U.S.C. 5305(a), to authorize use of CDBG funding for "activities necessary to make essential repairs and payment of operating expenses needed to maintain the habitability of housing units under the supervision of a court in order to prevent abandonment and deterioration of such housing in primarily low- and moderate-income neighborhoods."

Response. CDBG regulations currently allow the use of CDBG funds to make emergency repairs in privately owned buildings, as long as a national objective can be met. The fact that a privately owned building may be under the control of a court-appointed administrator would not change its eligibility for rehabilitation assistance. A statutory change would be required, however, to allow CDBG funds to be used to pay the operating costs of such buildings. To date, HUD has not pursued a legislative approach because HUD remains concerned that broadening eligibility in this way may draw funds away from other eligible activities.

2. Home Program

Comment. One commenter recommended delegating subsidy-layering reviews to state allocating agencies for Low-Income Housing Tax Credit (LIHTC) properties that are HOME-assisted. Subsidy layering reviews are required by 24 CFR 92.250(b) of HUD's HOME regulations. This regulatory section states that before committing funds to a project, a participating jurisdiction (PJ) must evaluate the project in accordance with its own subsidy layering guidelines to ensure that no more HOME funds, in combination with other funds, are invested in the housing than is necessary to provide affordable housing.

Response. HUD is pleased to advise that the proposal outlined by the commenter is already allowable under the HOME program. HUD previously provided guidance on this topic in its Notice CPD 98–01. The Notice states that for projects using LIHTC, the PJ may rely upon the state tax credit allocating agency's evaluation (which is conducted to determine whether there are excess tax credits) to ensure that HUD subsidies are not greater than necessary to provide affordable housing when combining HOME assistance with the LIHTC.

Comment. One commenter raised the issue of for-profit involvement in the HOME program. Section 231 of the HOME Investment Partnerships Act (42 U.S.C. 12744–12745) (HOME statute) requires that at least 15 percent of a PJ's annual HOME allocation be reserved for projects to be developed, sponsored, or owned by Community Housing Development Organizations (CHDOs), which are community-based non-profit organizations. To date, 51 percent of all HOME funds in completed projects have been used by CHDOs and other nonprofit organizations, with 49 percent used by for-profit developers for completed HOME projects.

Response. Because this requirement is based in statute, HUD could not remove the requirement through regulation. HUD, however, believes strongly in the ability of local PJs to identify affordable housing priorities and independently determine which organizations are best suited to assist them in achieving their goals. HUD believes local flexibility to make such decisions is important.

Comment. Five commenters raise a HOME Program topic that was recently highlighted by HUD in its June 2003 HOMEfires policy guidance newsletter (Vol. 5, No. 2). The commenters' issue centers on the statutory and regulatory requirement that a HOME PJ repay its local HOME account from non-federal sources in instances in which a HOME-assisted property does not remain affordable for the entire period of affordability. These provisions can be found in section 219(b) of the HOME statute (42 U.S.C. 12749) and § 92.503(b)(1) of the HOME regulations.

Response. HUD regrets that the statutory and regulatory requirements governing repayment may have been misunderstood by some PJs, but notes this is not a new policy. It is also important to recognize that it also has been HUD's longstanding policy to grant requests for waivers of the repayment requirement when a PJ can demonstrate that it took reasonable steps to intervene in a troubled project. Consequently, for rental projects, PJs that practice sound asset management (*e.g.*, exercising a reasonable amount of physical and financial oversight of their HOME-assisted projects and taking feasible actions to correct problems) reduce or eliminate their repayment risk, even if their actions are unsuccessful. With respect to homeownership projects, HUD published an interim rule on November 22, 2004 (69 FR 68050), that mitigates the risk incurred by PJ. HUD believes that the current approach is fair to PJs, while maximizing the continued availability of affordable housing units and protecting public funds.

Comment. Two commenters inquired about HUD allowing PJs to charge fees to help defray the cost of complying with the HOME onsite inspection requirement (24 CFR 92.504(d)) during the period of affordability. Section 92.214(b) of the HOME regulations prohibits PJs from charging monitoring,

servicing and origination fees in HOME-assisted projects.

Response. HUD agrees that as the number of completed units in a PJ's portfolio increases, its monitoring burden increases as well and that the current 10 percent administrative set-aside may not always cover these costs. Permitting PJs to charge monitoring fees is one method of covering this cost. However, assessing monitoring fees on projects will have the effect of raising rents charged to low- and very low-income tenants, making housing less affordable rather than reducing a barrier to affordable housing.

Comment. Three commenters raised the issue of expanding the eligible recipients of CHDO operating expense funds to include nonprofit organizations that do not develop, sponsor, or own HOME-assisted units. Section 92.208(a) of the HOME regulations allows up to five percent of a PJ's annual HOME allocation to be used for the operating expenses of CHDOs. However, § 92.300(e) limits these operating funds to organizations that will enter into a written agreement with the PJ to develop, own or sponsor HOME-assisted housing within the next 24 months following receipt of funds for operating assistance.

Response. The purpose of allowing up to five percent of a PJ's annual HOME allocation to be used for operating costs for CHDOs is to support organizations that are undertaking HOME projects. Currently, PJs use much less than the five percent allowed for CHDO operating expenses, choosing instead to use the funds for development of projects. Consequently, allowing HOME funds to be used for operating expenses for nonprofit organizations that do not develop, own or sponsor HOME-assisted housing might subject PJs to local pressure to fund organizations that do not produce HOME-assisted housing, reducing the amount of HOME funds available for affordable housing production and the number of affordable housing units produced.

Comment. One commenter noted that for HOME projects involving the new construction of rental housing, § 92.202(b) requires the PJ to meet the site and neighborhood standards at § 983.6(b). The commenter states that the site and neighborhood standards requirement in § 92.202 is unnecessary and that the location of affordable housing developments should be a local land use decision.

Response. HUD has an affirmative responsibility to provide equal housing opportunity and to expand housing choice for all persons without regard to race, color, national origin, religion, sex, familial status, or disability. This responsibility applies to HUD's recipients through site and neighborhood standards. The commenter, however, raises an issue for further consideration within HUD, and HUD will examine the requirements to determine whether modification is needed.

Comment. One commenter proposed a change to the regulation at § 92.214(a)(6) of the HOME regulations, which prohibits an additional investment of HOME funds in HOME-assisted properties after one year of completion.

Response. The purpose of this regulation is to ensure HOME funds are being invested in projects that will deliver standard units of affordable housing. This regulation prevents HOME funds from being used for (1) staged rehabilitation projects that do not bring properties up to standard, and (2) the ongoing maintenance of HOME-assisted units. HUD, therefore, does not support a change to this regulation. However, HUD recognizes that there are individual circumstances, subject to examination on a case-by-case basis, in which this regulation may constitute a barrier to affordable housing. In these circumstances, HUD has granted waivers of this regulation for good cause for the purpose of salvaging severely financially distressed HOME projects or addressing unforeseen problems.

Comment. One commenter advised that the need to document and account for HOME match is overly burdensome to PJs, although the commenter did not elaborate on specific aspects of documenting and accounting for HOME match that the commenter found overly burdensome.

Response. By establishing the HOME program, Congress intended to establish a partnership between the federal government and states, units of local government and nonprofit organizations to expand the supply of affordable, standard housing for low-income families. In keeping with the concept of partnership, each PJ is required to make contributions to qualified housing in an amount equal to 25 percent of appropriated HOME funds drawn down for housing projects. These contributions are referred to as "match." The recordkeeping and reporting requirements pertaining to HOME match are necessary to demonstrate compliance with the HOME statute.

Comment. One commenter supports the creation of a new HOME loan guarantee program modeled after the CDBG Section 108 Loan Guarantee Program.

Response. In the past, HUD has supported attempts to enact a Section 108-style HOME loan guarantee program similar to the program suggested by the commenter. Creation of the type of loan guarantee suggested by the commenter, however, would require a statutory change and previous efforts to establish such a program have been unsuccessful. While loan guarantees are currently an eligible form of assistance under § 92.205(b)(2) of the HOME regulations, it is important to note that loan guarantees have been used infrequently during the history of the HOME program.

Comment. One commenter urges HUD to revise the HOME regulations to simplify the rent and income restrictions of HOME-assisted rental projects. The commenter wrote that the HOME rent and income requirements unnecessarily restrict an owner's right to collect reasonable rents, while simultaneously failing to ensure that all tenants are in fact paying a reasonable percentage of their income for rent. The commenter also favors a single income eligibility ceiling of 80 percent of area median income.

Response. The HOME rent and income restrictions are found in sections 214 and 215 of the HOME statute and §§ 92.216 and 92.252 of the HOME regulations. HUD agrees that the rent and income restrictions of the HOME program are somewhat complex, but it is this system of rent and income restrictions that ensures the affordability of the housing assisted by HUD. HUD is concerned that the commenter's proposal would result in increased rents and a reduction of the affordability of HOME-assisted rental units for low- and very low-income renters. Increasing rents and weakening income targeting for lower income households would result in HOME funds being used increasingly for those renters with higher incomes or those with tenant-based rental assistance.

A June 28, 2001, study of rental housing under the HOME program performed by Abt Associates, Inc., entitled "Study of Ongoing Affordability of HOME Program Rents," found that 60 percent of all renter households in HOME-assisted rental housing are rent-burdened, or pay more than 30 percent of their income for housing. The study also found that 80 percent of the households living in HOME-assisted rental units have an annual income of 50 percent or less of area median income. An increase in HOME rents would affect not only those tenants that could afford an increase in rent, but also those tenants that are already rent-burdened, thereby increasing their rent burden and making the HOME-assisted units less affordable. Given the findings

of this study, HUD is not inclined to support a statutory or regulatory change to the HOME rent and income requirements.

Comment. One commenter advises that HOME funds would be more useful if the funds could be used for project reserves for operating costs and operating reserves for HOME-assisted rental projects. The HOME regulations at § 92.214(1) state that HOME funds may not be used to provide project reserve accounts, except as initial operating deficit reserve, or operating subsidies to cover potential shortfalls in the first 18 months of operation.

Response. Based on the purposes of the HOME program, which among others is to increase the supply of decent, safe, sanitary, and affordable housing for very low- and low-income families, and the limited HOME resources appropriated each year, the eligible use of HOME funds should not be expanded to cover operating subsidies and project reserves. In this regard, it is important to recognize that HOME funds are typically a small percentage of the total funding package in most rental housing development projects and are often used as gap financing enabling many affordable housing development projects to happen. HOME funds also often leverage other public and private funds that may be used for project operating costs. If operating reserve funding is necessary, other funding sources can be used to capitalize reserves and HOME funds attributed to other eligible costs. In addition, the limited amount of resources appropriated for the HOME program each year often restricts PJs from investing anything beyond gap financing in rental housing.

Comment. Two commenters addressed the HOME onsite inspection requirements at § 92.504(d)(1). The commenters wrote that an onsite inspection requirement of once every three years is more practical than the current HOME regulations, which require periodic inspections based on the total number of units in a HOME-assisted rental project. One of the commenters offers a risk assessment plan to determine how often projects should be inspected, with required inspections at least every three years. The commenter also suggests that the number of HOME-assisted units, and not the total number of units in a project, should determine the frequency of inspections.

Response. HUD believes that frequent inspection ensures that beneficiaries of the HOME program are residing in quality, standard housing at affordable rents and, equally as important, ensures the PJ's investment in affordable housing is protected. However, HUD will further examine this issue to determine whether the inspections currently required are excessive, or whether alternative approaches, such as risk-based approaches, would achieve the same protections.

Comment. Two commenters proposed that the HOME program could be more effective by allowing PJs to fund housing counseling for low-income families that will not use HOME funds to assist in the purchase of their own home. The HOME program regulation at § 92.206(d)(6) identifies housing counseling as an allowable project soft cost only if the (homebuyer) project is funded and the individual receiving the counseling becomes the owner of a HOME-assisted project.

Response. HUD agrees that housing counseling is a crucial component of a successful homeownership program. The chief purpose of the HOME program is to expand the supply of decent, safe, sanitary and affordable housing. By limiting the use of HOME funds for housing counseling to those who purchase housing with HOME funds, HUD ensures that HOME program beneficiaries are purchasing decent, safe, sanitary and affordable housing. As a result, the HOME program would not be more effective by allowing PJs to fund housing counseling for low-income families that will not use HOME funds to assist in the purchase of their own home. Currently, HUD administers a housing counseling program through HUD's Office of Housing. In a recent study of HOME-assisted homebuyer programs, more than 90 percent of PJs were either requiring or encouraging eligible homebuyers to participate in counseling programs. It is clear that most jurisdictions receiving HOME funds are using HUD-sponsored counseling programs or are supporting other existing counseling programs.

Comment. One commenter takes issue with the inclusion of property standards in the HOME program. The commenter submits that the property standard requirements of the HOME program result in fewer households receiving rehabilitation assistance. According to the commenter, this is because rather than only addressing the emergency needs of the unit, the PJ must also ensure that the HOME-assisted unit meets all applicable property standards, which is often a more costly endeavor.

Response. As discussed above, a primary purpose of the HOME program is to expand the supply of decent, safe, sanitary, and affordable housing. The HOME program is able to accomplish this goal due, in part, to the provisions at § 92.251, which address the property standard requirements of HOME-assisted units. The HOME program was not designed to address emergency repair needs, as evidenced by its exclusion as an eligible activity. HUD notes, however, that with respect to emergency needs, CDBG funds can be used to address the emergency repair needs of low-income households.

Comment. One commenter wrote that the income verification requirement of the HOME program is a regulatory barrier to affordable housing because it deters many private landlords from participating in the program.

Response. For HOME-assisted rental projects, § 92.252(h) of the HOME regulations requires initial determination of income using source documentation and annual re-certification of each tenant's annual income during the period of affordability. This requirement ensures compliance with section 215(a)(1)(C) of the HOME statute (42 U.S.C. 12745(a)(1)(C)), which provides that, in order for HOME-assisted rental units to qualify as affordable, they must be occupied only by households that qualify as low-income families. In developing the HOME regulations in 1996, HUD attempted to minimize the burden of performing income determinations on project owners by allowing owners to use tenant income self-certifications for five years after conducting the initial income determination. A complete income determination is required to be performed every sixth year. In addition, HUD posted an interactive online calculator on *http://www.hud.gov* to assist project owners with income determinations. Initial and periodic tenant income determinations ensure that HOME-assisted affordable housing continues to benefit the intended population. Consequently, HUD does not support a statutory change to eliminate this requirement.

Comment. One commenter requests a change to § 92.252(a) of the HOME regulations, which bases rent levels in HOME-assisted units on the lesser of the HUD Section 8 fair market rent (FMR) or rent that does not exceed 30 percent of the adjusted income of a family whose annual income equals 65 percent of the area median income. The commenter writes that by basing HOME rent levels on FMR and not on income, tenants at higher income levels are paying less than they can afford under a standard of affordability of 30 percent of income or less.

Response. FMRs are set at the 40th percentile rents paid by recent movers for standard quality housing units (*e.g.*,

40 percent of all recently rented units rent for less than the FMR). They are intended to be high enough to permit program participants to access a wide range of neighborhoods. Local housing authorities are asked to review proposed FMRs each year, and to provide comments and documentation if they believe FMRs are inaccurate and need to be revised. FMRs were established by the Congress as a ceiling on HOME program rents on the premise that rents above that level contributed little to the housing affordability problems faced by low income renters. HUD believes that the Congress's concerns were valid and supports retention of FMRs as a limit on HOME rents.

As discussed above in this notice, a June 28, 2001, study of rental housing under the HOME program performed by Abt Associates, Inc., entitled "Study of Ongoing Affordability of HOME Program Rents," provided significant information about rental housing under the HOME program. This study found that 60 percent of all renter households in HOME-assisted rental housing are rent burdened (*i.e.*, pay more than 30 percent of their income for housing). The study also found that 80 percent of the households living in HOME-assisted rental units have an annual income of 50 percent or less of area median income. Therefore, HUD does not support using a higher rent standard than the FMRs and would not endorse a move to increase rents in HOME-assisted rental projects.

Comment. One commenter proposes that all units in HOME-assisted projects that also receive project-based rental assistance should rent at the level allowable under the project-based rental subsidy program so that very low-income tenants would not have to pay more than 30 percent of income as rent. Currently, § 92.252(b)(2) of the HOME regulations allows state or local project-based rents only to be charged in HOME-assisted units occupied by families with income at or below 50 percent of area median income.

Response. Currently, project-based rents can only be charged in HOME-assisted units occupied by families with incomes at or below 50 percent of area median income. This is a statutory limitation, which would require legislative change.

3. Special Needs Assistance Programs

Comment. One commenter stated that a HUD field office has interpreted Supportive Housing (SHP) program regulations at 24 CFR 583.320 (Site Control) to mean that all properties funded for acquisition under a single project award must meet site control concurrently and that all inspections be completed before grant execution. As a result, properties have been lost when a seller is ready to close before others in the group are ready. This further delays or denies production of housing.

Response. The program statute requires HUD to recapture and reallocate funds if an applicant does not obtain ownership or control of the project site within 12 months of notification of the award of a grant. HUD regulations requiring all sites to be under control before the grant is signed are designed to comply with the statute, while ensuring that the entire project selected in the competition will be carried out as described in the application. Applicants who are concerned that they will not be able to obtain control over multiple sites at one time should apply for each individual site as a separate project.

Comment. One commenter stated that projects under Housing Preservation and Development programs and the Shelter Plus Care (S+C) program, including Section 8 Single Room Occupancy (SRO) Moderate Rehabilitation projects, should be automatically renewed similar to Section 8 vouchers. Expiring contracts should be renewed through the Section 8 Certificate Fund.

Response. Annual appropriations acts specify the source of funds and renewal standards for S+C renewals. Without Congressional action, HUD cannot implement automatic renewals through the Housing Certificate Fund.

Comment. One commenter stated that HUD's S+C regulations do not adequately allow for the reality and complexity of new construction projects. The commenter implies a need for a construction period that can exceed one year as currently limited in the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 *et seq.*) (McKinney-Vento Act). The commenter recommended that HUD change the statute to expand the time allowed for new construction.

Response. The McKinney-Vento Act does not authorize S+C rental assistance in conjunction with new construction. However, where new construction is performed in conjunction with SHP, the construction activities must begin with 18 months of the date of HUD's grant award letter and must be complete with 36 months after that notification.

Comment. One commenter stated that HUD's recent reinterpretation of the law has disallowed any "in-place" low-income tenants of a S+C/SRO project from returning to units after renovation to receive rental assistance. The commenter stated that this interpretation results in the displacement of poor non-homeless persons who are equally in need of housing. The commenter requested that HUD revisit its interpretation to allow for the inclusion of these "in-place" tenants.

Response. The McKinney-Vento Act, at section 441(b) (42 U.S.C. 11401(b), states that the amounts made available under Section 8 Moderate Rehabilitation for the SRO program shall be used only in connection with moderate rehabilitation of housing for occupancy by homeless individuals. Persons who reside in the housing prior to rehabilitation are not homeless, within the McKinney-Vento Act definition, so may not benefit from the S+C rental assistance payments. Such persons are eligible for relocation benefits pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*) (URA) or may return to their unit without rental assistance.

Comment. One commenter made the following recommendations. First, the commenter recommended that the McKinney-Vento Act funds authorized for the Continuum of Care (CoC) program should be allowed to assist in the development of ground floor commercial units as part of homeless project development. Such units would help reduce costs and help build support for projects. Second, the commenter recommended that local CoCs should determine the match required for eligible activities.

Response. With respect to the first recommendation, the McKinney-Vento Act requires all program funds to be used for homeless persons. HUD does permit the development of commercial activities in homeless facilities with non-McKinney-Vento funds. With respect to the second recommendation, the match is established by statute and HUD therefore cannot make the requested change through regulation.

B. Office of Fair Housing and Equal Opportunity

Comment. One commenter raised a question about uniform federal accessibility standards with respect to HUD's Supportive Housing for Persons with Disabilities (also referred to as the Section 811 program). The commenter stated that participants in the Section 811 program that provide for construction and development should be able to design their group homes for persons with developmental disabilities by working with HUD architects, based on their knowledge and experience with clients. The commenter referred to a group home that has housed persons

with developmental disabilities for the past 18 years. The commenter's issue is directed to section 4.34 of the Uniform Federal Accessibility Standards (UFAS), which pertains to kitchens. Under this requirement, most of the clients are supervised while handling food and cooking and are rarely able to work alone in preparation. The staff at these homes is responsible for utilizing the kitchen appliances in assisting the clients, and it is burdensome for them to work in situations where everything is lowered.

Response. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791 *et seq.*) (Section 504) prohibits discrimination based on disability in any program or activity receiving federal financial assistance. HUD's regulation implementing Section 504, codified at 24 CFR part 8, requires the design, construction, or alteration of buildings to be in conformance with UFAS. In addition, the Fair Housing Act (42 U.S.C. 3601 *et seq.*) and the regulation implementing the Fair Housing Act (24 CFR part 100) prohibit discrimination in the sale, rental, and financing of dwelling units, regardless of federal financial assistance, based on a variety of factors including disability.

As Section 811 projects are frequently newly constructed, both Section 504 and the Fair Housing Act apply. When projects are designed with accessibility features in mind from the beginning, costs associated with providing such elements are minimal. Additionally, although these accessibility requirements are mandated by statute, recipients have the authority to request waivers in limited situations. For example, although the regulation in 24 CFR 891.310(b)(3) mandates that all dwelling units in acquired or rehabilitated independent living facilities be accessible or adaptable for people with physical disabilities, it also allows for a lesser number of units to be accessible if costs make it financially infeasible, if less than one-half of the intended occupants have mobility impairments, and if the project complies with 24 CFR 8.23.

The Department acknowledges that certain costs are associated with ensuring that facilities are accessible to people with disabilities and that not every person will benefit from all accessible features. Persons with developmental disabilities, however, can also benefit from features of accessible housing under these laws. Additionally, it is incumbent upon the Department and its recipients to comply with the regulatory requirements of Section 504 and the Fair Housing Act.

Comment. One commenter wrote that the accessibility requirements are cumbersome and confusing for both the public and private sectors because several federal agencies have overlapping administrative requirements that sometimes appear to conflict with regulations administered by other federal agencies or state and local public housing agencies and builders. The commenter stated that it would like to see more consistency in guidance provided by HUD on the Fair Housing Act and Section 504.

Response. HUD recognizes that the existence of more than one federal law mandating accessibility for persons with disabilities in housing presents challenges for the building industry in assuring compliance with all applicable laws. HUD provides ongoing technical assistance and guidance concerning the statutes it enforces and their implementing regulations. HUD has taken a number of steps over a period of years to provide guidance to HUD recipients and the building industry on meeting the accessibility requirements of Section 504, the Architectural Barriers Act (42 U.S.C. 4151 *et seq.*), the Fair Housing Act, and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) (ADA). These efforts include holding town meetings and training seminars, disseminating training materials at these meetings, and providing technical guidance to outside housing-industry organizations. More recently, HUD has taken the steps described below:

a. In its role as a standard setting agency and member of the U.S. Access Board, HUD participated in the development of new guidelines covering access to facilities covered by the ADA. These guidelines overhaul the existing ADA Accessibility Guidelines, which were first published in 1991. As part of this effort, HUD has assisted in revising guidelines for federally funded facilities required to be accessible under the Architectural Barriers Act. Both the ADA guidelines and the guidelines for the Architectural Barriers Act specify access in new construction and alterations, and provide detailed provisions for various building elements, including ramps, elevators, restrooms, parking, and signage, among others. The guidelines, which are now in the final stages of development, are expected to be published in the near future.

b. HUD published a final report and policy statement on its review of model building codes for consistency with the accessibility requirements of the Fair Housing Act, including identification of areas of inconsistency and recommendations for resolution. In response to requests from the industry, HUD provided technical guidance in development of code text language that would address the areas of inconsistency HUD identified for the International Building Code (IBC), and in development of a stand-alone document, entitled "Code Requirements for Housing Accessibility," resulting in HUD's recognition of the 2003 IBC as an additional safe harbors for compliance with the accessibility requirements of the Fair Housing Act. The results of HUD's review were published in the **Federal Register** on February 28, 2005 (70 FR 9738).

c. HUD's program offices issued four notices to its recipients detailing the requirements of Section 504, the Fair Housing Act and the ADA: Two covered CPD programs, one covered Office of Housing programs, and the one most recently covered programs of the Office of Public and Indian Housing. These notices reach thousand of recipients that administer all of HUD's programs and services.

d. HUD's Fair Housing Accessibility FIRST program is providing extensive education and outreach on the accessibility requirements of the Fair Housing Act. (*See,* for example, the information about the program on the Web site: *http://www.fairhousingfirst.org.*) While the FIRST program focuses on the Fair Housing Act, the training modules, FAQ's and other information also discuss related laws, including Section 504, the Architectural Barriers Act and the ADA. The Disability Rights Laws training module includes a matrix of the laws. HUD acknowledges that it has an ongoing obligation to provide assistance to the public and anticipates more guidance in the future.

Comment. HUD has recently denied FHA mortgage insurance under section 221 of the National Housing Act (12 U.S.C. 17151) to properties that restrict occupancy to persons age 62 or over due to HUD's long-standing policy of not discriminating against families with children.

Response. HUD is not aware of the situation to which the commenter refers but advises that section 808(e)(5) of the Fair Housing Act requires HUD to administer HUD programs and activities in a manner that affirmatively furthers the purposes of the Fair Housing Act. HUD's handbook entitled Occupancy Requirements of Subsidized Multifamily Housing Programs (Handbook 4350.3, issued on June 12, 2003) is consistent with the Fair Housing Act and addresses the matter raised by the commenter. Paragraph 3–22(D) of this handbook

provides that owners of properties which house elderly persons or which house elderly persons and persons with disabilities may not exclude otherwise eligible elderly families with children. The policy stated in this paragraph furthers the intent of the Fair Housing Act to affirmatively further fair housing for families with children under the age of 18.

C. Office of Healthy Homes and Lead Hazard Control (OHHLC)

Comment. One commenter stated that lead-based paint inspection and paint removal is required of homes receiving repair loans or grants up to $20,000 under the Department of Agriculture's Rural Housing Service 504 program, and that this requirement is burdensome and should be withdrawn.

Response. The U.S. Department of Agriculture has decided to use HUD's approach for residential properties which the Department of Agriculture provides rehabilitation assistance and that are not also receiving HUD assistance. This was not a requirement imposed by HUD.

Comment. One commenter suggested that HUD remove the clearance testing requirement and recognize the training provided by either the Environmental Protection Agency (EPA) or the Occupational Health and Safety Administration (OSHA) as sufficient to perform "interim controls."

Response. Clearance is required to ensure that the job is done properly. HUD therefore finds that clearance testing is not a substitute for EPA training, but rather constitutes a quality assurance measure, which is important in striving for lead-hazard free housing. HUD, however, does recognize EPA training, and has for some time.

Comment. In a related issue, one commenter stated that HUD's requirement that clearance testing be done prior to completion of any job can result in significant delays in the rehabilitation of housing. The commenter states that neither EPA nor OSHA requires clearance testing prior to conclusion of work on a jobsite.

Response. For most rehabilitation, renovation and remodeling projects in pre-1978 assisted housing, clearance is required to ensure that the job is done properly and to reduce the liability of contractors. HUD believes that it has addressed this burden to the extent feasible by allowing an exemption from the clearance requirements for disturbances of only a small area of paint surfaces.

Comment. One commenter stated that EPA and OSHA have established worker training and work practice standards that are duplicative of HUD training requirements.

Response. The EPA training and certification requirements for workers are for lead-based paint abatement work (*see* 40 CFR 745.227). EPA does not require training and certification for rehabilitation, renovation or remodeling work that is not abatement. HUD recognizes the value of the abatement worker training and certification, and has provided, in its regulations at 24 CFR part 35 (the Lead Safe Housing Rule), that anyone who has completed an abatement worker or supervisor course is qualified to perform interim controls in HUD-assisted housing without further training. The OSHA lead-in-construction training (29 CFR 1926.62) covers the same general safety issues as the HUD interim controls training, but OSHA's focus is on protecting the worker, and not on protecting the home after the work is done. The HUD-approved curricula address both issues.

Comment. One commenter stated that HUD should streamline and simplify its Lead Safe Housing Rule.

Response. HUD agreed with this comment and issued a rule on June 21, 2004 (69 FR 34262), that made a number of technical amendments to its Lead Safe Housing Rule. HUD believes this rule clarified several regulatory provisions and contributed to improving the simplicity and comprehensibility of its regulations. The June 21, 2004, rule also streamlined several regulatory provisions.

Comment. One commenter stated that there is a shortage of licensed lead abatement contractors, which hinders implementation of HUD's Lead Safe Housing Rule.

Response. A small percentage of HUD-assisted housing requires lead abatement work. HUD's Lead Safe Housing Rule provides that most required lead-related work constitutes interim controls of lead hazards, for which certified/licensed lead abatement contractors are not required. In addition, HUD has provided training to over 40,000 individuals in lead-safe work practices for use in interim control activities.

Comment. One commenter stated that HUD's Lead Safe Housing Rule does not significantly distinguish between vacant and occupied buildings, causing unnecessary costs and delays. The commenter offered several suggestions. First, the commenter recommended that for vacant buildings, the regulations should allow lead-based paint inspection, regardless of amount of federal funding. Second, the commenter recommended that if lead-based paint is found, allow either: (a) A risk assessment and interim controls for rehabilitation between $5,000 and $25,000 per unit, or (b) standard treatment or abatement. Third, the commenter stated that a requirement to have certified workers is unnecessary in a vacant building because there are no children or residents to protect; OSHA and EPA requirements would suffice. Fourth, the commenter stated that after substantial rehabilitation work is completed in a building, HUD should require a final clearance test of the whole building.

Response. With respect to the commenter's first recommendation, HUD's Lead Safe Housing Rule already allows a lead-based paint inspection for a vacant building (24 CFR 35.115(a)(4) and (a)(5)).

With respect to the commenter's second recommendation, HUD's Lead Safe Housing Rule already allows the approach in: (a) 24 CFR 35.930(c), for rehabilitation of $5,000 up to and including $25,000 per unit, and (b) 24 CFR 35.120(a), for rehabilitation up to and including $25,000 per unit. The governing statutes (the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 *et seq.*) and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 *et seq.*)) and HUD's Lead Safe Housing Rule require abatement of lead hazards for rehabilitation above $25,000 per unit (*see* 24 CFR 35.930(d)).

With respect to the commenter's third recommendation, HUD requires certified workers only when EPA requires them, that is, for abatement work. Abatement during rehabilitation is only required under the Lead Safe Housing Rule for those projects with federal assistance over $25,000 per unit. However, regardless of the cost of a project, HUD believes that lead work should be performed in a protective manner that minimizes the creation and dispersal of lead dust and debris, because children may in fact be present after the work has been completed in a vacant unit. Therefore, for rehabilitation projects over $5,000 and up to $25,000 per unit, HUD requires interim controls, and the associated training and clearance, to ensure that the housing will be safe for the family that will occupy the house after the work is completed, whether or not the unit was vacant during the work. Similarly, for work up to $5,000 per unit, HUD requires that the rehabilitation work be done safely and that clearance is conducted, to achieve the same protective goal.

With respect to the commenter's fourth recommendation, HUD already

requires that a clearance test be conducted after paint disturbance, interim hazard controls, or abatement (Lead Safe Housing Rule, 24 CFR 35.930(b) and 35.1330(a)(3), respectively). HUD's interpretive guidance (item R13) notes that, "Clearance must be performed after all the rehabilitation and/or hazard reduction work is complete."

Comment. One commenter stated that HUD should clarify that federal regulations do not require certified abatement personnel for interim controls work.

Response. HUD's Lead Safe Housing Rule distinguishes the training requirements for abatement (abatement worker training and certification) at 24 CFR 35.1325, which incorporates EPA's training requirements at 40 CFR 745.226(c) and 745.227(e)(1), and interim controls work (lead-safe work practices training) at 35.1330(a)(4)(iii). HUD is continuing to reach out with this message through its programmatic efforts. HUD believes that its outreach efforts provide the clarification.

Comment. One commenter stated that HUD should issue guidance for CPD grantees on how to comply with the Lead Safe Housing Rule efficiently and cost-effectively.

Response. HUD is continuing to reach out to CDBG grantees through staff in CPD, both at Headquarters and in the field, and continuing to provide training and technical assistance to these grantees.

Comment. One commenter stated that HUD could reduce clearance costs by: (a) Clarifying that a state-certified sampling technician can be used for non-abatement clearance; and (b) including sampling technician training in the housing quality standard core training.

Response. With respect to the commenter's first suggestion, HUD notes that its regulations provide that state-certified sampling technicians can be used for clearance examinations. The ability to use state-certified sampling technicians can be found in the Lead Safe Housing Rule at 24 CFR 35.1340(a)(iii) and (iv). With respect to the second suggestion, HUD believes that the technician training proposal merits further consideration, and HUD will take the commenter's recommendation under advisement.

Comment. One commenter stated that HUD should provide lead hazard control grant program set-asides for community-based organizations. The commenter also stated that HUD should drop the zero-bedroom exemption from the definition of target housing, and HUD should require disclosure of lead-based paint hazards to all occupants of multifamily buildings.

Response. The limitation of grants to state, tribal, and local governments is a statutory one (42 U.S.C. 4851), as is the zero-bedroom exemption (42 U.S.C. 4851b), and therefore cannot be changed through regulations. For HUD to require disclosure of lead-based paint hazards to all occupants of multifamily housing would require a change to the HUD and EPA position that information or reports on other units in a multifamily building are only relevant to prospective purchasers or lessees if the information stems from a representative sample of the dwelling units in the building and the findings apply to the multifamily housing as a whole (see preamble to the Lead Disclosure Rule, at 61 FR 9072, subunit IV.D.2.c, paragraph 3). When the evaluation findings do apply to the multifamily housing as a whole, the hazards must be disclosed to all tenants. HUD does not believe such a change is necessary (see 42 U.S.C. 4852d).

Comment. One commenter stated that HUD should issue lead-safety requirements for housing covered by HUD-insured single family mortgages.

Response. Subpart E of HUD's Lead Safe Housing Rule is reserved for possible future rulemaking on lead-based paint poisoning prevention requirements, and HUD is considering rulemaking under this subpart.

Comment. One commenter stated that HUD should clarify that the Consolidated Plan must describe the relationship between plans for reducing lead hazards and the extent of lead poisoning and lead hazards.

Response. OHHLHC is working with CPD to promote the integration of lead-hazard control into Consolidated Plans.

Comment. One commenter stated that the Lead Safe Housing Rule is burdensome to organizations that rehabilitate low-income housing, and many housing providers are no longer rehabilitating existing housing.

Response. As noted above in this notice, HUD has streamlined its regulation to provide for use of interim controls rather than abatement in all but those units for which rehabilitation cost over $25,000. HUD has provided information on how providers can conduct lead-safe rehabilitation cost-effectively. HUD will continue to do so.

D. Office of Housing—Federal Housing Administration

1. Single Family Housing

Comment. With respect to the FHA Appraiser Roster requirements in 24 CFR 200.202, one commenter stated that, "[i]n order to ensure that FHA properties are properly appraised, HUD should also require two years as a licensed or certified appraiser as a condition of being placed on the [FHA Appraiser] Roster. Appraisals completed for HUD/FHA are often more complicated than those completed for conventional clients and thus warrant the additional experience. In comparison to conventional appraisals, FHA appraisers require a higher degree of skill and more knowledge of construction, depreciation, cost estimating for repairs and estimating the useful and remaining life of residential improvements and equipment."

Response. HUD's regulations governing the FHA Appraiser Roster require that appraisers be state-licensed or state-certified but the regulations do not direct impose a minimum experience requirement. Instead HUD relies on the experience requirements imposed by the states before they will license or certify an individual as an appraiser.

Although FHA does have additional reporting requirements appraisals completed for HUD/FHA are not, intrinsically, more complicated than those completed for conventional lending purposes. The more specific FHA reporting requirements do not require a higher degree of skill, only an adherence to FHA policies and regulations. In addition, conventional appraisers, as well as FHA appraisers, are required to have a working knowledge of residential construction techniques and are typically called upon to estimate the useful and remaining life of residential improvements and equipment as well as be well versed in the application of the cost approach.

In order for an appraiser to be eligible for inclusion on the FHA Appraiser Roster, the appraiser must fall within one of the three Appraiser Qualifications Board (AQB) real property appraiser classifications: (1) Licensed; (2) certified residential; and (3) certified general. The minimum number of required experience hours for these classifications are 2,000, 2,500, and 3,000, respectively.

FHA is interested in maintaining high standards for appraisers listed on the FHA Appraiser Roster and continually revises and updates its quality control and review programs to ensure that such standards are adhered to. Additionally, to increase the accuracy and thoroughness of FHA appraisals, FHA clarifies policies and procedures through mortgagee letters to FHA appraiser and industry partners and continually updates and revises appraisal related handbooks.

HUD believes that the current eligibility requirements for placement on the FHA Appraiser Roster are sufficient to ensure that an appraiser, at time of placement on the FHA Appraiser Roster, has acquired the necessary experience, training and knowledge to adequately perform appraisals of properties that will serve as security for FHA-insured loans.

Comment. With respect to the requirements in 24 CFR 203.37a, prohibiting the practice of property "flipping," one commenter expressed concern regarding the restriction on resale of property occurring 90 days or less following acquisition. The regulation provides that if a property is sold within 90 days or less following the date of acquisition by the seller, the property is not eligible for purchase with an FHA-insured mortgage.

The commenter stated "[t]his requirement has had an adverse impact on legitimate business deals because it discourages investors from wanting to participate in property rehabilitation projects that utilize FHA mortgage insurance. Investors make legitimate livings purchasing distressed properties, reconditioning them, and returning them to market at fair market prices and within a reasonable amount of time. The end result of this activity is more homeownership opportunities and improved neighborhood revitalization. HUD should allow more exemptions to the rule."

Response. In the proposed rule on property flipping, published on September 5, 2001 (46 FR 46502), HUD proposed to prohibit FHA-insured financing for any property being sold within six months after acquisition by the seller. This proposed six month prohibition generated the most comments on the proposed rule, and many commenters wrote that the six-month ban would reduce the incentive for investors to buy and rehabilitate these properties. In response to these concerns, HUD, in the final rule published May 1, 2003 (68 FR 23370), substantially revised the proposed time restrictions on re-sales while still implementing safeguards to assure that the value of the property is recognized in the marketplace and to reduce the possibility of appraisal fraud.

HUD believes that re-sales executed within 90 days imply prearranged transactions that often prove to be the most egregious examples of predatory lending practices. Furthermore, HUD believes that 90 days is not an unreasonable waiting period if actual rehabilitation and repair of a property occur before the property is resold. It has never been HUD's intention to eliminate the ability of investors and contractors to profit from their actions, but rather to assure that homeowners are not purchasing overvalued houses and becoming the unwitting victims of predatory practices. To this end, HUD believes the final rule as published on May 2, 2003, as amended by the rule published on December 23, 2004 (and discussed in Section III of this notice) accomplishes this goal.

Comment. With respect to the regulations in 24 CFR 203.21, one commenter stated that HUD should lengthen the amortization period for FHA mortgage loans beyond the existing 30-year term. The commenter stated that recently, more and more lenders have begun offering 20- and 40-year loans to facilitate the availability and affordability of homeownership. The commenter suggested that extending the life of the loan above 30 years would reduce the monthly mortgage payment, allowing more households to qualify for a mortgage and, hence, increase homeownership opportunities.

Response. FHA is constantly assessing new products that will make homeownership more affordable, but has no plans at this time to offer mortgages that have terms longer than 30 years.

Comment. One commenter expressed concern regarding the requirement that condominium developments be at least 51 percent owner-occupied before individual units can be deemed eligible for FHA-insured loans. The commenter wrote that this requirement limits sales and homeownership opportunities, particularly in market areas comprised of significant condominium developments and first-time homebuyers. The condominium market has matured since adoption of the 51 percent rule and as a result liquidity risk has declined. Condominium ownership is now a viable homeownership tool.

Response. Since FHA began insuring individual units in condominium developments, it has held the view that condominium associations under the control of owner occupants have a greater probability of flourishing and thereby reducing risk of loss to the insurance fund than would condominium developments that are primarily rental units with the condominium association controlled by investors. Homeowners have different interests regarding condominium properties than investors/tenants. Homeowners are more likely to promote maintenance, repairs and adequate reserves than investors who are inclined to minimize expenditures and tenants who tend to have less concern for the condition of the property.

HUD recognizes that condominium ownership has matured and is now recognized as a viable housing form. As part of this recognition, HUD is presently exploring the elimination of prior HUD approval for certain types of condominium developments before insuring mortgages in them.

Comment. One commenter stated that HUD should establish fire safety requirements for its single-family residential properties similar to those mandated by the Fire Administration Authorization Act of 1992 (Pub. L. 102–522) for its multi-family properties, and should use the National Fire Protection Association (NFPA) Building Construction and Safety Code (NFPA 5000) to reduce HUD's dependence upon its Minimum Property Standards (MPS). The MPS presently establish fire safety standards for single-family residential properties.

Response. HUD agrees that the MPS, last updated in 1994, contain outdated construction requirements, including fire-safety standards that are incorporated by reference, and as discussed in Section III of this notice, the Initiative intends to focus its review specifically on the MPS in 2005. While the published MPS do not contain specific or prescriptive requirements, the standards pertaining to fire safety are incorporated by reference to the 1991 Uniform Building Code, the 1993 BOCA Building Code, the 1991 Standard Building Code (24 CFR 200.924c) for multi-family dwellings, and the 1992 CABO Building Code for single family dwellings.

Before incorporating by reference the NFPA 5000 code, HUD must first complete its ongoing assessment of the MPS to determine their use and necessity in today's marketplace, and develop a vision for the future of the MPS. This assessment is also necessary before developing additional fire-safety requirements or incorporating by reference updated model building codes. HUD's Office of Policy Development and Research completed and published a study of the MPS during the first half of 2002, which is currently being reviewed and evaluated within HUD. Should HUD decide to retain the MPS for multifamily housing and single-family dwellings, the fire safety requirements, as well as model building codes incorporated by reference, would be part of the updating efforts.

2. Manufactured Housing Program

Comment. One commenter stated that HUD should restore a "bright line"

distinction between HUD code manufactured homes and other structures, such as state-regulated modular homes, and clarify responsibilities for regulating aspects of on-site completion of factory-built homes. The commenter stated that HUD should consider the actions described below:

(1) Rescind all prior actions allowing complete or partial removal or alteration of the chassis on-site. A two-story HUD-code home (with the chassis altered) looks just like a two story site-built or modular home. Further, the completion of garages or basements to a HUD-code home, where a specially designed chassis has been removed or sunken underground, looks like state-regulated site-built and modular homes that Congress indicated were not being preempted. Relatively poor performance of manufactured homes hurts the market for affordable factory-built housing, including better-performing modular homes.

(2) Restrict the amount of work that can be done to a manufactured home on-site to placing the home on a foundation or pier system support or pad, to avoid confusion regarding HUD versus state/local jurisdiction.

(3) Rescind all alternative construction letters that permit on-site completion of manufactured homes using factory personnel and approved third agency personnel, and allow state/local governments to inspect/approve all site work in accordance with state manufactured home "installation" requirements. This would remove a major gap in the present regulatory system regarding site completion work on manufactured homes.

The commenter stated that gaps are being created in regulatory oversight by the Department's reduced inspections of manufactured home facilities and the actual or effective unilateral preemption of state and local officials performing inspections of on-site construction and installation of manufactured homes. The commenter wrote that these perceived gaps are eroding public and elected official confidence in both manufactured housing and modular construction. The commenter stated that HUD should work with the modular housing industry to identify actions that can be taken to assist the modular construction industry to produce affordable housing. The commenter wrote that in furtherance of this goal, HUD should consider sponsoring a national conference or workshop as part of its affordable housing initiative with all sectors of the home building industry, consumers, government officials, lenders, and insurers.

The commenter also stated that HUD should strengthen its oversight and enforcement of the federal manufactured housing program to reduce consumer complaints, improve product quality and durability, and increase public acceptance. The commenter states that a significantly higher number of consumer complaints for manufactured homes versus modular homes (10–20 times the number of complaints), together with the public's lack of ability to distinguish between manufactured homes and modular homes, have tainted the public's perception of modular housing as a viable affordable housing alternative. The commenter submits that confusion by public and financial institutions as to what constitutes a HUD-code home has resulted in increasing numbers of local jurisdictions attempting to impose zoning restrictions, which limit the availability of both affordable manufactured and modular homes. The commenter wrote that this problem is being exacerbated by retailers that represent to consumers that they are purchasing modular homes built to higher safety standards, when they are actually purchasing a poorer performing manufactured home. The commenter concludes with the statement that this has also caused taxation problems for consumers and public officials when communities discover that the home is a manufactured home, to be taxed as a chattel, rather than a modular unit taxed as real estate.

Response. The nature of the manufactured home industry and the products the industry produces have changed drastically since enactment of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401 *et seq.*) (1974 Act). Market demands have resulted in changes in design and construction by many manufactured home producers such that their homes do closely resemble modular home construction in appearance. The manufactured housing industry has changed from producing mostly single-section homes that were mobile, to producing multiple-section homes that rarely are moved.

Modular homes are generally either not covered by the 1974 Act, if they also meet the definition of "manufactured home," or can be excluded from coverage. The majority of all manufactured homes being produced today require some on-site work in order to complete them. This does not include their placement on a foundation or stabilization system for support at the site.

HUD has received comments from MHCC on a pre-publication draft proposed rule to facilitate some on-site construction without the need for HUD approval. Interested parties and the public will have an opportunity to comment on the specifics of this proposal when published. Additionally, HUD will further consider the recommendations made by the commenter.

Comment. One commenter stated that state and local jurisdictions should not use zoning and land use regulations to require that manufactured housing in their communities is aesthetically identical to existing single family housing. The commenter wrote that HUD's 1997 statement of policy on this subject should be revised and expanded in accordance with the mandates of the Manufactured Housing Improvement Act of 2000 (title VI Pub. L. 106–569, approved December 27, 2000), (the MHI Act) to include zoning regulations. Discriminatory practices on certain zoning and land use decisions are continuing to be made by state and local governments despite the 1997 statement of policy.

Response. The MHI Act does not provide HUD with the authority to extend its preemption of state and local laws over manufactured home construction, under section 604(d) of the 1974 Act, to state and local zoning laws and regulations. Further discussion of this position can be found in a notice published by HUD in the **Federal Register** on July 17, 2003 (68 FR 42327). HUD's Manufactured Housing Program Office worked cooperatively with MHCC to develop a revised draft statement of policy to reflect the changes in the purposes resulting from the MHI Act. While HUD can encourage state and local governments to eliminate certain zoning and land use practices to facilitate the placement of manufactured housing, it cannot require that states or local governments discontinue those practices under the 1974 Act.

Comment. One commenter stated that subpart I of HUD's manufactured housing procedural and enforcement regulations (24 CFR part 3282, subpart I) establishes procedures concerning how manufacturers notify and remedy defects in manufactured homes. One commenter wrote that the subpart I requirements are considered vague and confusing by some industry members and others and that there has been significant controversy as to the meaning of certain aspects of the regulations. The commenter also wrote that some industry members claim there have been abuses by HUD contractors, who these industry members describe have financial incentives to find fault with manufactured homes. According to

the commenter, these perceived abuses lead to higher priced homes for consumers. The commenter recommends that HUD impose time limits of one year after initial sale for application of a requirement for notification of defects, and five years for application of a requirement for correction of defects that present an unreasonable risk of death or injury. The commenter describes this change as conforming to existing law. The commenter stated that industry also recommends that the regulations be modified to protect manufacturers that act in "good faith" when making determinations under 24 CFR part 3282, subpart I. The commenter claims this "good faith" is a safe harbor for manufacturers under the law, and would promote affordability by eliminating unnecessary requirements.

Response. HUD is in agreement that some streamlining of the current subpart I regulations would help remove some ambiguities and confusion in the existing procedures. The MHCC has been actively reviewing, with HUD participation, the existing regulations to identify areas in need of revision. However, the 1974 Act does not limit manufacturers' responsibilities in some ways suggested by the commenter. For example, there are no provisions in the 1974 Act to establish time limits for manufacturer notification to homeowners of defects, or correction of defects that present unreasonable risks to occupants.

The statute does not contemplate "good faith" as being a safe harbor from notification and correction responsibilities, and HUD believes that, by implication, manufacturers are required to act in good faith. HUD, however, will further consider specific use of the term "good faith" in revising the regulations in subpart I of 24 CFR part 3282.

Comment. One commenter stated that the current alternative construction (AC) approval letter procedure, set forth in HUD's regulations in 24 CFR 3282.14, is limited to specific narrow circumstances and requires the manufacturer to submit a formal request to HUD to obtain approval for the completion of homes at the site. The process can take up to three months before an AC letter is issued to permit limited aspects of homes, which did not conform to the federal Manufactured Home Construction and Safety Standards in the factory, to be completed at the site. The commenter noted that HUD provided the statutorily created MHCC with a draft proposed rule for comment that would permit limited on-site completion of new manufactured homes, and no longer require advance approval by the Secretary under the AC process for specified completion work to be performed at the site. The commenter encourages adoption of this proposed rule to clarify requirements for on-site completion, and streamlining or eliminating certain requirements relating to work performed on site.

Response. HUD is in agreement and is pursuing rulemaking on this matter.

3. Multifamily Housing Programs

Comment. With respect to the regulations governing HUD's Section 202 Supportive Housing for the Elderly (Section 202) and Section 811 Supportive Housing for Persons with Disabilities (Section 811) programs, codified in 24 CFR part 891, several commenters stated that the development cost limits in 24 CFR 891.140 are not reflective of the true costs of development in each region of the country. The commenters wrote that sponsors are therefore forced to exhaust all other funding sources before requesting additional funding from HUD, which delays the development process.

The commenters also expressed concern about the operating costs standards in 24 CFR 891.150, that establish the amount of project rental assistance contract (PRAC) funds awarded to the Section 202 and Section 811 projects. The regulations do not permit any adjustments to the PRAC until after one year of operation. The commenter stated that this is a disincentive to participate in the programs by small nonprofits.

Response. With the publication of HUD's FY2004 and FY2005 Section 202 and Section 811 NOFAs (May 14, 2004, 69 FR 26942, March 21, 2005, 70 FR 13576), the Department has raised the development cost limits applicable to the Section 202 and Section 811 programs to be consistent with the cost limits established pursuant to section 221(d)(3) of the National Housing Act (12 U.S.C. 17151(d)(3)) that were raised in January 2004. The Department also contracted for a study, which addresses limits for the total cost of developing a Section 202 or Section 811 project. That study has been completed and is under final review.

Although PRAC authority for the first year cannot be amended because a full year is required to determine the actual cost of operating a project, HUD already has in place a policy to deal with any shortfalls during the first year. Two notes have been added to the PRAC to alleviate concerns expressed by some owners that the PRAC amount set by HUD would not be sufficient to cover the project's annual expenses for the first year. In year two, when the owner may apply for a PRAC increase, the notes for the PRAC will include records of the discrepancy between the reserved amount and the actual amount needed to operate the project, as well as of the project's actual expenses for the first year. If the formula rents are not sufficient to cover the actual monthly expenses, the owner will still be required to submit a voucher based on the project's actual expenses. When at year's end a budget shortfall occurs, the owner's minimum capital investment is used to cover the deficit and, if there is still a shortfall, the owner, with HUD approval, can borrow against the second year budget authority. HUD's plan is to contract for a study to determine if the initial rewards are consistent with actual operating costs for comparable assisted housing in various housing markets.

Comment. Four commenters stated that requiring the removal of all contamination from sites on FHA-insured multifamily properties without taking into account risk, or the use of institutional controls or engineered barriers, is a barrier to the development of affordable properties, especially in older urban areas. The commenters recommended that HUD require that:

(1) Developers enter a program similar to the Illinois Site Remediation Program using "risk-based" decisionmaking and institutional controls, or at least make contact with the state environmental agency as soon as possible in the development process;

(2) Remedial action plans be approved before the start of construction;

(3) Remedial action is completed prior to occupancy; and

(4) A Phase I or Phase II investigation be conducted for the site. The developer would not be required to participate in the Site Remediation Program if it can be shown that no remediation is required for the site.

In summary, the commenters recommend allowing FHA insurance or assistance for properties that meet EPA standards, as these standards are interpreted by the state and local regulatory agency for residential safety.

Response. HUD is examining the issue raised by the commenters and is taking the commenters' suggestion under advisement.

Comment. One commenter advised of the burden associated with HUD's "previous participation" requirements in 24 CFR 200.217a, referred to as the "2530 review." The commenter stated that the current 2530 review process was established before the involvement

of major corporate entities as passive limited partner investors, and before the availability of contemporary database, credit reporting, and other information systems that allow for the expedited and thorough analysis of a project sponsor's financial strength and background. HUD requires a 2530 review of all individual officers of any corporation directly investing as a limited partner in an FHA insured low-income housing tax credit (LIHTC) transaction. All officers and directors three levels below the mortgagor entity must be listed. The commenter stated that this is a particularly onerous and inhibiting prospect for larger syndications. The commenter recommended that, where the limited partnership is a fund established by a syndicator, the 2530 clearance be required only for that specific fund or a "master 2530" procedure be established for direct corporate investors or syndication firms.

Response. HUD is currently considering a revision to the 2530 process based on ownership type. HUD also determined that this process was ideal for e-government. On April 13, 2005 (70 FR 19660), HUD published a final rule which requires all participants in HUD's multifamily housing programs to file their previous participation certificates by a specific date using the Active Partner Performance System on HUD's secure Internet site. This rule reduces the paperwork burden associated with previous participation review.

Comment. One commenter stated that under current regulations in 24 CFR part 891, there is no middle ground between extremes of non-compliance versus full compliance with HUD's accessibility requirements. The commenter stated that the cognitive abilities of persons with developmental disabilities are such that the tasks they would be able to perform in the kitchen would not require full accessibility. The shortfalls experienced as a direct consequence of the Section 811 development cost limits not being updated on a regular basis to reflect drastic rises in site acquisition costs, compounded by the strict adherence to UFAS, has the unintended consequence of raising project costs, thus impeding the development and rehabilitation of affordable housing for persons with developmental disabilities.

Response. The Section 811 programmatic accessibility requirements at 24 CFR 891.310 allow for a lesser number of accessible units and bedrooms if the project will be rehabilitated for persons with physical or developmental disabilities. However, the Section 504 requirements at 24 CFR part 8, which use UFAS to measure compliance, cannot be waived. Although current occupants may not need the full accessibility in the kitchen, future tenants may need such accessibility. Furthermore, the choice of new construction or rehabilitation of a property is at the option of the project sponsor. It is much more difficult and costly to make an existing structure accessible than it is to newly construct an accessible project.

As noted in an earlier response, the Department has brought relief by increasing the development cost limits in the FY 2004 and the FY2005 NOFAs and the Department is also contracting for a study to develop realistic cost limits for the development of Section 811 and Section 202 housing, which should alleviate a lot of the shortfalls that sponsors have been experiencing in trying to develop such housing.

Comment. One commenter referred to HUD's regulations in 24 CFR 245.310 and stated that certain rent increases are adjustments authorized annually by HUD under an Annual Adjustment Factor (AAF) or an Operating Cost Adjustment Factor (OCAF) that do not impact the portion of the rent that tenants receiving Section 8 assistance pay since their contribution to rent is based on 30 percent of their income regardless of the new rent. The commenter recommended that the regulation should be amended to require that tenants be notified only when owners are seeking budget-based rent increases, special rent adjustments, tenant utility decreases, etc. which cause a change in the dollar amount of the rent paid by the tenant.

Response. This requirement predates automatic adjustments such as AAF and OCAF, which do not result in a change in the tenant's portion of the rent. HUD will revise its regulation to reflect current practice.

Comment. One commenter expressed concern that HUD policy on occupancy of properties restricted to the elderly is not consistent with the Fair Housing Act. The commenter stated that there is also evidence that it is not consistent with custom and practice, which maintains elderly communities for the elderly population only. HUD has not clarified its position on elderly housing subsequent to amendments to the Fair Housing Act enacted in 1995. The commenter recommended that all housing should conform to the Housing for Older Persons Act (Pub. L. 104–76, approved December 28, 1995), except for specific conditions stipulated in housing specifically restricted to the elderly, such as Section 202. The commenter specifically recommended amending FHA's Multifamily Accelerated Processing (MAP) guide to explicitly allow age restrictions in properties financed with FHA-insured mortgages. Current interpretation of policy that does not permit age-restricted occupancy on insured properties will be a significant impediment to refinancing Section 202 loans with FHA insurance. HUD participation in affordable housing for the elderly is further constrained in areas with community defined zoning for the elderly that excludes residents under 18.

Response. Current HUD policy for its market rate Section 221(d)(4) program (the program provided under section 221(d)(4) of the National Housing Act (12 U.S.C. 17151(d)(4))) requires designated elderly properties to admit families with children and young adults unless the head of household is under age 62. However, under section 231 of the National Housing Act (12 U.S.C. 1715v), all occupants must be 62 years of age or older. HUD has been receiving inquiries from lenders regarding the submission of mortgage insurance applications for properties that will restrict occupancy to only the elderly, defined as an individual who is at least 62 years of age. Lenders currently may choose to submit an application for such properties for mortgage insurance under section 231.

HUD is reviewing its existing regulations and policies regarding elderly restrictions in FHA's various multifamily programs and will publish for public comment a rule that describes the policies affecting the tenant eligibility requirements for residency in FHA mortgage insured projects. Comments received in response to that rulemaking will be thoroughly reviewed and considered, and amendments to the MAP Guide may result from this rulemaking.

Comment. With respect to FHA's use of a low-floater finance package to facilitate the production of affordable multifamily housing, one commenter stated that FHA's proposal is too limited in nature to benefit or encourage production of affordable housing. The commenter recommends that HUD meet with industry experts to craft a low-floater finance package that will be of limited risk and maximum benefit to serve the affordable housing objective.

Response. HUD met with various industry groups to informally solicit recommendations and HUD is examining its current policy on low-floater finance packages.

E. Office of Public and Indian Housing

Comment. One commenter stated that HUD should establish separate FMRs for

assisted living facilities and allow PHAs to set payment standards at 120 percent of the FMR and/or to move to the 50th percentile FMRs. The commenter also stated that HUD should be more flexible in considering local data in setting FMRs rather than rely on expensive and complex data surveys and streamline the process for PHAs to receive higher FMRs.

Response. Legislation similar to HUD's legislative proposals for a Flexible Voucher Program (FVP) (discussed in Section III of this notice), and a public housing Rent Simplification program were recently introduced as part of S.771 in the Senate. If enacted, these proposals would address the statutory barriers raised by the commenter. Under the proposed Flexible Voucher Program, a PHA would no longer be required to set payment standards based on FMRs. PHAs would have full discretion to establish payment standards for modest housing using local data as well as FMRs.

Comment. One commenter stated that HUD should make funding for the Section 8 administrative fees sufficient to cover costs.

Response. The formula for payment of administrative fees is statutory. HUD cannot alter the formula or the amount established by an appropriations act. The FVP legislative proposal would allow HUD to alter the formula for payment through rulemaking.

Comment. One commenter stated that housing assistance payments are late as a result of appropriation problems, bureaucratic delays in Washington DC, and antiquated systems. HUD should continue efforts to provide timely payments to owners by ensuring that PHAs have the ability to make automated electronic fund transfers to owners. Additionally, HUD should provide technical assistance, funding and other support to ensure that all PHAs have the capacity to utilize automated payment systems. One commenter stated that since PHAs are not responsible for delays in payments, owners should be able to directly charge HUD late penalties.

Response. Housing assistance payments are obligated on a quarterly basis and are electronically transferred to a PHA's bank accounts on the first business day of each month. Historically, when delays in the passage of appropriation laws occur HUD has operated under continuing resolutions. Therefore, housing assistance payments continue in spite of such delays. HUD's accounting and electronic fund transfer systems are very reliable and have functioned well over the years.

HUD agrees that automated payment systems will provide the most reliable and timely payment to owners. However, individual PHAs must initiate such systems with their financial institutions. PHAs lacking capacity to fully develop such systems need to explore partnerships with other PHAs or organizations to maximize their abilities in this area. As discussed above, housing assistance payments are provided to PHAs through electronic transfer on the first business day of each month. Neither the law (including regulations) nor the housing assistance payment (HAP) contract between the PHA and owner gives the owner a right to seek a late payment from HUD.

Comment. Several commenters expressed concern about the regulations governing inspections of units (see 24 CFR 982.305 and 982.405). The commenters stated that unit-by-unit inspections delay resident occupancy from up to 30 days or longer even when done within the required time. The industry relies on seamless turnover to contain overhead costs within tolerable limits. The financial implications of such delays are sufficient to deter them from participating in the program. The organizations recommend that PHAs be permitted to conduct inspections within 60 days of move-in. Alternatively, the PHAs could conduct initial inspections of a representative sample of units to "certify" conditions. This process would reward owners with well-maintained properties.

Response. The Administration's FVP legislative proposal would allow inspections within 60 days of the provision of initial assistance.

Comment. One commenter stated that each year vouchers are unused because owners are unwilling to participate in the program because of burdensome requirements such as HAP contracts, amendments of landlord leases, and compliance with procedures not normally attendant in conventional housing practices.

Response. The FVP legislative proposal, if enacted, will provide PHAs the flexibility to design their programs to meet local needs. PHAs will be able to enter into HAP contracts conditionally with owners before inspecting units. This will ensure that in tight rental markets program families have a fair opportunity to lease units, instead of losing potential units because the landlord is unable or unwilling to hold the units vacant until such time that the PHA is able to complete the paperwork.

Comment. One commenter stated that HUD should allow PHAs to use Section 8 funds for acquisition, rehabilitation, and new construction of affordable units. The commenter believes that if PHAs had more flexibility in the use of Section 8 dollars, the need for recaptures would be reduced.

Response. The statutory framework of the Section 8 program only allows PHAs to use Section 8 funds to provide rental assistance on behalf of eligible families. PHAs may, however, use up to 20 percent of the funding authorized by HUD to provide project-based rental assistance to owners of newly constructed, rehabilitated, or existing housing.

Comment. One commenter proposed that HUD allow participants in HUD's Section 8 Homeownership program to buy two and three family homes and rent out the other units to generate additional income; permit voucher subsidy periods to coincide with the term of the mortgage by eliminating the mandatory time limit; and allow use of a higher separate payment standard for homeownership families.

Response. The regulations that provide the eligible unit must be either a one-unit property or a single dwelling unit in a cooperative or a condominium ensure that the program only subsidizes the unit occupied by the family, as opposed to additional units purchased to generate rental or investment income. This restriction on the use of the homeownership subsidy to the unit occupied by the family is required under current law.

In implementing the homeownership option, HUD decided that a time limit was appropriate for homeownership assistance because the goal of the program was not simply to defray the family's expenses, but to foster responsibility and assist the family in ultimately achieving economic self-sufficiency. HUD also believed that permitting PHAs to set a higher payment standard for homeownership families was problematic in that it would increase program costs and reduce the number of families assisted by the voucher program as a whole. These were two outcomes that HUD specifically wished to avoid in implementing the homeownership option.

Under the FVP legislative proposal, all of these decisions would be delegated to the local PHA. The local PHA would have the administrative flexibility to define unit eligibility, provide a larger or smaller subsidy to homeowners (balanced against the impact on the PHA's funding and the total number of families that the PHA could ultimately serve), and eliminate the time limit on homeownership assistance for all families.

Comment. One commenter urged HUD to implement the downpayment component of the Section 8 homeownership program.

Response. Section 8(y)(7)(A) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(y)) provides that a PHA may provide assistance to the family in lieu of monthly assistance payments in the form of a single grant to be used for the downpayment assistance "to the extent provided in advance in appropriations Acts." To date, Congress has not appropriated funding for this purpose and consequently, HUD is unable, under current law, to authorize use of the downpayment grant option. HUD's FVP legislative proposal, however, would allow a PHA to offer the downpayment grant option without the necessity of appropriations specifying downpayment assistance as one of the eligible activities of the FVP.

Comment. One commenter stated that the 15 percent allocation limit should be increased to facilitate the financing of new construction and rehabilitation of low and moderate-income multifamily housing. Another commenter suggested that PHAs should be allowed to project-base more than 20 percent of their vouchers.

Response. The percentage of funding that can be project-based is statutory, and therefore HUD is unable to revise the limit by regulation.

Comment. Three commenters stated that supportive services, as used in the context of the Section 8 project-based voucher program, should be defined by regulation. The commenters also expressed concern with the deconcentration requirements applicable to the project-based voucher program. One commenter claimed the initial guidance waiver process was cumbersome. Another commenter stated that the 20 percent poverty limit should be removed. The third commenter stated that regulations regarding the deconcentration requirements should be issued. With respect to HUD's project-based voucher program, another commenter stated that the process to convert tenant-based vouchers to project-based vouchers was cumbersome.

Response. HUD's proposed rule on project-based vouchers, published in the **Federal Register** on March 18, 2004 (69 FR 12950), proposes to deregulate much of the process for attaching project-based vouchers to structures. As provided in the proposed rule, HUD will no longer approve a PHA's intent to project-base its units, a PHA's unit selection policy and advertisement or HAP contract renewal terms. HUD agrees that there is a need to more clearly define "supportive services." With respect to the deconcentration requirements, the March 18, 2004, proposed rule deregulates much of the process for attaching project-based vouchers to structures. The rule provides that HUD will no longer approve a PHA's intent to project-base its units, a PHA's unit selection policy and advertisement, or HAP contract renewal terms. The public comment period closed on HUD's project-based voucher proposed rule on May 17, 2004, and HUD has reviewed and considered the comments. The rule is in the final stages of internal review before issuance.

F. Environmental Requirements Applicable to HUD Programs

Comment. HUD-funded developments should not have environmental requirements different or beyond those imposed on non-HUD-funded developments.

Response. Like other federal agencies, HUD is subject to the statutes, executive orders, and oversight agency regulations that impose environmental and historic preservation review requirements on federal actions. While HUD favors joint reviews and use of locally generated information, there is no way to avoid the separate statutory federal requirements short of legislative change. HUD has, however, taken several steps to minimize this problem through: (1) Seeking increased use of statutory provisions authorizing environmental processing by states or units of general local government under 24 CFR part 58 so that localities can control the timing of reviews and combine them with those required under state law; (2) providing exemptions and categorical exclusions for activities having minimal impacts; (3) issuing guidance for absorbing processing within normal program operations; and (4) working with oversight agencies (the Council on Environmental Quality and the Advisory Council on Historic Preservation) on simplifying requirements and expediting procedures.

Comment. One commenter stated that HUD should defer to states, which have their own requirements for environmental review. HUD should also exempt one-to-four family home rehabilitation under the HOME program and should allow construction for housing the homeless under a risk-based approach rather than requiring 100 percent cleanup.

Response. Substitution of state environmental requirements for federal ones would require major legislative changes. Full exclusions or exemptions from environmental review reflect a judgment that an activity (1) does not have the potential for significant impact on the human environment and therefore is categorically excluded from review under the National Environmental Policy Act (NEPA), and (2) would not alter any conditions so as to require a review or compliance determination under related federal environmental laws listed in 24 CFR 58.5. HUD has already determined that one-to-four family home rehabilitation is categorically excluded from NEPA review under certain conditions, as described in 24 CFR 58.35(a)(3)(i). However, such rehabilitation may require review under the terms of other federal environmental laws or authorities, including consultation under the National Historic Preservation Act. HUD does not have authority to unilaterally exempt a class of HUD actions from environmental review where a law or authority requires review or compliance. HUD regulations do provide that if a HOME recipient carrying out federal environmental responsibilities determines that an action is categorically excluded from NEPA review and does not, in a particular instance, trigger review under the other federal environmental laws and authorities that action may be declared to be exempt from further environmental review (see 24 CFR 58.35(a)(12)). Risk-based methods are acceptable by HUD's program for the homeless.

V. Ongoing Review of HUD Regulations

HUD appreciates the time that commenters took to review HUD regulations and submit their comments, questions, and suggestions to HUD. HUD hopes the commenters find that the responses in this notice have addressed their comments. The commenters raised important issues, and HUD has already taken action to respond to these issues and to consider recommended regulatory and statutory changes. It is the intention of HUD to report periodically on its progress in reviewing its regulations and other administrative practices with respect to barriers they may pose to affordable housing. HUD's review of its regulations is not confined to any specific period. HUD considers this an ongoing process. Therefore, interested members of the public should submit comments to HUD as they work with HUD programs, HUD program requirements and regulations and notify HUD of concerns that may not have already been expressed in this notice or addressed by HUD. HUD acknowledges that regulatory change is not an expeditious process and statutory

change even less so, but HUD is committed to removing its own regulatory barriers to affordable housing for those regulations that are in fact determined to be barriers and where it is feasible to do so.

Dated: May 12, 2005.

A. Bryant Applegate,

Senior Counsel and Director of America's Affordable Communities Initiative.

[FR Doc. 05–10041 Filed 5–19–05; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–20T]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzel, room 7622, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Heather Ranson, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Ms. Kathryn M. Halvorson, Director, Air Force Real Property Agency, 1700 North Moore St., Suite 2300, Arlington, VA 2209–2802; (703) 696–5502; COE: Ms. Shirley Middleswarth, Army Corps of Engineers, Civil Division, Directorate of Real Estate, 441 G Street, NW, Washington, DC 20314–1000; (202) 761–7425; ENERGY: Mr. Andy Duran, Department of Energy, Office of Engineering & Construction Management, ME–90, 1000 Independence Ave, SW., Washington, DC 20585; (202) 586–4548; GSA: Mr. Biran K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; NAVY: Mr. Charles C. Cocks, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: May 12, 2005.

Mark R. Johnston,

Director, Office of Special Needs, Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 5/20/2005

Suitable/Available Properties

Buildings (by State)

Colorado

Bunkhouse #3540
Forest Road 560
Section 32
Bailey Co: Park CO 80421–
Landholding Agency: GSA
Property Number: 54200520012
Status: Excess
Comment: 560 sq. ft., most recent use—storage, no sanitary facilities/potable water/power
GAS Number: 7–A–CO–0657

Georgia

Bldg. W0–3
West Point Lake
West Point Co: GA 31833–
Landholding Agency: COE
Property Number: 31200520001
Status: Unutilized
Comment: 7 x 7 gatehouse, off-site use only

Missouri

Social Security Building
123 Main Street
Joplin Co: Jasper MO 64801–
Landholding Agency: GSA

Property Number: 54200520013
Status: Excess
Comment: 10,322 sq. ft., needs repair, possible asbestos/lead paint, most recent use—office, tenants to relocate within two years
GSA Number: 7–G–MO–0674

South Dakota

Residence, Tract 139
101 Laurel Avenue
Oahe Dam/Lake Oahe Proj.
Pierre Co: SD 57501–
Landholding Agency: COE
Property Number: 31200520008
Status: Excess
Comment: 996 sq. ft., off-site use only

Residence, Tract 302
107 E. Main Street
Oahe Dam/Lake Oahe Proj.
Pierre Co: SD 57532–
Landholding Agency: COE
Property Number: 31200520009
Status: Excess
Comment: 1096 sq. ft., off-site use only

Residence, Trace 525
108 East 7th Ave.
Oahe Dam/Lake Oahe Proj.
Pierre Co: SD 57532–
Landholding Agency: COE
Property Number: 31200520010
Status: Excess
Comment: 1568 sq. ft., off-site use only

Suitable/Unavailable Properties

Land (by State)

New Mexico

Sites 69 & 70
Conchas Lake
San Miguel Co: NM
Landholding Agency: COE
Property Number: 31200520006
Status: Excess
Comment: ½ acre lots, closest town is approximately 32 miles away

Unsuitable Properties

Buildings (by State)

California

Bldg. 11237
Vandenberg AFB
Lompoc Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200520001
Status: Unutilized
Reason: Secured Area

Bldgs. 4 & 15
Naval Submarine Base
Point Loma Co: CA
Landholding Agency: Navy
Property Number: 77200520014
Status: Unutilized
Reason: Extensive deterioration

Georgia

Pumphouse
Carters Lake
Oakman Co: GA 30732–
Landholding Agency: COE
Property Number: 31200520002
Status: Unutilized
Reason: Extensive deterioration

Bldgs. ASBC01, ASBC02
Asbury Park
Hartwell Co: GA 30643–
Landholding Agency: COE
Property Number: 31200520003
Status: Unutilized
Reason: Extensive deterioration

Hawaii

Bldg. 3389
Hickam AFB
Hickam Co: HI
Landholding Agency: Air Force
Property Number: 18200520002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Idaho

Bldg. CF633
Idaho Natl Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200520005
Status: Excess
Reason: Extensive deterioration

Illinois

Bldg. 3101
Capital MAP, DCFT
Springfield Co: Sangamon IL 62707–
Landholding Agency: Air Force
Property Number: 18200520003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 144–147
FERMILAB
Batavia Co: DuPage IL 60510–
Landholding Agency: Energy
Property Number: 41200520003
Status: Excess
Reasons: Extensive deterioration

Bldg. 325C
Argonne National Laboratory
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 41200520004
Status: Excess
Reasons: Secured Area

Iowa

RTHBUN–79326
Buck Creek Park
Centerville Co: Appanoose IA 52544–
Landholding Agency: COE
Property Number: 31200520004
Status: Excess
Reasons: Extensive deterioration

Kansas

Bldgs. L37, L38
Lucas Park
Sylvan Grove Co: KS 67481–
Landholding Agency: COE
Property Number: 31200520005
Status: Excess
Reasons: Extensive deterioration

Mississippi

Bldg. 6
ANG CRTC
Gulfport Co. Harrison MS 39507–
Landholding Agency: Air Force
Property Number: 18200520004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 19–22
ANG CRTC
Gulfport Co: Harrison MS 39507–
Landholding Agency: Air Force
Property Number: 18200520005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 38
ANG CRTC
Gulfport Co: Harrison MS 39507–
Landholding Agency: Air Force
Property Number: 18200520006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Montana

Bldg. 546
Malmstrom AFB
Cascade Co: MT 59402–
Landholding Agency: Air Force
Property Number: 18200520007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

New York

Bldg. 276
106th RQW
Westhamton Beach Co: Suffolk NY 11978–
Landholding Agency: Air Force
Property Number: 18200520008
Status: Excess
Reason: Secured Area

South Carolina

Bldg. 277
McEntire Air National Station
Eastover Co: Richland SC 29044–
Landholding Agency: Air Force
Property Number: 18200520009
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 5
J. Strom Thurmond Project
Clarks Hill Co: McCormick SC 29821–
Landholding Agency: COE
Property Number: 31200520007
Status: Unutilized
Reason: Extensive deterioration

Tennessee

17 Buildings
Naval Support Activity
Mid-South
Millington Co: TN 38054–
Location: 892–893, 1704, 1487, 2020, 2035, 2044–2045, 2071, 2074, 2079–2082, 2094, 2096, 2063
Landholding Agency: Navy
Property Number: 77200520012
Status: Excess
Reason: Secured Area

Land (by State)

California

Trailer Space
Naval Base
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200520013
Status: Unutilized
Reason: Secured Area

[FR Doc. 05–9832 Filed 5–19–05; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Meeting of the California Desert District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet in formal session on Friday, June 24, 2005, from 8 a.m. to 5 p.m. and Saturday, June 25 from 8 a.m. to 3 p.m. The meeting will be held in the Ontario Airport Hilton Hotel, located at 700 North Haven Avenue, in Ontario, California.

Tentative agenda items include the following:

—Reports by Council members, the District Manager and five field office managers.
—Update on the West Mojave Plan.
—Discussions regarding the formation of a technical review team (TRT) to evaluate the special use permit process for events held in the California Desert District.
—Discussions regarding the formation of a TRT for Dumont Dunes and a TRT for the El Mirage Dry Lake Recreation Area.
—Public comment for items not on the agenda.

All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, California 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: Doran Sanchez, BLM California Desert District Public Affairs Specialist (951) 697–5220.

Dated: May 12, 2005.

Linda Hansen,

District Manager.

[FR Doc. 05–10092 Filed 5–19–05; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and marine mammals.

DATES: Written data, comments or requests must be received by June 20, 2005.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: James R. Ake, Dunkirk, MD, PRT–100021.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Craig T. Boddington, Templeton, CA, PRT–102421.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Richard A. Bonander, Casper, WY, PRT–102452.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Stephen H. McKelvain, Arlington, VA, PRT–103052.

The applicant requests a permit to import the sport-hunted trophy of one cheetah (*Acinonyx jubatus*) taken in Namibia, for the purpose of enhancement of the survival of the species.

Applicant: Carl E. Beal, III, Blackwell, TX, PRT–098182.

The applicant requests a permit to authorize interstate and foreign commerce, export and cull of excess male red lechwe (*Kobus leche*) from his captive herd for the purpose of enhancement of the survival of the species. This notification covers activities conducted by the applicant over a period of five years.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Salvatore Cucorullo, Washingtonville, NY, PRT–102062.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: James Weyand, Bloomsburg, PA, PRT–102654.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: John J. Keslar Rector, PA, PRT–102694.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Dated: May 6, 2005.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–10096 Filed 5–19–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Extension of Existing Information Collection To Be Submitted to OMB for Review Under the Paperwork Reduction Act

A request extending the information collection described below will be submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection may be obtained by contacting the USGS Clearance Officer at the phone number listed below. Comments on the proposal should be made within 60 days to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the USGS solicits specific public comments as to:

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

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

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

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Earthquake Report.

OMB Approval No: 1028–0048.

Summary: The collection of information referred herein applies to a World-Wide Web site questionnaire that permits individuals to report on the effects of the shaking from an earthquake—on themselves personally, buildings, other man-made structures, and ground effects such as faulting or landslides. The USGS may use the information to provide qualitative, quantitative, or graphical descriptions of earthquake damage.

Estimated Completion Time: 6 minutes.

Estimated Annual Number of Respondents: 100,000.

Frequency: After each earthquake.

Estimated Annual Burden Hours: 10,000 hours.

Affected Public: The general public.

For Further Information Contact: To obtain copies of the survey, contact the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192, telephone (703) 648–7313, or go to the Web site (*http://pasadena.wr.usgs.gov/shake/*).

Dated: May 16, 2005.

P. Patrick Leahy,

Associate Director for Geology.

[FR Doc. 05–10152 Filed 5–19–05; 8:45 am]

BILLING CODE 4310–47–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Enterprise Rancheria Fee-to-Trust Transfer and Casino-Hotel Project, Yuba County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, with the Estom Yumeka Maidu Tribe (Enterprise Rancheria) as a cooperating agency, intends to gather information necessary for preparing an Environmental Impact Statement (EIS) for a proposed 40 acre fee-to-trust transfer and casino and hotel project to be located in Yuba County, California. The purpose of the proposed action is to help provide a land base for, and address the socio-economic needs of the Enterprise Rancheria. This notice also announces a public scoping meeting to identify potential issues, concerns and alternatives to be considered in the EIS.

DATES: Written comments on the scope and implementation of this proposal must arrive by June 20, 2005. The public scoping meeting, to be co-hosted by the BIA and the Enterprise Rancheria, will be held June 9, 2005, from 6 p.m. to 9 p.m., or until the last public comment is received.

ADDRESSES: You may mail or hand carry written comments to Clay Gregory, Regional Director, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825. Please include your name, return address and caption, "DEIS Scoping Comments, Enterprise Rancheria, 40 Acre Fee-to-Trust Casino/Hotel Project, Yuba County, California," on the first page of your written comments.

The public scoping meeting will be held at the Elk's Lodge, 920 D Street, Marysville, California 95901–5322.

FOR FURTHER INFORMATION CONTACT: John Rydzik, (916) 978–6042.

SUPPLEMENTARY INFORMATION: The 40 acre project site is located 4 miles southeast of the Community of Olivehurst, California, near the intersection of Forty Mile Road and State Route 65, in unincorporated Yuba County. The site is currently undeveloped and in use for hay farming. Surrounding land uses include agriculture, open space and entertainment.

The proposed action consists of the placing of a 40 acre parcel, currently privately owned, into federal trust status and the construction of a casino-hotel project, for the benefit of the Enterprise Rancheria. The proposed construction would consist of a 207,760 square-foot gaming facility and a 107,125 square-foot hotel on the 40 acre parcel. The two-story gaming facility would include a casino floor, food and beverage areas (including a buffet, gourmet restaurant, and bar), meeting space, guest support services, offices and security area. The eight-story hotel would contain 170 rooms (152 standard rooms and 18 suites) and would feature a lobby area, retail space, exercise room and arcade.

The BIA previously prepared an Environmental Assessment (EA) that analyzed the potential environmental effects of the proposed action. The EA was made available for public comments in July 2004. Upon consideration of the public and agency comments received during the 30-day public comment period, the BIA, in consultation with the Enterprise Rancheria, decided to prepare an EIS to further analyze the environmental effects which may result from the proposed action.

Areas of environmental concern to be addressed in the EIS include land use, geology and soils, water resources, agricultural resources, biological resources, cultural resources, mineral resources, paleontological resources, traffic and transportation, noise, air quality, public health/environmental hazards, public services and utilities, hazardous waste and materials, socio-economics, environmental justice, and

visual resources/aesthetics. In addition to the proposed action, a reasonable range of alternatives, including a no-action alternative, will be analyzed in the EIS. The range of issues and alternatives may be expanded based on comments received during the scoping process.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by the law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with sections 1501.7, 1506.6 and 1508.22 of the Council of Environmental Quality Regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: May 2, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 05–10138 Filed 5–19–05; 8:45 am]

BILLING CODE 4310–W7–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–936–1320–FL; HAG–05–0116; WAOR–60818]

Notice of Invitation—Federal Coal Exploration License Application, WAOR 60818; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction.

SUMMARY: In Federal Coal Exploration License Application, WAOR 60818, published February 25, 2005, as FR Doc. 05–3629, make the following correction:

On page 9377, T. 14 N., R. 10 W., Sec. 8, E½SW¼., should read T. 14 N., R. 1 W., Sec 8, E½NW¼.

Any party electing to participate in this exploration program shall notify, in writing, both the Oregon/Washington State Director, Bureau of Land Management at the address above and the Transalta Centralia Mining LLC, at 913 Big Hanaford Road, Centralia, Washington 98531. Such written notice must refer to serial number WAOR–60818 and be received no later than June 20, 2005, or 10 calendar days after the last publication of this notice in the Centralia Chronicle newspaper, whichever is later. This notice will be published once a week for two (2) consecutive weeks in the newspaper.

Dated: May 9, 2005.

John S. Styduhar,

Acting Chief, Branch of Land & Mineral Resources, Oregon/Washington.

[FR Doc. 05–10093 Filed 5–19–05; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–302 and 731–TA–454 (Second Review)]

Fresh and Chilled Atlantic Salmon From Norway

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the countervailing duty and antidumping duty orders on fresh and chilled Atlantic salmon from Norway.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty and antidumping duty orders on fresh and chilled Atlantic salmon from Norway would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: May 9, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov)*. The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On May 9, 2005, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent interested party group responses to its notice of institution (70 FR 5471, February 2, 2005) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 17, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–10103 Filed 5–19–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–465, 466, and 468 (Second Review)]

Sodium Thiosulfate From China, Germany, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year reviews.

SUMMARY: The subject five-year reviews were initiated in February 2005 to

determine whether revocation of the antidumping duty orders on sodium thiosulfate from China, Germany, and the United Kingdom would be likely to lead to continuation or recurrence of material injury to a domestic industry. On May 9, 2005, the Department of Commerce published notice that it was revoking the orders effective March 7, 2005, because "the domestic interested parties did not participate in these sunset reviews" (70 FR 24393). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject reviews are terminated.

EFFECTIVE DATE: March 7, 2005.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: May 17, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–10104 Filed 5–19–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–05–020]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 3, 2005 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–1082 and 1083 (Final) (Chlorinated Isocyanurates from China and Spain)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before June 22, 2005.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: May 18, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–10175 Filed 5–18–05; 10:08 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

State Unified Plan Planning Guidance for State Unified Plans Submitted Under Section 501 of the Workforce Investment Act of 1998 (WIA): Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration, Office of Workforce Investment is soliciting comments concerning the proposed extension of the collection for the Planning Guidance and Instructions for Submission of the State Unified Plan Planning Guidance for State Unified Plans submitted under Section 501 of the Workforce Investment Act of 1998 (WIA). A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before July 19, 2005.

ADDRESSES: Christine D. Kulick, U.S. Department of Labor, Employment and Training Administration, Room S–4231, 200 Constitution Avenue, NW., Washington, DC 20210: (202) 693–3045 (voice) (This is not a toll free number); (202) 693–7755 (TTY); (202) 693–3015 (Fax); or e-mail: *Kulick.Christine@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this notice is to provide interested parties with the planning guidance for use by States in submitting two years of their Strategic Five-Year State Plan for Title I of the Workforce Investment Act of 1998 and the Wagner Peyser Act. The Planning Guidance and Instructions provide a framework for the collaboration of Governors, Local Elected Officials, businesses and other partners to continue the development of workforce investment systems that address customer needs, deliver integrated, user-friendly services; and are accountable to the customers and the public.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension without change.

Agency: Employment and Training Administration.

Title: State Unified Plan Planning Guidance for State Unified Plans

submitted under Section 501 of the Workforce Investment Act of 1998 (WIA).

OMB Number: 1205–0407.

Affected Public: State, Local, or Tribal.

Total Respondents: 59.

Number of Responses: 59.

Estimated Total Burden Hours: 1,475.

Total Burden Cost (Capital/Startup): $0.

Total Burden Cost (Operating/Maintaining): $231.00 (mailing hard copy of State Plan).

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 16, 2005.

Gay Gilbert,

Administrator, Employment & Training Administration Office of Workforce Investment.

[FR Doc. E5–2557 Filed 5–19–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Planning Guidance and Instructions for Submission of the Strategic Five Year State Plan for Title I of the Workforce Investment Act of 1998 (WIA) and the Wagner Peyser Act: Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration, Office of Workforce Investment is soliciting comments concerning the proposed extension of the collection for the Planning Guidance and Instructions for Submission of the Strategic Five Year State Plan for Title I of the Workforce Investment Act of 1998 (WIA) and the Wagner Peyser Act. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before July 19, 2005.

ADDRESSES: Christine D. Kulick, U.S. Department of Labor, Employment and Training Administration, Room S–4231, 200 Constitution Avenue, NW., Washington, DC 20210: (202) 693–3045 (voice) (This is not a toll free number); (202) 693–7755 (TTY); (202) 693–3015 (Fax); or e-mail: *Kulick.Christine@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this notice is to provide interested parties with the planning guidance for use by States in submitting two years of their Strategic Five-Year State Plan for Title I of the Workforce Investment Act of 1998 and the Wagner Peyser Act. The Planning Guidance and Instructions provide a framework for the collaboration of Governors, Local Elected Officials, businesses and other partners to continue the development of workforce investment systems that address customer needs, deliver integrated, user-friendly services; and are accountable to the customers and the public.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension without change.

Agency: Employment and Training Administration.

Title: Planning Guidance and Instructions for Submission of the Strategic Five Year State Plan for Title I of the Workforce Investment Act of .1998 (WIA) and the Wagner Peyser Act.

OMB Number: 1205–0398.

Affected Public: State, Local, or Tribal.

Total Respondents: 59.

Number of Responses: 59.

Estimated Total Burden Hours: 1,475.

Total Burden Cost (Capital/Startup): $0.

Total Burden Cost (Operating/Maintaining): $231.00 (mailing hard copy of State Plan).

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 16, 2005.

Gay Gilbert,

Administrator, Employment & Training Administration, Office of Workforce Investment.

[FR Doc. E5–2558 Filed 5–19–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described class of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statues referred to in 29 CFR Part 1, Appendix, as well as such additional

statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from the date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the David-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decision being modified.

Volume I

Connecticut
CT20030001 (Jun. 13, 2003)
CT20030004 (Jun. 13, 2003)
New York
NY20030003 (Jun. 13, 2003)
NY20030004 (Jun. 13, 2003)
NY20030010 (Jun. 13, 2003)
NY20030013 (Jun. 13, 2003)
NY20030014 (Jun. 13, 2003)
NY20030015 (Jun. 13, 2003)
NY20030016 (Jun. 13, 2003)
NY20030018 (Jun. 13, 2003)
NY20030020 (Jun. 13, 2003)
NY20030022 (Jun. 13, 2003)
NY20030025 (Jun. 13, 2003)
NY20030026 (Jun. 13, 2003)
NY20030031 (Jun. 13, 2003)
NY20030033 (Jun. 13, 2003)
NY20030039 (Jun. 13, 2003)
NY20030040 (Jun. 13, 2003)
NY20030041 (Jun. 13, 2003)
NY20030045 (Jun. 13, 2003)
NY20030048 (Jun. 13, 2003)
NY20030049 (Jun. 13, 2003)
NY20030066 (Jun. 13, 2003)
NY20030071 (Jun. 13, 2003)
NY20030075 (Jun. 13, 2003)

Volume II

None

Volume III

None

Volume IV

Indiana
IN20030001 (Jun. 13, 2003)
IN20030006 (Jun. 13, 2003)

Volume V

Iowa
IA20030003 (Jun. 13, 2005)
IA20030005 (Jun. 13, 2005)
IA20030013 (Jun. 13, 2005)
IA20030019 (Jun. 13, 2005)
IA20030029 (Jun. 13, 2005)
IA20030032 (Jun. 13, 2005)
IA20030038 (Jun. 13, 2005)
IA20030047 (Jun. 13, 2005)
IA20030054 (Jun. 13, 2005)
IA20030056 (Jun. 13, 2005)
IA20030059 (Jun. 13, 2005)
IA20030060 (Jun. 13, 2005)
Missouri
MO20030012 (Jun. 13, 2005)
MO20030053 (Jun. 13, 2005)

Volume VI

Alaska
AK20030001 (Jun. 13, 2005)
AK20030002 (Jun. 13, 2005)
AK20030003 (Jun. 13, 2005)
AK20030006 (Jun. 13, 2005)

Volume VI

California
CA20030029 (Jun. 13, 2005)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those notes above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the David-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriiptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 12th day of May, 2005.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 05–9840 Filed 5–19–05; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Wage and Hour Division

[Administrative Order No.]

Special Industry Committee for All Industries in American Samoa; Appointment; Convention; Hearing

ACTION: Re-opening and extension of period to submit pre-hearing statements.

SUMMARY: This document re-opens and extends the period for filing a pre-hearing statement in order to participate as a party in Industry Committee No. 26 for American Samoa.

DATES: Pre-hearing statements must be received on or before May 31, 2005.

ADDRESSES: Send pre-hearing statements to the U. S. Department of Labor, Employment Standards Administration, Wage and Hour Division, 200 Constitution Avenue, NW., Room S3502, Washington DC 20210 and to the Office of the Governor of American Samoa, P.O. Box 485, Pago Pago, American Samoa 96799.

FOR FURTHER INFORMATION CONTACT: Nancy M. Flynn, Director of Planning and Analysis, Wage and Hour Division, telephone: (202–693–0551)

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 4, 2005, (70 FR 23236), the Department of Labor published a notice to convene special Industry Committee No. 26 for American Samoa on June 20, 2005, in Pago Pago, American Samoa. As a prerequisite to participation as a party in the Committee hearing, interested persons shall file six copies of a pre-hearing statement at the Office of the Governor of American Samoa and six copies at the National Office of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. Each pre-hearing statement shall contain the data specified in 29 CFR 511.8 of the regulations. The time period for filing pre-hearing statements is extended to May 31, 2005. If such statements are sent by airmail between American Samoa and the mainland, such filing shall be deemed timely if postmarked within the time provided.

Signed in Washington, DC this 16th day of May, 2005.

Victoria A. Lipnic,

Assistant Secretary, Employment Standards Administration.

[FR Doc. 05–10099 Filed 5–19–05; 8:45 am]

BILLING CODE 4510–27–P

LEGAL SERVICES CORPORATION

Development of Regulatory Agenda for 2005–2006

AGENCY: Legal Services Corporation.

ACTION: Development of regulatory agenda for 2005–2006 "request for comments.

SUMMARY: As part of its ongoing efforts to improve the administration of regulatory programs and requirements, Legal Services Corporation is soliciting suggestions for the possible clarification, modification, revision or deletion of existing LSC regulations, looking toward the development of a regulatory agenda and priorities for the years 2005–2006.

DATES: Written comments must be received on or before June 20, 2005.

ADDRESSES: Written comments may be submitted by mail, fax or e-mail to Victor M. Fortuno at the addresses listed below.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, Vice President for General Counsel, Legal Services Corporation, 3333 K St., NW., Washington, DC, 20007; 202–295–1620 (phone); 202–337–6519 (fax); *vfortuno@lsc.gov.*

SUPPLEMENTARY INFORMATION: The Legal Services Corporation's (LSC) mission is to promote equal access to the system of justice and improve opportunities for low-income people throughout the United States by making grants for the provision of high-quality civil legal assistance to those who would be otherwise unable to afford legal counsel consistent with the requirements of Congress.

LSC is in the process of developing a regulatory agenda and setting regulatory priorities for the years 2005–2006. With this notice, LSC is soliciting public input for the consideration by the Board of Directors in pursuit of this task. Specifically, LSC seeks comment on which of LSC regulations are in need of amendment, and why. In particular, LSC requests commenters to identify and discuss:

- Regulations which may require clarification, modification or revision;
- Regulations which appropriately may be considered for deletion; and
- Areas or topics for which new regulations may be needed or desirable.

In addition, to the extent that comments provide suggestions on which rules LSC should seek to clarify, modify or revise, LSC seeks suggestions as to the priority order in which LSC should undertake such rulemaking proceedings.

Victor M. Fortuno,

Vice President and General Counsel.

[FR Doc. 05–10059 Filed 5–19–05; 8:45 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Development of Strategic Directions 2006–2010

AGENCY: Legal Services Corporation.

ACTION: Development of strategic directions "request for comments.

SUMMARY: In 2000, the Legal Services Corporation (LSC) Board of Directors adopted Strategic Directions 2000–2005. LSC is now undertaking an effort to develop Strategic Directions for the years 2006–2010. Toward that end, the Legal Services Corporation is soliciting suggestions for updating, revising and modifying LSC's Strategic Directions.

DATES: Written comments must be received on or before June 20, 2005.

ADDRESSES: Written comments may be submitted by mail, fax or e-mail to Charles Jeffress at the addresses listed below.

FOR FURTHER INFORMATION CONTACT: Charles Jeffress, Chief Administrative Officer, Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007; 202–295–1630 (phone); 202–337–7302 (fax); *cjeffress@lsc.gov.*

SUPPLEMENTARY INFORMATION: In 2000, the Legal Services Corporation (LSC) Board of Directors adopted Strategic Directions 2000–2005. LSC is now undertaking an effort to develop Strategic Directions for the years 2006–2010. Toward that end, the Legal Services Corporation is soliciting suggestions for updating, revising and modifying LSC's Strategic Directions. The LSC Strategic Directions 2000–2005 document is available at the LSC Electronic Public Reading Room on the LSC Web site at: *http://www.lsc.gov/FOIA/foia_epr.htm.*

LSC seeks comments on the key directions for LSC over the next several years. LSC is actively seeking input from the public and all interested stakeholders, who are asked to address:

- What are realistic yet meaningful goals?
- How may LSC most effectively achieve its identified goals?
- How might LSC measure the achievement of the identified goals?

LSC also welcomes comments on whether there are different or additional questions that LSC should consider in its work on strategic directions for

2006–2010. Comments should be submitted as set forth above.

Victor M. Fortuno,

Vice President and General Counsel.

[FR Doc. 05–10060 Filed 5–19–05; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services; Cooperative Agreement to Study User Satisfaction With Access to Government Information and Services at Public Libraries and Public Access Computing Centers

AGENCY: Institute of Museum and Library Services (IMLS), NFAH.

ACTION: Notification of availability.

SUMMARY: The Institute of Museum and Library Services (IMLS) is requesting proposals leading to one (1) award of a Cooperative Agreement to Study User Satisfaction with Access to Government Information and Services at Public Libraries and Public Access Computing Centers. This study will explore how the part of the population with limited access to Internet resources (individuals who do not have broadband access from home, work, or school; who choose to access government services and information from locations other than home, work, or school; or who do so through traditional means of access) accesses services and information from the Federal, State, and local governments and whether such users are satisfied with the information and services they are able to access. The study will also examine the ways that public libraries and public access computing centers provide assistance (*e.g.*, reference services, tutorials, classes, training) to users seeking information and services from the Federal, State, and local governments. Eligible organizations include all types of libraries except Federal and for-profit libraries. Eligible libraries include public, school, academic, special, private (not-for-profit), archives, library agencies, and library consortia. In addition, research libraries that give the public access to services and materials suitable for scholarly research not otherwise available to the public and that are not part of a university or college are eligible. Institutions of higher education, including public and not-for-profit universities and colleges, are also eligible. Graduate schools of library and information science may apply as part of an institution of higher education. The Cooperative Agreement will be for up to 2 years. The award amount will be up to $500,000. Those interested in receiving the Program Solicitation should see the address and contact information below.

DATES: This Program Solicitation is scheduled for release and posting on the Internet on approximately May 20, 2005. Proposals shall be due on July 19, 2005. Awards will be announced by September 30, 2005.

ADDRESSES: The Program Solicitation will be posted to the Institute's Web site at *http://www.imls.gov/whatsnew/current/access_study.htm* on approximately May 20, 2005. Requests for the Program Solicitation should be addressed to Martha Crawley, Program Officer, Office of Library Services, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036–5802, telephone: 202–653–4667, e-mail: *mcrawley@imls.gov*.

FOR FURTHER INFORMATION CONTACT: Martha Crawley, Program Officer, Office of Library Services, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036–5802, telephone: 202–653–4667, e-mail: *mcrawley@imls.gov*.

Dated: May 17, 2005.

Rebecca Danvers,

Director of Research and Technology.

[FR Doc. 05–10100 Filed 5–19–05; 8:45 am]

BILLING CODE 7036–01–M

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael McDonald, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* June 3, 2005.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Faculty Humanities Workshop, submitted to the Division of Education Programs at the April 7, 2005 deadline.

Michael McDonald,

Acting Advisory Committee Management Officer.

[FR Doc. 05–10050 Filed 5–19–05; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364]

Southern Nuclear Operating Company, Inc., Joseph M. Farley Nuclear Plant, Units 1 And 2; Notice of Issuance of Renewed Facility Operating License Nos. NPF–2 And NPF–8 for an Additional 20-Year Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Renewed Facility Operating License Nos. NPF–2 and NPF–8 to Southern Nuclear Operating Company, Inc. (SNC or the licensee), the operator of the Joseph M. Farley Nuclear Plant (FNP), Units 1 and 2. Renewed Facility Operating License No. NPF–2 authorizes operation of FNP, Unit 1, by the licensee at reactor core power levels not in excess of 2775 megawatts thermal in accordance with the provisions of the FNP, Unit 1, renewed license and its technical specifications. Renewed Facility Operating License No. NPF–8 authorizes operation of FNP, Unit 2, by the licensee

at reactor core power levels not in excess of 2775 megawatts thermal in accordance with the provisions of the FNP, Unit 2, renewed license and its technical specifications.

The FNP units are Westinghouse pressurized-water nuclear reactors located in Houston County, Alabama, on the west bank of the Chattahoochee River.

The application for the renewed licenses complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As required by the Act and the Commission's regulations in 10 CFR Chapter I, the Commission has made appropriate findings, which are set forth in each license. Prior public notice of the proposed issuance of these renewed licenses and of an opportunity for a hearing regarding the proposed issuance of these renewed licenses was published in the **Federal Register** on November 5, 2003 (68 FR 62640).

For further details with respect to this action, see (1) SNC's license renewal application for FNP, Units 1 and 2, dated September 12, 2003; (2) the Commission's safety evaluation report dated May 2005 (NUREG–1825); (3) the licensee's updated final safety analysis report; and (4) the Commission's final environmental impact statement dated March 2005 (NUREG–1437, Supplement 18). These documents are available at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, first floor, Rockville, Maryland 20852, and can be viewed from the NRC Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*.

Copies of Renewed Facility Operating License Nos. NPF–2 and NPF–8 may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of Regulatory Improvement Programs. Copies of the safety evaluation report (NUREG–1825) and the final environmental impact statement (NUREG–1437, Supplement 18) may be purchased from the National Technical Information Service, Springfield, Virginia 22161–0002 (*http://www.ntis.gov*), 1–800–553–6847, or the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954 (*http://www.access.gpo.gov/su_docs/index.html*), (202) 512–1800. All orders should clearly identify the NRC publication number and the requestor's Government Printing Office deposit account number or VISA or MasterCard number and expiration date.

Dated at Rockville, Maryland, this 12th day of May 2005.

For The Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. E5–2556 Filed 5–19–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Reinstatement; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

["Tell Us How We're Doing!", SEC File No. 270–406, OMB Control No. 3235–0463]

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this previously-approved questionnaire to the Office of Management and Budget for approval.

The Commission currently sends the questionnaire to persons who have used the services of the Commission's Office of Investor Education and Assistance. The questionnaire consists mainly of eight (8) questions concerning the quality of services provided by OIEA. Most of the questions can be answered by checking a box on the questionnaire.

The Commission needs the information to evaluate the quality of services provided by OIEA. Supervisory personnel of OIEA use the information collected in assessing staff performance and for determining what improvements or changes should be made in OIEA operations for services provided to investors.

The respondents to the questionnaire are those investors who request assistance or information from OIEA.

The total reporting burden of the questionnaire in 2004 was approximately 5 hours and 45 minutes. This was calculated by multiplying the total number of investors who responded to the questionnaire times how long it is estimated to take to complete the questionnaire (23 respondents × 15 minutes = 5 hours and 45 minutes).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: May 11, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–10172 Filed 5–19–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of May 23, 2005:

An open meeting will be held on Monday, May 23, 2005, at 10 a.m., in Room 1C30, the William O. Douglas Meeting Room, and a closed meeting will be held on Wednesday, May 25, 2005 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Goldschmid, as duty officer, voted to consider the items listed for the closed meeting in closed session, and that no earlier notice thereof was possible.

The subject matter of the open meeting scheduled for Monday, May 23, 2005, will be:

The Commission will hear oral argument on an appeal by Rita J. McConville from the decision of an administrative law judge. The administrative law judge found that McConville, formerly the chief financial officer of Akorn, Inc. ("Akorn"), had significant responsibility for the financial statements in the Form 10–K for the year ended December 31, 2000 (the "2000 Form 10–K") filed by Akorn, which materially inflated Akorn's accounts receivable, net sales, and assets; caused Akorn to maintain inaccurate books and records; and falsely assured Akorn's auditors that the financial statements in the 2000 Form 10–K complied with Generally Accepted Accounting Principles and that she did not know of any events that would materially impact those financial statements. In so doing, the law judge found, McConville violated Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 and Rules 10b–5, 13b2–1 and 13b2–2 thereunder, and caused Akorn to violate Sections 13(a) and 13(b)(2) of the Exchange Act and Rules 12b–20 and 13a–1 thereunder. The law judge ordered McConville to cease and desist from violating and causing violations of these provisions, and to pay disgorgement in the amount of $115,858, plus prejudgment interest.

Among the issues likely to be argued are:

1. Whether McConville's involvement in the preparation and filing of the 2000 Form 10–K was sufficient to provide a basis for liability;

2. Whether McConville knew that Akorn did not have a system of internal accounting controls for its accounts receivable necessary for the preparation of accurate financial statements and knowingly failed to implement such a system;

3. Whether the Order Instituting Proceedings gave McConville adequate notice of the claims lodged against her and the grounds on which those claims allegedly rested;

4. Whether a cease-and-desist order against McConville is in the public interest; and

5. Whether disgorgement should be ordered, and if so, in what amount.

The subject matter of the closed meeting scheduled for Wednesday, May 25, 2005, will be:

Formal orders of investigations;

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: May 17, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–10173 Filed 5–17–05; 4:20 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51696; File No. SR–PCX–2005–50]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to a Pilot Rule Extension of a Waiver of California Arbitrator Disclosure Standards

May 13, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 12, 2005 and on May 13, 2005 (Amendment No. 1), the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange and its wholly owned subsidiary PCX Equities, Inc. ("PCXE") are proposing to extend the pilot rule in PCX Rule 12.1(i) and PCXE Rule 12.2(h), which requires industry parties in arbitration to waive application of contested California arbitrator disclosure standards, upon the request of customers (and, in industry cases, upon the request of associated persons with claims of statutory employment discrimination), for an additional six-month pilot period, until November 26, 2005.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 21, 2002, the Commission approved, for a six-month pilot period, the Exchange's proposal to amend PCX and PCXE arbitration rules to require industry parties in arbitration to waive application of contested California arbitrator disclosure standards, upon the request of customers or, in employment discrimination cases, upon the request of associated persons.[3] The Commission approved an extension of the pilot period on May 15, 2003,[4] November 19, 2003,[5] May 24, 2004,[6] and November 23, 2004.[7] The pilot period is currently set to expire on May 25, 2005.

On July 1, 2002, the Judicial Council of the State of California adopted new rules that mandated extensive disclosure requirements for arbitrators in California (the "California Standards"). The California Standards are intended to address perceived conflicts of interest in certain commercial arbitration proceedings. As a result of the imposition of the California Standards on arbitrations conducted under the auspices of self-regulatory organizations ("SROs"), the National Association of Securities Dealers, Inc. ("NASD") and the New York Stock Exchange ("NYSE") suspended the appointment of arbitrators for cases pending in California, and filed a joint complaint in federal court for declaratory relief in which they contend that the California Standards cannot lawfully be applied to NASD and NYSE because the California Standards are preempted by federal law and are inapplicable to SROs under

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 46881 (November 21, 2002), 67 FR 71224 (November 29, 2002) (Order approving SR–PCX–2002–71).

[4] *See* Exchange Act Release No. 47872 (May 15, 2003), 68 FR 28869 (May 27, 2003) (Order approving SR–PCX–2003–22).

[5] *See* Exchange Act Release No. 48806 (November 19, 2003), 68 FR 66521 (November 26, 2003) (Order approving SR–PCX–2003–61).

[6] *See* Exchange Act Release No. 49758 (May 24, 2004), 69 FR 30734 (May 28, 2004) (Order approving SR–PCX–2004–25).

[7] *See* Exchange Act Release No. 50731 (November 23, 2004), 69 FR 69660 (November 30, 2004) (Order approving SR–PCX–2004–104).

state law.[8] Subsequently, in the interest of continuing to provide investors with an arbitral forum in California pending the resolution of the applicability of the California Standards, the NASD and NYSE filed separate rule proposals with the Commission that would temporarily require their members to waive the California Standards if all non-member parties to arbitration have done so. The Commission approved the NASD's rule proposal on September 26, 2002[9] and the NYSE's rule proposal on November 12, 2002.[10] Both the NASD and the NYSE filed rule proposals to further extend the pilot period for additional six-month periods.[11]

Since the NASD's and NYSE's lawsuit relating to the application of the California Standards has not been resolved, PCX is now requesting an extension of the pilot for an additional six months (or until the pending litigation has resolved the question of whether or not the California Standards apply to SROs). PCX requests that the pilot be extended for six months beginning on May 26, 2005. The extension of time permits the Exchange to continue the arbitration process using PCX rules regarding arbitration disclosures and not the California Standards. No substantive changes are being made to the pilot program, other than extending the operation of pilot program.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[12] in general, and Section 6(b)(5) of the Act,[13] in particular, in that it is designed to promote just and equitable principles of trade by ensuring that OTP Holders, OTP Firms, ETP Holders and the public have a fair and impartial forum for the resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2005–50 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2005–50. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–50 and should be submitted on or before June 10, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[15] in that it promotes just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

The Commission also believes that the proposed rule change raises no issues that have not been previously considered by the Commission. Granting accelerated approval here will merely extend a pilot program that is designed to inform aggrieved parties about their options regarding mechanisms that are available for resolving disputes with broker-dealers. The PCX and PCXE adopted the pilot program under PCX Rule 12.1(i) and PCXE Rule 12.2(h), respectively, in

[8] *See* Motion for Declaratory Judgment, *NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc.*, v. *Judicial Council of California*, filed in the United States District Court for the Northern District of California, No. C 02 3486 SBA (July 22, 2002). For a more complete discussion of the various pending cases related to the California Standards, see Exchange Act Release No. 50971 (January 6, 2005), 70 FR 2685 (January 14, 2005) (Notice regarding SR–NASD–2004–180), Exchange Act Release No. 51213 (February 16, 2005), 70 FR 8862 (February 23, 2005) (Order approving SR–NASD–2004–180) and Exchange Act Release No. 51395 (March 18, 2005), 70 FR 15137 (March 24, 2005) (Order approving SR–NYSE–2005–14).

[9] *See* Exchange Act Release No. 46562 (September 26, 2002), 67 FR 62085 (October 3, 2002) (Order approving SR–NASD–2002–126). Thereafter, the pilot period was extended to September 30, 2003. *See* Exchange Act Release No. 48187 (July 16, 2003), 68 FR 43553 (July 23, 2003) (Order approving SR–NASD–2003–106).

[10] *See* Exchange Act Release No. 46816 (November 12, 2002), 67 FR 69793 (November 19, 2002) (Order approving SR–NYSE–2002–56). Thereafter, the pilot period was extended to September 30, 2003. *See* Exchange Act Release No. 47836 (May 12, 2003), 68 FR 27608 (May 20, 2003) (Order approving SR–NYSE–2003–16).

[11] *See* Exchange Act Release No. 48553 (September 26, 2003), 68 FR 57494 (October 3, 2003) (Order approving SR–NASD–2003–144); Exchange Act Release No. 49452 (March 19, 2004) 69 FR 17010 (March 31, 2004) (Order approving SR–NASD–2004–40); Exchange Act Release No. 48552 (September 26, 2003), 68 FR 57496 (October 3, 2003) (Order approving SR–NYSE–2003–28); Exchange Act Release No. 49521 (April 2, 2004), 69 FR 18661 (April 8, 2004) (Order approving SR–NYSE–2004–18); Exchange Act Release No. 50447 (September 24, 2004), 69 FR 58567 (September 30, 2004) (Order approving SR–NASD–2004–126); Exchange Act Release No. 50449 (September 24, 2004), 69 FR 58985 (October 1, 2004) (Order approving SR–NYSE–2004–50; Exchange Act Release No. 51213 (February 16, 2005), 70 FR 8862 (Order approving SR–NASD–2004–180); and Exchange Act Release No. 51395 (March 18, 2005), 70 FR 15137 (March 24, 2005) (Order approving SR–NYSE–2005–14).

[12] 15 U.S.C. 78s(b).

[13] 15 U.S.C. 78s(b)(5).

[14] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

response to the purported imposition of the California Standards on Exchange arbitrations and arbitrators. The pilot rules are currently set to expire on May 25, 2005, and must be extended in order to continue to provide the waiver option until a final judicial determination is reached. During the period of this extension, the Commission and Exchange will continue to monitor the status of the pending litigation.

After careful consideration, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[16] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that the current extension of the pilot program, under PCX Rule 12.1(i) and PCXE Rule 12.2(h), expires on May 25, 2005. Accordingly, the Commission believes that there is good cause, consistent with Section 6(b)(5) of the Act,[17] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–PCX–2005–50) is hereby approved on an accelerated basis, and that PCX Rule 12.1(i) and PCXE Rule 12.2(h) are extended until November 26, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–2525 Filed 5–19–05; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending May 6, 2005

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2005–21122.

Date Filed: May 2, 2005.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP 1230 dated 2 May 2005, Mail Vote 447—Resolution 024d—Currency Names, Codes, Rounding Units and Acceptability of Currencies. Intended effective date: 1 May 2005.

Docket Number: OST–2005–21172.

Date Filed: May 4, 2005.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP 1231 dated 2 May 2005, Resolution 002aa—General Increase Resolution except within Europe, between USA/US Territories and Austria, Belgium, Chile, Czech Republic, Finland, France, Germany, Iceland, Italy, Jordan, Korea (Rep. of), Malaysia, Netherlands, New Zealand, Panama, Scandinavia, Switzerland; PTC COMP 1232 dated 2 May 2005 Resolution 002a—General Increase Resolution between USA/US Territories and Austria, Belgium, Chile, Czech Republic, Finland, France, Germany, Iceland, Italy, Jordan, Korea (Rep. of), Malaysia, Netherlands, New Zealand, Panama, Scandinavia, Switzerland; Minutes: PTC COMP 1233 dated 4 May 2005 Intended effective date: 30 May 2005.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 05–10090 Filed 5–19–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending May 6, 2005

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (*see* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2005–21130.

Date Filed: May 2, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 23, 2005.

Description: Application of Transportes Aereos de Cabo Verde d/b/a TACV, requesting a foreign air carrier permit to engage in: (a) Scheduled foreign air transportation of persons, property and mail without frequency and capacity limitation, on all routes authorized in Annex I of the Bilateral Agreement for carriers designated by the Government of Cape Verde, namely: (i) From points behind Cape Verde via Cape Verde and intermediate points to a point or points in the United States and beyond; (ii) all-cargo service or services, between the United States and any point or points; (b) international charter traffic of passengers (and their accompanying baggage) and/or cargo (including, but not limited to, freight forwarder, split, and combination (passenger/cargo) charters): (i) Between any point or points in Cape Verde and any point or points in the United States; and (ii) between any point or points in the United States and any point or points in a third country or countries, provided that, except with respect to cargo charters, such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to Cape Verde for the purpose of carrying local traffic between Cape Verde and the United States.

Docket Number: OST–2005–21135.

Date Filed: May 2, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 23, 2005.

Description: Application of Jet Airways (India) Ltd., requesting a foreign air carrier permit authorizing it to engage in scheduled foreign air transportation of persons, property, and mail as follows: From points behind India, via India and intermediate points, to a point or points in the United States, and beyond. Jet Airways also requests that its foreign air carrier permit include authority to engage in charter foreign air transportation of persons, property, and mail between India and the United States and between the United States and third countries (provided that such charter traffic is carried on a flight that serves India for purposes of carrying traffic between India and the United States), without prior Department approval; and other charter trips.

Docket Number: OST–2005–21157.

Date Filed: May 3, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 24, 2005.

Description: Application of Executive Airlines, S.L., requesting a foreign air carrier permit authorizing it to engage in charter foreign air transportation of persons, property and mail between Spain and the United States and other

[16] 15 U.S.C. 78s(b)(2).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

charters between third countries and the United States, using small aircraft.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 05–10088 Filed 5–19–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability for the Draft O'Hare Modernization Section 303/4(f) and Section 6(f) Evaluation for Proposed New Runways and Associated Development at Chicago O'Hare International Airport, Chicago, IL

AGENCY: Federal Aviation Administration, Department of Transportation (DOT).

ACTION: Notice of availability of the Draft O'Hare Section 303/4(f) and Section 6(f) Evaluation and notice of public comment period.

Location of Proposed Action: O'Hare International Airport, Chicago, Illinois.

SUMMARY: The Federal Aviation Administration (FAA) announces that the Draft O'Hare Modernization Section 303/4(f) and Section 6(f) Evaluation for the O'Hare Modernization Environmental Impact Statement is available for public review and comment. The Section 303/4(f) and Section 6(f) Evaluation can be obtained on the Web at *http://www.agl.faa.gov/OMP/DEIS.htm* or the locations noted below.

The Section 303/4(f) and Section 6(f) Evaluation documents the consideration of impacts to Section 303/4(f) lands and DOT Section 6(f) lands that could be impacted by build alternatives proposed at Chicago O'Hare International Airport. The proposed build alternatives are intended to address the projected needs of the Chicago region by reducing delays at O'Hare, thereby enhancing capacity of the National Airspace System, and ensuring that terminal facilities and supporting infrastructure can efficiently accommodate airport users.

The comment period is open as of the date of this Notice of Availability and closes July 5, 2005. Comments must be sent to Michael W. MacMullen of the FAA at the address shown below. Comments must be postmarked and emails must be sent no later than midnight, July 5, 2005.

SUPPLEMENTARY INFORMATION: The City of Chicago (City), Department of Aviation, as owner and operator of Chicago O'Hare International Airport (O'Hare or the Airport), P.O. Box 66142, Chicago, IL 60666, proposes to modernize O'Hare to address existing and future capacity and delay problems. The City initiated master planning and the process of seeking FAA approval to amend its airport layout plan to depict the O'Hare Modernization Program (OMP). The City is also seeking the other necessary FAA approvals to implement the OMP and associated capital improvements and procedures. The FAA has prepared its O'Hare Modernization DEIS addressing specific improvements at and adjacent to Chicago O'Hare International Airport, Chicago, Illinois. FAA's DEIS, issued on January 21, 2005, presents an evaluation of the City's proposed project and reasonable alternatives. Under the City's concept, O'Hare's existing seven-runway configuration would be replaced by an eight-runway configuration, in which six runways would be oriented generally in the east/west direction, the existing northeast/southwest-oriented Runways 4L/22R and 4R/22L would remain, and Runways 14L/32R and 14R/32L would be closed.

The Section 303/4(f) and Section 6(f) Evaluation is available for review until July 5, 2005, on the FAA's Web site *http://www.agl.faa.gov/OMP/DEIS.htm*), and at the following locations:

Arlington Heights Memorial Library, 500 North Dunton Ave., Arlington Heights
Bellwood Public Library, 600 Bohland Ave., Bellwood
Bensenville Community Public Library, 200 S. Church Rd., Bensenville
Berkeley Public Library, 1637 Taft Ave., Berkeley
Bloomingdale Public Library, 101 Fairfield Way, Bloomingdale
College of DuPage Library, 425 Fawell Blvd., Glen Ellyn
Des Plaines Public Library, 1501 Ellinwood Ave., Des Plaines
Eisenhower Public Library, 4652 N. Olcutt Ave., Harwood Heights
Elk Grove Village Public Library, 1001 Wellington Ave., Elk Grove
Elmhurst Public Library, 211 Prospect Ave., Elmhurst
Elmwood Park Public Library, 4 W. Conti Pkwy., Elmwood Park
Franklin Park Public Library, 10311 Grand Ave., Franklin Park
Glendale Heights Library, 25 E. Fullerton Ave., Glendale Heights
Glenview Public Library, 1930 Glenview Rd., Glenview
Harold Washington Library, 400 S. State St., Chicago
Hoffman Estates Library, 1550 Hassell Rd., Hoffman Estates
Itasca Community Library, 500 W. Irving Park Rd., Itasca
Lombard Public Library, 110 W. Maple St., Lombard
Maywood Public Library, 121 S. 5th Ave., Maywood
Melrose Park Public Library, 801 N. Broadway, Melrose Park
Morton Grove Public Library, 6140 Lincoln Ave., Morton Grove
Mount Prospect Public Library, 10 S. Emerson St., Mount Prospect
Niles Public Library, 6960 W. Oakton St., Niles
Northlake Public Library, 231 N. Wolf Rd., Northlake
Oak Park Public Library, 834 Lake St., Oak Park
Oakton Community College Library, 1616 E. Gold Rd., Des Plaines
Park Ridge Public Library, 20 S. Prospect Ave., Park Ridge
River Forest Public Library, 735 Lathrop Ave., River Forest
Rover Grove Public Library, 8638 W. Grant Ave., River Grove
Schaumburg Township District Library, 130 S. Roselle Rd., Schaumburg
Schiller Park Public Library, 4200 Old River Rd., Schiller Park
Villa Park Public Library, 305 S. Ardmore Ave., Villa Park, and
Wood Dale Public Library, 520 N. Wood Dale Rd., Wood Dale

FOR FURTHER INFORMATION CONTACT: Michael W. MacMullen, Airports Environmental Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, IL 60018. Telephone: 847–294–8339, FAX: 847–294–7046; e-mail address: *ompeis@faa.gov*.

Issued in Des Plaines, Illinois, on May 17, 2005.

Barry Cooper,

Manager, Chicago Area Modernization Program Office, Great Lakes Region.

[FR Doc. 05–10132 Filed 5–19–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–03–115–31]

Conducting Component Level Tests To Demonstrate Compliance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of final policy on conducting component level tests in

order demonstrate compliance with the requirements of §§ 25.785(b) and (d).

DATES: The final policy was issued by the Transport Airplane Directorate on May 9, 2005.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe and Cabin Safety Branch, ANM–115, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2136; fax (425) 227–1320; e-mail: *jeff.gardlin@faa.gov*.

SUPPLEMENTARY INFORMATION: A notice of proposed policy was published in the **Federal Register** on July 22, 2003 (68 FR 43418). A notice reopening the comment period for an additional amount of time was published in the **Federal Register** on September 15, 2003 (68 FR 54042). Three (3) commenters responded to these requests for comments.

Background

The final policy provides FAA certification policy on conducting component level tests in order to demonstrate compliance with the requirements of §§ 25.785(b) and (d).

Injurious item located within the headstrike zone can be assessed for occupant injury potential. These test methods are the product of an Aviation Rulemaking Advisory Committee recommendation and are harmonized with the Joint Aviation Authorities (JAA) and Transport Canada.

The final policy as well as the disposition of comments received is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl*. If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, on May 9, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–10134 Filed 5–19–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Galley Carts and Containers

AGENCY: Federal Aviation Administration (FAA), (DOT).

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of, and requests comment on proposed Technical Standard Order (TSO) C–175, Galley Carts and Containers. This proposed TSO tells persons seeking TSO authorization or letter of design approval what minimum performance standards (MPS) their galley carts and containers must meet to be identified with the appropriate TSO making.

DATES: Comments must be received on or before July 19, 2005.

ADDRESSES: Send all comments on this proposed TSO to: Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Technical Programs and Continued Airworthiness Branch (AIR–120), 800 Independence Avenue SW., Washington DC 20591. ATTN: Mr. Dave Rich. Or, you may deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Rich, AIR–120, Room 815, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Telephone (412) 262–9034, ext. 292, fax (412) 264–9302.

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the proposed TSO by submitting written data, views, or arguments to the above address. Comments received may be examined, both before and after the closing date, in room 815 at the above address, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director, Aircraft Certification Service, will consider all comments received on or before the closing date before issuing the final TSO.

Background

In November 2004, the SAE International organization published the Aerospace Standard (AS) 8056, Minimum Design and Performance of Airplane Galley In-Flight Carts, Containers, and Associated Components, that prescribes the minimum design and performance requirements for equipment used in aircraft for the housing of beverages, meals, and waste. As such, the FAA elects to adopt with minor modifications, the standards prescribed in AS 8056 as the minimum performance standards a manufacturer of galley carts and containers must first meet in order for their product to be identified with TSO–C175 markings.

How To Obtain Copies

You can view or download the proposed TSO from its online location at: *http://www.airweb.faa.gov/rgl*. At this Web page, select "Technical Standard Orders." At the TSO page, select "Proposed TSOs." For a paper copy, contact the person listed in **FOR FURTHER INFORMATION CONTACT.**

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Issued in Washington, DC, on May 16, 2005.

Susan J.M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 05–10135 Filed 5–19–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Nueces County, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for the proposed U.S. Highway (US) 181 Harbor Bridge replacement highway project in Nueces County, Texas.

FOR FURTHER INFORMATION CONTACT: John R. Mack, P.E. District Engineer, Federal Highway Administration—Texas Division, 300 East 8th Street, Austin, Texas 78701. Telephone: 512–536–5960.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Department of Transportation (TxDOT), will prepare an environmental impact statement (EIS) for a proposal to replace the existing US 181 Harbor Bridge in Nueces County, Texas. The proposed improvement would involve replacement of the existing Harbor Bridge and approaches where US 181 crosses the Corpus Christi Ship Channel, a roadway distance of approximately 2.25 miles.

The need for the proposed bridge improvements is based on a number of identified deficiencies in the existing structure, including high maintenance

costs, safety issues, capacity needs, shipping height restrictions, and connectivity to adjacent areas. The purpose of the improvements is to address these deficiencies while identifying future plans for the US 181 roadway structure and the area it serves.

Alternatives under consideration include (1) taking no action, and (2) replacing the existing US 181 Harbor Bridge and approach roads with a facility built to current highway standards. A Feasibility Study prepared in 2003 evaluated four corridor alternatives along existing and new location right-of-way and a No-Build alternative, resulting in the identification of a recommended study corridor. A reasonable number of alignment alternatives will be identified and evaluated in the EIS, as well as the No-Build Alternative, based on input from federal, state, and local agencies, as well as private organizations and concerned citizens.

Impacts caused by the construction and operation of the proposed improvements would vary according to the alternative alignment utilized. Generally, impacts would include the following: Impacts to residences and businesses, including potential relocation; impacts to parkland; transportation impacts (construction detours, construction traffic, and mobility improvement); air and noise impacts from construction equipment and operation of the roadway; social and economic impacts, including impacts to minority and low-income residents; impacts to historic cultural resources; water quality impacts from construction and roadway runoff; and impacts to waters of the U.S. including wetlands from right-of-way encroachment.

A letter that describes the proposed action and a request for comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed interest in the proposal. TxDOT completed a Feasibility Study for the project in June 2003. In conjunction with the Feasibility Study, TxDOT developed a public involvement plan, sponsored three citizens' advisory committee (CAC) meetings, held two public meetings, and distributed two newsletters. An agency scoping meeting will be held by TxDOT on June 23, 2005 to brief agency representatives on project plans, introduce project team members, obtain comments pertaining to the scope of the EIS, identify important issues, set goals, and respond to questions. A continuing public involvement program will include a project mailing list, project newsletters, a June 23, 2005 public scoping meeting (public notice will be given of the time and place), and numerous informal meetings with interested citizens and stakeholders. In addition, a public hearing will be held after the publication of the Draft EIS. Public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: May 10, 2005.

John R. Mack,

District Engineer, Austin, Texas.

[FR Doc. 05–10055 Filed 5–19–05; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34699]

Georgia Southwestern Railroad, Inc.—Acquisition and Operation Exemption—Central of Georgia Railroad Company

Georgia Southwestern Railroad, Inc. (GSWR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from Central of Georgia Railroad Company (CGA) and operate approximately 43 miles of rail line, extending from milepost R–120 at Florida Rock to milepost R–55.0 at Allie, in Harris and Meriwether Counties, GA. The transaction also includes the acquisition by GSWR of 12.2 miles of incidental trackage rights, extending from milepost M–290.3 at South Columbus through milepost M–290.9/P–290.9 at Columbus and milepost P–291.7/R–1.2 at West Columbus to milepost R–12.0 at Florida Rock, in Harris and Muscogee Counties, GA.

The transaction was scheduled to be consummated on May 20, 2005. GSWR certifies that its projected annual revenues as a result of this transaction would not exceed $5 million and would not result in the creation of a Class II or Class I rail carrier.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34699, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Louis E. Gitomer, Esq., Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: May 12, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–9993 Filed 5–19–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Low Income Taxpayer Clinic Grant Program; Availability of 2006 Grant Application Package

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document contains a notice that the IRS has made available the grant application package (Publication 3319) for organizations interested in applying for a Low Income Taxpayer Clinic (LITC) matching grant for the 2006 grant cycle (January 1, 2006, through December 31, 2006). The IRS will award a total of up to $6,000,000 (unless otherwise provided by specific Congressional appropriation) to qualifying organizations, subject to the limitations of Internal Revenue Code section 7526, for LITC matching grants.

DATES: Grant applications for the 2006 grant cycle must be electronically filed or received by the IRS no later than 4 p.m. e.d.t. on July 25, 2005.

ADDRESSES: Send completed grant applications to: Internal Revenue Service, Taxpayer Advocate Service, LITC Grant Program Administration Office, Mail Stop 211–D, 401 W. Peachtree St., NW., Atlanta, GA 30308.

Copies of the 2006 Grant Application Package and Guidelines, IRS Publication 3319 (Rev. 5–2005), can be downloaded from the IRS Internet site at *http://www.irs.gov/advocate* or ordered from the IRS Distribution Center by calling 1–800–829–3676. Applicants can also file electronically at *http://www.grants.gov*. For applicants applying through the Federal Grants Web site, the Funding Number is TREAS–GRANTS–052006–001.

FOR FURTHER INFORMATION CONTACT: The LITC Program Office at 404–338–8306 (not a toll-free number) or by e-mail at *LITCProgramOffice@irs.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 7526 of the Internal Revenue Code authorizes the IRS, subject to the availability of appropriated funds, to award organizations matching grants of up to $100,000 for the development, expansion, or continuation of qualified low income taxpayer clinics. Section 7526 authorizes the IRS to provide grants to qualified organizations that represent low income taxpayers in controversies with the IRS or inform individuals for whom English is a second language of their tax rights and responsibilities. The IRS may award grants to qualifying organizations to fund one-year, two-year or three-year project periods. Grant funds may be awarded for start-up expenditures incurred by new clinics during the grant period.

The 2006 Grant Application Package and Guidelines, Publication 3319 (Rev. 5–2005), includes several changes that are being implemented to improve delivery of clinic services, including additional oversight and assistance with the technical components of the LITC Program by the LITC Program Office. Among the changes, the LITC Program Office has developed a new form to be submitted with interim and annual reports to assist clinics in consistently reporting the number of cases worked and taxpayers served throughout the year. In addition, the LITC Program Office has clarified the comprehensive Program standards.

The costs of preparing and submitting an application are the responsibility of each applicant. Each application will be given due consideration and the LITC Program Office will mail notification letters to each applicant.

Selection Consideration

Applications that pass the eligibility screening process will be numerically ranked based on the information contained in their proposed program plan. Please note that the IRS Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) Programs are independently funded and separate from the LITC Program. Organizations currently participating in the VITA or TCE Programs may be eligible to apply for a LITC grant if they meet the criteria and qualifications outlined in the 2006 Grant Application Package and Guidelines, Publication 3319 (Rev. 5–2005). Organizations that seek to operate VITA and LITC Programs, or TCE and LITC Programs, must maintain separate and distinct programs even if co-located to ensure proper cost allocation for LITC grant funds and adherence to the rules and regulations of the VITA, TCE and LITC Programs, as appropriate. In addition to the criteria and qualifications outlined in the 2006 Grant Application Package and Guidelines, to foster parity regarding clinic availability and accessibility for taxpayers nationwide, the IRS will consider the geographic area of applicants as part of the decision-making process. The IRS will also seek to attain a proper balance of academic and non-profit organizations, as well as a proper balance of start-up and existing clinics.

Comments

Interested parties are encouraged to provide comments on the IRS's administration of the grant program on an ongoing basis. Comments may be sent to Internal Revenue Service, Taxpayer Advocate Service, Attn: W.R. Swartz, LITC Program Office, 290 Broadway, 14th Floor, New York, NY 10007.

Nina E. Olson,

National Taxpayer Advocate, Internal Revenue Service.

[FR Doc. 05–10170 Filed 5–19–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, June 16, 2005.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 (toll-free), or 718–488–2085 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Thursday, June 16, 2005, from 2 p.m. to 3 p.m. e.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. For information or to confirm attendance, notification of intent to attend the meeting must be made with Audrey Y. Jenkins. Ms. Jenkins may be reached at 1–888–912–1227 or (718) 488–2085, send written comments to Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201 or post comments to the Web site: *http://www.improveirs.org*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance.

The agenda will include various IRS issues.

Dated: May 17, 2005.

Martha Curry,

Director, Taxpayer Advocacy Panel.

[FR Doc. 05–10171 Filed 5–19–05; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Friday,
May 20, 2005

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 960

Licensing of Private Land Remote-Sensing Space Systems; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 960

[Docket No.: 050204028–5028–01]

RIN: 0648–AT00

Licensing of Private Land Remote-Sensing Space Systems

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Proposed rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) proposes to amend its regulations governing the licensing of private Earth remote sensing space systems under Title II of the Land Remote Sensing Policy Act of 1992, 15 U.S.C. 5621 *et seq.* (the Act). The proposed amendments update the regulations to reflect: The new U.S. Commercial Remote Sensing Policy issued in April 2003, experience gained since August 2000 with respect to the licensing of commercial remote sensing space systems, and improvements that take into account public comments received on the regulations. The proposed amendments will allow NOAA to more effectively license Earth remote sensing space systems and help to ensure their compliance with the requirements of the Act.

DATES: Comments must be received by July 5, 2005.

ADDRESSES: Comments on these proposed changes to the regulations should be sent to Mr. Douglas Brauer, NOAA/NESDIS International and Interagency Affairs Office, 1335 East-West Highway, Room 7311, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Brauer at (301) 713–2024 x213 or Mr. Glenn Tallia at (301) 713–1221.

SUPPLEMENTARY INFORMATION: Title II of the Land Remote Sensing Policy Act of 1992 (the Act), 15 U.S.C. 5621 *et seq.*, authorizes the Secretary of Commerce (the Secretary) to issue licenses for the operation of private Earth remote sensing space systems. The authority to issue licenses and to monitor compliance therewith has been delegated from the Secretary to the Administrator of NOAA (the Administrator) and redelegated to the Assistant Administrator for Satellite and Information Services (the Assistant Administrator).

On July 31, 2000, NOAA published in the **Federal Register** an interim final rule captioned Licensing of Private Land Remote-Sensing Space Systems; Interim Final Rule (*See* 65 FR 46822). These regulations, which were effective on August 30, 2000, set forth the agency's minimum requirements for the licensing, monitoring and compliance of operators of private Earth remote sensing space systems under the Act, 15 CFR Part 960. The regulations were intended to facilitate the development of the U.S. commercial remote sensing industry and promote the collection and widespread availability of Earth remote sensing data, while preserving essential U.S. national security interests, foreign policy and international obligations.

Since the publication of the regulations: Two new commercial remote sensing satellites have been successfully launched and are now operational; NOAA has issued eight new licenses for increasingly advanced remote sensing space systems, bringing the total to 21 licenses issued; and, in April 2003, the President announced a new policy on U.S. commercial remote sensing from space. NOAA is now proposing amendments to update the regulations to reflect: (1) The new U.S. policy on commercial remote sensing from space, (2) experience gained since August 2000 with respect to the licensing of commercial remote sensing space systems, and (3) improvements that take into account public comments received on the interim final rule. The proposed amendments will allow NOAA to more effectively license Earth remote sensing space systems and help to ensure their compliance with the requirements of the Act.

Proposed Amendments

1. Purpose

In section 960.1(a), the reference to the President's March 1994 Policy on Foreign Access to Remote Sensing Space Capabilities has been removed. This policy was rescinded and superseded by the new U.S. Commercial Remote Sensing Policy issued on April 25, 2003. To avoid the need to update the regulations in the future to include citations to specific policies addressing commercial remote sensing, NOAA has included a more general reference to currently applicable U.S. Policy. In addition, the list of intended goals in the section has been modified to reflect the goals of the most current policy.

Section 960.1(b) has been modified to refer to currently applicable U.S. Policy on remote sensing, as opposed to any specific remote sensing policy. The addition of "necessary" corrects an omission in the 2000 regulations.

Section 960.1(c) has been added to emphasize the objective of the new U.S. policy to sustain, enhance and encourage U.S. firms to play a leadership role in the commercial remote sensing satellite industry.

2. Definitions

In section 960.3, the definition for the term the President's Policy has been removed. Instead, a more general definition for the term U.S. Policy has been added which is defined to include policy(ies) that address U.S. commercial remote sensing space capabilities. Also added are definitions for the terms Data Protection Plan and Orbital Debris. Finally, the definition of the term Significant or Substantial foreign agreement has been modified to improve its clarity.

3. Confidentiality of Information

In section 960.5(a), the list of documents considered to be business confidential or proprietary information has been expanded to include foreign agreements and supporting documentation submitted to NOAA that are explicitly designated and marked as business confidential or proprietary by the submitter.

In addition, section 960.5(b) has been modified to remove the requirement that a public summary of the proposed system be submitted at the same time as the license application. This is in recognition of the fact that the elements of the proposed system may differ from the licensed system. Instead, NOAA will require the public summary to be submitted within 30 days of license issuance. This public summary will be used by NOAA to provide information to the public concerning a licensed system. NOAA will no longer require summaries for amendment requests.

4. Review Procedures for License Applications

NOAA has made minor modifications to section 960.6(a) to make the wording consistent throughout that section and thereby improve its clarity. In addition, in sections 960.6(b) and (c), NOAA has increased the period of time reviewing agencies have to conduct completeness reviews for license applications from 10 working days to 30 calendar days. The option to extend the completeness review for an additional 10 working days has been eliminated. In addition, as part of the subsequent interagency review process, a reviewing agency will be required to notify NOAA before the expiration of the 30-day review period if it will be unable to complete its review on time. As is required by the 2000 regulations, an agency must also

give a reason for its delay and an estimate of when its review will be completed. These changes reflect the experience of the interagency review process over the past four years. The extension of the initial completeness review period will allow the reviewing agencies additional time to more thoroughly review license applications and supporting documentation, which should reduce the number of follow-up questions to the applicant. These changes, however, will not impact the overall 120-day statutory review period. In addition, section 960.6(e)(2) has been modified to include the correct citation to section 960.6(b).

The February 2, 2000, interagency Memorandum of Understanding Concerning the Licensing of Private Remote Sensing Satellite Systems (MOU), included as Appendix 2 of the regulations, contains timelines concerning completeness reviews that differ from what is proposed above. NOAA, in consultation with the other signatory agencies to the MOU, has determined not to amend the MOU at this time. In those limited cases where the timelines contained in the regulations and MOU differ, the timelines contained in the regulations will govern.

5. Amendments to Licenses

In Section 960.7(a)(4), the citation to Appendix 1 has been corrected. In addition, consistent with the changes proposed for review of new applications, in sections 960.7(c), (d), and (e), NOAA has increased the period of time reviewing agencies have to conduct completeness reviews on license amendment requests from 10 working days to 30 calendar days. The option to extend the completeness review for an additional 10 working days has been eliminated. In addition, as part of the subsequent interagency review process, a reviewing agency will be required to notify NOAA before the expiration of the 30-day review period if it will be unable to complete its review on time. As is required by the 2000 regulations, an agency must also give a reason for its delay and an estimate of when its review will be completed. These changes reflect the experience of the interagency review process over the past four years. The extension of the initial completeness review period will allow the reviewing agencies additional time to more thoroughly review proposed license amendments and supporting documentation, which should reduce the number of follow-up questions to the applicant. These changes, however, will not impact the overall 120-day statutory review period. Finally, NOAA has added a new section 960.7(g) that sets forth the conditions under which the amendment request review process may be terminated.

6. Notification of Foreign Agreements

NOAA has made a minor editorial change to section 960.8(b) to remove redundant wording. This change should improve the clarity of section 960.8(b). NOAA has added a new section 960.8(e) to ensure that licensees provide to NOAA final documentation of their foreign agreements in a timely manner.

7. License Term

NOAA has added a new section 960.9(c) to reduce the administrative burden to the U.S. Government for licensed systems, which will not, in fact, be developed. This will allow NOAA to devote its time and resources to licensees whose systems are under actual development, or in ongoing operations. This section has two phases. In the first phase, the licensee has five years to conduct preliminary and critical design reviews for its proposed satellite system. Following the critical design review, the licensee will have an additional five years to execute a binding contract for launch services and complete the pre-ship review of the satellite. If these milestones are not met, the Assistant Administrator may terminate the license if he/she determines that sufficient progress is not being made toward the development and launch of the satellite. Companies that are currently licensed will have five years from the date of issuance of these regulations to conduct the preliminary and critical design reviews.

NOAA appreciates the complexity of raising the capital necessary to develop and launch a remote sensing satellite and will work with the individual licensee in charting the progress of development. The proposed milestone approach is consistent with that of other government agencies, most notably to the Federal Communications Commission for communications satellite systems. NOAA is interested in receiving comments on whether the time frames for the milestone approach proposed herein are suitable, and on alternative approaches to ensure that the licenses it issues will be acted upon.

8. Conditions for Operation

In sections 960.11(b)(8) and (9), NOAA has clarified the relationship of the Department of Interior to the National Land Remote Sensing Archive and the means by which licensees will offer data to the Archive. NOAA has also corrected language regarding the cost of fulfilling user requests to match the language in the Act.

NOAA has added a new section 960.11(b)(13). In this section, NOAA has added a new operational condition requiring the licensee to submit to NOAA a Data Protection Plan that provides information on how the licensee will protect data and information from tasking to dissemination. As NOAA licenses more advanced systems, greater emphasis has been placed on protection of the data.

NOAA has added a new section 960.11(c), to allow licensees to seek waivers of particular license conditions. NOAA does not anticipate granting blanket waivers of conditions; instead it will grant waivers on a case-by-case basis, for good cause shown, and following consultations with other agencies.

9. Data Policy for Remote Sensing Space Systems

Sections 960.12(b) and (c)(5) have been modified to correct minor oversights from the 2000 regulations.

10. Prohibitions

In sections 960.13(f) and (g), NOAA has added the phrase "in a timely manner." This addition clarifies the importance of the licensee providing NOAA information while it is still relevant.

11. Enforcement Procedures

NOAA has added new sections 960.15(b) through (g) which set forth detailed procedures to be followed by NOAA when assessing civil penalties under the Act. The 2000 regulations, in section 960.15(a), included a general statement that all civil penalty procedures shall be in accordance with 15 CFR Part 904. Part 904 sets forth procedures to be followed by NOAA when assessing civil penalties under other statutes such as the Magnuson-Stevens Fishery Conservation Act and the Marine Mammal Protection Act. Upon additional review, it was determined that not all of the provisions of Part 904 would have application in the case of NOAA assessing a civil penalty against a NOAA licensee for violations the Act, regulations or a license. Accordingly, it was decided that procedures specific to the assessment of civil penalties against a licensee for such violations should be included.

12. Filing Instructions and Information

Because NOAA will no longer require the public summary at the time a license application is filed, Appendix 1(c) has been modified to remove a public

summary from the list of information that must be submitted with a license application.

In addition, because numerous companies hold licenses for several systems, NOAA has modified Appendix 1(d) Sec. III to add the requirement to name each system. This will allow NOAA to better identify such systems. Finally, the requirement to submit technical information has been changed to require the submission of more specific and detailed technical information.

Classification

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

This proposed rule establishes a more effective process to promote the development of the remote sensing industry and to minimize any adverse impact on any entity, large or small, that may seek a license to operate a private remote sensing space system.

Accordingly, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Given the extraordinary capitalization required to operate a commercial remote sensing space system, costs of development and launch are quite high. Depending on the complexity of a proposed commercial remote sensing space system, it can cost approximately $250 to $500 million to build, launch and operate such a system. As such, small entities have yet to enter this field and appear highly unlikely to do so.

B. Paperwork Reduction Act of 1995 (35 U.S.C. 3500 et seq.)

This proposed rule contains a new collection-of-information requirement subject to the Paperwork Reduction Act (PRA) that will modify the existing collection-of-information requirement that was approved by OMB under control number 0648–0174. This new requirement has been submitted to OMB for approval. Public reporting burden for these requirements are estimated to average: 40 hours for the submission of a license application; 10 hours for the submission of a data protection plan; 5 hours for the submission of a plan describing how the licensee will comply with data collection restrictions; 3 hours for the submission of an operations plan for restricting collection or dissemination of imagery of Israeli territory; 3 hours for submission of a data flow diagram; 2 hours for the submission of satellite sub-systems drawings; 3 hours for the submission of a final imaging system specifications document; 2 hours for the submission of a public summary for a licensed system; 2 hours for the submission of a preliminary design review; 2 hours for the submission of a critical design review; 1 hour for notification of a binding launch services contract; 1 hour for notification of completion of pre-ship review; 10 hours for the submission of a license amendment; 2 hours for the submission of a foreign agreement notification; 2 hours for the submission of spacecraft operational information submitted when a spacecraft becomes operational; 2 hours for notification of deviation in orbit or spacecraft disposition; 2 hours for notification of any operational deviation; 2 hours for notification of planned purges of information to the National Satellite Land Remote Sensing Data Archive; 3 hours for the submission of an operational quarterly report; 8 hours for an annual compliance audit; 10 hours for an annual operational audit; and 2 hours for notification of the demise of a system or a decision to discontinue system operations. No estimate is being given to provide imagery data to the Archive. An estimate will be developed at a later date.

The public burden for this collection of information includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspect of the collection of information to Mr. Douglas Brauer, NOAA/NESDIS International and Interagency Affairs Office, at the address noted above and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

C. National Environmental Policy Act (42 U.S.C. 4321 et seq.)

Publication of these regulations does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

D. Executive Order 12866, Regulatory Planning and Review

This rule has been determined to be significant for purposes of Executive Order 12866.

List of Subjects in 15 CFR Part 960

Administrative practice and procedure, Confidential business information, Penalties, Reporting and recordkeeping requirements, Satellites, Scientific equipment.

Dated: May 13, 2005.

Gregory W. Withee,

Assistant Administrator for Satellite and Information Services.

Accordingly, for the reasons set forth above, Part 960 of title 15 of the Code of Federal Regulations is proposed to be amended as follows:

PART 960—LICENSING OF PRIVATE REMOTE SENSING SYSTEMS

1. The authority citation for part 960 continues to read as follows:

Authority: 15 U.S.C. 5624.

2. Section 960.1 is revised to read as follows:

§ 960.1 Purpose.

(a) The regulations in this part set forth the procedural and informational requirements for obtaining a license to operate a private remote sensing space system under Title II of the Land Remote Sensing Policy Act of 1992 (15 U.S.C. 5621 *et seq.*) (Pub. L. 102–555, 106 Stat. 4163) and applicable U.S. Policy, which addresses the U.S. commercial remote sensing satellite industry. (Available from NOAA, National Environmental Satellite Data and Information Service, 1335 East-West Highway, Room 7311, Silver Spring, MD 20910). In addition, this part describes NOAA's regulation of such systems, pursuant to the Act and applicable U.S. Policy. The regulations in this part are intended to:

(1) Preserve the national security of the United States;

(2) Observe the foreign policies and international obligations of the United States;

(3) Advance and protect U.S. national security and foreign policy interests by

maintaining U.S. leadership in remote sensing space activities, and by sustaining and enhancing the U.S. remote sensing industry;

(4) Promote the broad use of remote sensing data, their information products and applications;

(5) Ensure that unenhanced data collected by licensed private remote sensing space systems concerning the territory of any country are made available to the government of that country upon its request, as soon as such data are available and on reasonable commercial terms and conditions as appropriate;

(6) Ensure that remotely sensed data are widely available for civil and scientific research, particularly environmental and global change research; and

(7) Maintain a permanent comprehensive U.S. government archive of global land remote sensing data for long-term monitoring and study of the changing global environment.

(b) In accordance with the Act and applicable U.S. Policy, decisions regarding the issuance of licenses and operational conditions (*See* Subpart B of this part) will be made by the Secretary of Commerce or his/her designee. Determinations of conditions necessary to meet national security, foreign policy and international obligations are made by the Secretaries of Defense and State, respectively.

(c) In accordance with U.S. Policy, NOAA encourages U.S. companies to build and operate commercial remote sensing space systems whose operational capabilities, products, and services are superior to any current or planned foreign commercial systems. However, because of the potential value of its products to an adversary, the U.S. Government may restrict operations of the commercial systems in order to limit collection and/or dissemination of certain data and products to the U.S. Government or to U.S. Government-approved recipients.

3. Section 960.3 is amended by revising the definition for the term Significant or Substantial foreign agreement, by adding, in alphabetical order, definitions for the terms Data Protection Plan, U.S. Policy, and by removing the definition for the term President's Policy.

§ 960.3 Definitions.

* * * * *

Data Protection Plan refers to the licensee's plan to protect data and information through the entire cycle of tasking, operations, processing, archiving and dissemination. At a minimum, this includes protection of communications links and/or delivery methods for tasking of the satellite, downlinking of data to a ground station (including relay stations), and delivery of data from the satellite to the Licensee's central data storage facilities.

Significant or Substantial foreign agreement (also referred to in this part as foreign agreement or agreement) means an agreement with a foreign nation, entity, consortium, or person that provides for one of the following:

(1) Administrative control, which may include distributorship arrangements involving the routine receipt of high volumes of the system's unenhanced data;

(2) Participation in the operations of the system, including direct access to the systems's unenhanced data; or

(3) An equity interest in the licensee held by a foreign nation and/or person, if such interest equals or exceeds or will equal or exceed ten (10) percent of total outstanding shares, or entitles the foreign person to a position on the licensee's Board of Directors.

* * * * *

U.S. Policy means the policy(ies) announced by the President that specifically address U.S. commercial remote sensing space capabilities.

4. Section 960.5 is revised to read as follows:

§ 960.5 Confidentiality of information.

(a) Any proprietary information related to a license application, application for amendment, foreign agreement, or any other supporting documentation submitted to NOAA will be treated as business confidential or proprietary information, if that information is explicitly designated and marked as such by the submitter. This does not preclude the United States Government from citing information in the public domain provided by the licensee in another venue (*e.g.*, a licensee's website or press release).

(b) Within thirty (30) days of the issuance of a license to operate a remote sensing space system, the Licensee shall provide the Assistant Administrator a publicly-releasable summary of the licensed system. The summary must be submitted in a readily reproducible form accompanied by a copy on electronic media. This summary shall be available for public review at a location designated by the Assistant Administrator and shall include:

(1) The name, mailing address and telephone number of the licensee and any affiliates or subsidiaries;

(2) A general description of the system, its orbit(s) and the type of data to be acquired; and

(3) The name and address upon whom service of all documents may be made.

5. Section 960.6 is amended by revising paragraphs (a), (b), (c) and (e) to read as follows:

§ 960.6 Review procedures for license applications.

(a) The Assistant Administrator shall within three (3) working days of receipt of an application, forward a copy of the application to the Department of Defense, the Department of State, the Department of the Interior, and any other Federal agencies determined to have a substantial interest in the license application. The Assistant Administrator shall advise such agencies of the deadline prescribed by paragraph (b) of this section to require additional information from the applicant. The Assistant Administrator shall make a determination on the application, in accordance with the Act and section 960.1(b), within 120 days of its receipt. If a determination has not been made within 120 days, the Assistant Administrator shall inform the applicant of any pending issues and any action required to resolve them.

(b) The reviewing agencies have thirty (30) days from receipt of application to notify the Assistant Administrator in writing whether the application omits any of the information listed in Appendix 1 of this part or whether additional information may be necessary to complete the application. This notification shall state the specific reasons why the additional information is being sought. The Assistant Administrator shall then notify the applicant, in writing, what information is required to complete the license application. The 120-day review period prescribed in Section 201(c) of the Act will be stopped until the Assistant Administrator determines that the license application is complete.

(c) Within thirty (30) days of receipt of a complete application, as determined by the Assistant Administrator, each Federal agency consulted in paragraph (a) of this section shall recommend, in writing, to the Assistant Administrator approval or disapproval of the application. If a reviewing agency is unable to complete its review in thirty (30) days, it is required to notify NOAA prior to the expiration of the interagency review period, in writing, of the reason for its delay and provide an estimate of the additional time necessary to complete the review.

* * * * *

(e) The Assistant Administrator may terminate the license application review process if:

(1) The application is withdrawn before the decision approving or denying it is issued; or

(2) The applicant, after receiving a request for additional information pursuant to paragraph (b) of this section, does not provide such information within the time stated in the request.

* * * * *

6. Section 960.7 is amended by revising paragraphs (a)(4), (c), (d), and (e), and by redesignating existing paragraph (g) as paragraph (h) and adding a new paragraph (g) to read as follows:

§ 960.7 Amendments to licenses.

(a) * * *

(4) deviation from orbital characteristics, performance specifications, data collection and exploitation capabilities, operational characteristics identified under Appendix 1 of this part, or any other change in license parameters.

* * * * *

(c) The Assistant Administrator, shall within three (3) working days of receipt of a request for amendment, forward a copy of the request to the Department of Defense, the Department of State, the Department of the Interior, and any other Federal agencies determined to have a substantial interest in the amendment request. The Assistant Administrator shall advise such agencies of the deadline prescribed by paragraph (d) of this section to require additional information from the licensee. The Assistant Administrator shall make a determination on the amendment request, in accordance with the Act and section 960.1(b), within 120 days of its receipt. If a determination has not been made within 120 days, the Assistant Administrator shall inform the licensee of any pending issues and any actions necessary to resolve them.

(d) The reviewing agencies have thirty (30) days from receipt of the amendment request to notify the Assistant Administrator in writing whether the request omits any of the information listed in Appendix 1 of this part or whether additional information may be necessary to complete the request. This notification shall state the specific reasons why the additional information is being sought. The Assistant Administrator shall then notify the licensee, in writing, what information is required to complete the amendment request. The 120-day review period prescribed in Section 201(c) of the Act will be stopped until the Assistant Administrator determines that the amendment request is complete.

(e) Within thirty (30) days of receipt of a complete amendment application, as determined by the Assistant Administrator, each Federal agency consulted in paragraph (c) of this section shall recommend, in writing, to the Assistant Administrator approval or disapproval of the amendment application. If a reviewing agency is unable to complete its review in thirty (30) days, it is required to notify NOAA prior to the expiration of the interagency review period, in writing, of the reason for its delay and provide an estimate of the additional time necessary to complete the review.

* * * * *

(g) The Assistant Administrator may terminate the amendment request review process if:

(1) The amendment request is withdrawn before the decision approving or denying it is issued; or

(2) The applicant, after receiving a request for additional information pursuant to paragraph (d) of this section, does not provide such information within the time stated in the request.

* * * * *

7. Section 960.8 is amended by revising paragraph (b), and redesignating existing paragraphs (e) and (f) as paragraphs (f) and (g) and adding new paragraph (e) to read as follows:

§ 960.8 Notification of foreign agreements.

* * * * *

(b) The Assistant Administrator, in consultation with other appropriate agencies, will review the proposed foreign agreement. As part of this review, the Assistant Administrator will ensure that the proposed foreign agreement contains the appropriate provisions to ensure compliance with all requirements concerning national security interests, foreign policy and international obligations under the Act or the licensee's ability to comply with the Act, these regulations and the terms of the license. These requirements include:

(1) The ability to implement, as appropriate, restrictions on the foreign party's acquisition and dissemination of imagery as imposed by the license or by the Secretary of Commerce;

(2) The obligations of the licensee to provide access to data for the National Satellite Land Remote Sensing Data Archive (the Archive); and

(3) The obligations of the licensee to convey to the foreign party the reporting and recordkeeping requirements of the license and to facilitate any monitoring and compliance activities identified in the license.

* * * * *

(e) The licensee is required to provide NOAA a signed copy of the foreign agreement within 30 days of its signature.

* * * * *

8. Section 960.9 is amended by adding a new paragraph (c) to read as follows:

§ 960.9 License term.

* * * * *

(c) The licensee shall notify the Assistant Administrator that specific actions leading to the development and operation of the licensed remote sensing space system have been completed. If the Assistant Administrator determines that a licensee has not completed such actions with respect to a licensed system he/she may terminate the license. The actions required to be taken and associated timelines are as follows:

(1) Presentation to NOAA of the following formal review materials within five (5) years of the license issuance:

(i) Preliminary Design Review, and

(ii) Critical Design Review.

(2) Licensee certification to NOAA of the following milestones within five (5) years of the Critical Design Review:

(i) Execution of a binding contract for launch services, and

(ii) Completion of the pre-ship review of the remote sensing payload.

(3) Remote sensing space systems currently licensed by NOAA will have five (5) years from the date of issuance of these regulations to meet the milestones in § 960.9(c)(1).

9. Section 960.11 is amended by revising paragraphs (b)(8) and (b)(9) and adding new paragraphs (b)(13) and (c) to read as follows:

§ 960.11 Conditions for operation.

* * * * *

(b) * * *

(8) A licensee shall make available unenhanced data requested by the Department of the Interior on reasonable cost terms and conditions as agreed by the licensee and the Department of the Interior. After the expiration of any exclusive right to sell, or after an agreed amount of time, the Department of the Interior shall make these data available to the public at the cost of fulfilling user requests.

(9) Before purging any licensed data in it possession, the licensee shall offer such data to the Archive at the cost of reproduction and transmission. The Department of the Interior shall make these data available immediately to the public at the cost of fulfilling user requests.

* * * * *

(13) The licensee shall submit a Data Protection Plan to the Assistant Administrator for review and approval. The licensee's Data Protection Plan shall contain the process to protect data and information throughout the entire cycle of tasking, operations, processing, archiving and dissemination. If the operating license restricts the distribution of certain data and imagery to the United States Government or United States Government-approved customers, including data whose public distribution is limited for 24 hours after collection, the Data Protection Plan should also provide for secure delivery of restricted data and imagery to Government-approved customer facilities. Communications links that may require protection include, but are not limited to: Telemetry, tracking and commanding; narrowband and wideband data, including satellite platform and sensor data, imagery, and metadata; and terrestrial delivery methods including electronic and physical package delivery. The licensee's Data Protection Plan must be approved by NOAA before the licensee's remote sensing space system may be launched. NOAA encourages the licensee's early submission and review of the Data Protection Plan to avoid any negative impacts on its system's development and launch schedule.

(c) The Assistant Administrator may waive any of the conditions in § 960.11(b) upon a showing of good cause and following consultations with the appropriate agencies.

§ 10. Section 960.12 is amended by revising paragraphs (b) and (c)(5) to read as follows:

§ 960.12 Data policy for remote sensing space systems.

* * * * *

(b) If the U.S. Government has not funded and will not fund, either directly or indirectly, any of the development, fabrication, launch, or operations costs of a licensed system, the licensee may provide access to its unenhanced data in accordance with reasonable commercial terms and conditions subject to the requirement of providing data to the government of any sensed state, pursuant to §960.11(b)(10).

(c) * * *

(5) The extent to which the U.S. interest in promoting widespread data availability can be satisfied through license conditions that ensure access to the data for non-commercial scientific, educational, or other public benefit purposes.

11. Section 960.13 is amended by revising paragraphs (f) and (g) to read as follows:

§ 960.13 Prohibitions.

* * * * *

(f) Fail or refuse to provide to the Secretary or his/her designee in a timely manner, all reports and/or information required to be submitted to the Secretary under the Act or the regulations in this part;

(g) Fail to update in a timely manner, the information required to be submitted to the Secretary in the license application.

* * * * *

12. Section 960.15 is amended by revising paragraph (a), redesignating existing paragraph (b) as paragraph (h), and by adding a new paragraphs (b) through (g) to read as follows:

§ 960.15 Penalties and sanctions.

* * * * *

(a) In addition, any person who violates any provision of the Act, any license issued thereunder, or the regulations in this part may be assessed a civil penalty by the Secretary of not more than $10,000 for each violation. Each day of operation in violation constitutes a separate violation. Civil penalties will be assessed in accordance with the procedures contained in paragraphs (b) through (g) of this section.

(b) A notice of violation and assessment (NOVA) will be issued by NOAA and served personally or by registered or certified mail, return receipt requested, upon the licensee alleged to be subject to a civil penalty.

(1) The NOVA will contain:

(i) a concise statement of the facts believed to show a violation;

(ii) a specific reference to the provisions of the Act, regulation, license, agreement, or order allegedly violated;

(iii) the findings and conclusions upon which NOAA based the assessment;

(iv) the amount of the civil penalty assessed; and

(v) an explanation of the licensee's rights upon receipt of the NOVA.

(2) In assessing a civil penalty, NOAA will take into account information available to the Agency concerning any factor to be considered under the Act and implementing regulations, and any other information that justice or the purposes of the Act require.

(3) The NOVA may also contain a proposal for compromise or settlement of the case.

(4) The NOVA may also contain a request for the licensee to cease and desist operations which are in violation of the Act, regulations, license, agreement, or order. If the NOVA contains such a request it will advise the licensee:

(i) Of the amount of time the licensee has to cease and desist the violation. The amount of time will be decided on a case-by-case basis at the sole discretion of the Agency.

(ii) If the licensee fails to respond or comply with NOAA's request, an injunction or other judicial relief may be sought.

(iii) Paragraph (c) of this section applies only to those parts of the NOVA assessing monetary penalties.

(c) The licensee has 14 days from receipt of the NOVA to respond. During this time:

(1) The licensee may accept the penalty or compromise penalty, if any, by taking the actions specified in the NOVA.

(2) The licensee may request a hearing under section 960.10.

(3) The licensee may request an extension of time to respond. NOAA may grant an extension of up to 14 days unless it is determined that the requester could, exercising reasonable diligence, respond within the 14-day period. A telephonic response to the request is considered an effective response, and will be followed by written confirmation.

(4) The licensee may take no action, in which case the NOVA becomes final in accordance with paragraph (d) of this section.

(d) If no request for hearing is timely filed as provided in §960.10, the NOVA becomes effective as the final administrative decision and order of NOAA on the 30th day after service of the NOVA or on the last day of any delay period granted. If a request for hearing is timely filed in accordance with §960.10, the date of the final administrative decision is as provided in that section.

(e) The licensee must make full payment of the civil penalty assessed within 30 days of the date upon which the assessment becomes effective as the final administrative decision and order of NOAA under paragraph (d) of this section or §960.10.

(1) Payment must be made by mailing or delivering to NOAA at the address specified in the NOVA a check or money order made payable in United States currency in the amount of the assessment to the "Treasurer of the United States," or as otherwise directed.

(2) Upon any failure to pay the civil penalty assessed, NOAA may request the Justice Department to recover the amount assessed in any appropriate district court of the United States, or may act under paragraph (f) of this section.

(f) NOAA, in its sole discretion, may compromise, modify, remit, or mitigate, with or without conditions, any civil penalty imposed.

(1) The compromise authority of NOAA under this section is in addition to any similar authority provided in any applicable statute or regulation, and may be exercised either upon the initiative of NOAA or in response to a request by the alleged violator or other interested person. Any such request should be sent to NOAA at the address specified in the NOVA.

(2) Neither the existence of the compromise authority of NOAA under this section nor NOAA's exercise thereof at any time changes the date upon which an assessment is final or payable.

(g) Factors to be taken into consideration when assessing a penalty may include the nature, circumstances, extent, and gravity of the alleged violation; the licensee's degree of culpability; any history of prior offenses; and such other matters as justice may require.

* * * * *

13. Appendix 1 to part 960 is amended by revising paragraphs (c) and Sec. III of paragraph (d) to read as follows:

Appendix 1 to Part 960—Filing Instructions and Information To Be Included in the Licensing Application.

* * * * *

(c) Number of copies. One (1) copy of each application must be submitted in a readily reproducible form accompanied by a copy on electronic media.

(d) * * *

Sec. III—Space Segment

(1) The name of the system and the number of satellites which will compose this system;

(2) Technical space system information at the level of detail typical of a Request for Proposal specification (including sensor type; spatial and spectral resolution; pointing parameters, etc.);

(3) Anticipated best theoretical resolution (show calculation);

(4) Swath width of each sensor (typically at nadir);

(5) The various fields of view for each sensor (IFOV, in-track, cross-track);

(6) On-board storage capacity;

(7) Navigation capabilities—GPS, star tracker accuracies;

(8) Time-delayed integration with focal plane;

(9) Oversampling capability;

(10) Image motion parameters—linear motion, drift, aggregation modes;

(11) Anticipated system lifetime.

* * * * *

[FR Doc. 05–9983 Filed 5–19–05; 8:45 am]

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Federal Register

Friday,
May 20, 2005

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 927

Winter Pears Grown in Oregon and Washington; Order Amending Marketing Order No. 927; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. AO–F&V–927–A1; FV04–927–1 FR]

Winter Pears Grown in Oregon and Washington; Order Amending Marketing Order No. 927

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the marketing order (order) for winter pears grown in Oregon and Washington. The amendments are based on recommendations jointly proposed by the Winter Pear Control Committee and the Northwest Fresh Bartlett Marketing Committee, which are responsible for local administration of orders 927 and 931, respectively. Marketing Agreement and Order No. 931 regulates the handling of fresh Bartlett pears grown in Oregon and Washington. The amendments would combine the winter pear and fresh Bartlett orders into a single program under marketing order 927, and would add authority to assess pears for processing. All of the proposals were favored by pear growers in a mail referendum, held March 22 through April 8, 2005. These amendments are intended to streamline industry organization and improve the administration, operation, and functioning of the program.

DATES: This rule is effective May 21, 2005.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Post Office Box 1035, Moab, UT 84532, telephone: (435) 259–7988, fax: (435) 259–4945; or Susan Hiller, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Northwest Marketing Field Office, 1220 SW. Third Avenue, room 385, Portland, OR 97204; telephone (503) 326–2724 or Fax (503) 326–7440.

Small businesses may request information on this proceeding 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.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on March 24, 2004, and published in the March 30, 2004, issue of the **Federal Register** (69 FR 16501), and a Recommended Decision issued on January 5, 2005, and published in the January 13, 2005, issue of the **Federal Register** (70 FR 2520). Secretary's Decision and Referendum Order issued February 28, 2005, and published in the **Federal Register** on March 8, 2005 (70 FR 11155).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

This final rule was formulated on the record of a public hearing held on April 13 and 14, 2004, in Yakima, Washington and on April 16, 2004, in Portland, Oregon. Notice of this hearing was issued March 24, 2004 and published in the **Federal Register** on March 30, 2004 (69 FR 16501). The hearing was held to consider the proposed amendment of Marketing Agreement and Order No. 927, regulating the handling of winter pears grown in the States of Oregon and Washington, hereinafter referred to as the "order."

The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900y).

The notice of hearing contained order changes proposed by both the Winter Pear Control Committee and the Northwest Fresh Bartlett Marketing Committee, which are responsible for local administration of orders 927 and 931, respectively. Marketing order 927 regulates the handling of winter pears grown in Oregon and Washington. Marketing order 931 regulates the handling of Bartlett pears in the same production area.

The amendments included in this decision will:

1. Expand the definition of "pears" to include all varieties of pears classified as summer/fall pears in addition to winter pears; add Concorde, Packham, and Taylor's Gold pears to the current list of winter pear varieties; and add a third category of pears which would include varieties not classified as summer/fall or winter pears. This amendment extends program coverage to all pears grown in Oregon and Washington.

2. Revise the definition of "size" to include language currently used within the industry.

3. Extend the order's coverage to pears for processing by revising the definition of "handle," and adding definitions of "processor" and "process."

4. Establish districts for pears for processing. This amendment divides the order's production area into two districts for pears for processing: one being the State of Oregon and the other being the State of Washington.

5. Dissolve the current Winter Pear Control Committee and establish two new administrative committees: the Fresh Pear Committee and the Processed Pear Committee (Committees). This proposal adds a public member and public alternate member seat to both of the newly established Committees and removes Section 927.36, Public advisors. The Committees will coordinate administration of Marketing Order 927, with each Committee recommending assessments and administering program functions specific to their commodity. Coordinated administration will allow each Committee to make decisions on behalf of the commodity they represent, yet combine administrative functions, when applicable, to maximize efficiencies and minimize program costs.

Additionally, related changes are being made to order provisions governing nomination and selection of members and their alternates, terms of office, eligibility for membership, and quorum and voting requirements, to reflect the proposed dual committee structure.

6. Authorize changes in the number of Committee members and alternates, and allowing reapportionment of committee membership among districts and groups (*i.e.*, growers, handlers, and processors). Such changes will require a Committee recommendation and approval by the Department.

7. Add authority to establish assessment rates for each category of pears, including: summer/fall pears, winter pears, and all other pears. In addition, rates of assessment could be different for fresh pears and pears for processing in each category, and could include supplemental rates on individual varieties.

8. Add authority for container marking requirements for fresh pears.

9. Remove the order provision allowing grower exemptions from regulation. This is a tool no longer used by the industry and, thus, is considered obsolete.

10. Amend § 927.70, Reports, to update order language regarding confidentiality requirements to conform to language under the Act.

11. Clarify inspection requirements and adding authority to eliminate those requirements if an alternative, adequate method of ensuring compliance with quality and size standards in effect under the order can be developed.

12. Eliminate the current exemptions for pears for processing and for pears shipped to storage warehouses.

13. Provide that separate continuance referenda be held every 6 years for fresh pears and processing pears.

14. Add the authority for the Committees to conduct post-harvest research, in addition to production research and promotion (including paid advertising).

15. Update several order provisions to make them more current.

16. Revise order provisions to reflect the two-committee structure being recommended for administration of the program.

AMS also proposed to allow such changes as may be necessary to the order, if any of the proposed changes are adopted, so that all of the order's provisions conform to the effectuated amendments. None are deemed necessary.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on January 5, 2005, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by February 14, 2005.

A Secretary's Decision and Referendum Order was issued on February 28, 2005, directing that a referendum be conducted during the period March 22 through April 8, 2005, among pear growers to determine whether they favored the proposed amendments to the order. Ballots representing 387 pear producers, or about 20 percent of the producers eligible to vote, were cast.

Ballots cast in the referendum were tallied in two ways: (1) To determine the level of support for the amendments from all pear producers (both fresh and pears for processing) within the production area as a whole, and (2) to determine the level of support for the amendments among producers of pears for processing within the States of Oregon and Washington, each independently.

To become effective, the amendments had to be approved by at least two-thirds of all producers voting or by voters representing at least two-thirds of the volume of pears represented by all voters voting in the referendum.

Additionally, according to the AMAA, for the purpose of ascertaining producer support for the issuance of an order applicable to pears for processing, a referendum must be conducted among producers of such pears, and results must be tallied by State (as opposed to the entire production area). In order for such proposal to pass, a minimum of 66⅔ percent of either the number of voters voting by State or the volume of production for that State represented in the referendum, must be favorable.

The voters voting in the referendum, both by production area and by processed pear producers by State, favored all of the amendments proposed by the Committees. These amendments will authorize all pears produced in the States of Oregon and Washington, whether for the fresh or processed market, to be regulated under Federal marketing order 927.

Support for the amendments from both fresh and processed pear producers within the production area combined represented 98 percent of the eligible voters voting and 99 percent of the production represented in the referendum.

Oregon producers of pears for processing voting in favor of the amendments represented 100 percent of the voters and volume of Oregon pears for processing represented in the referendum. Washington producers of pears for processing voting in favor of the amendments represented 98 percent of the voters and 95 percent of the volume of Washington pears for processing represented in the referendum.

The amended marketing agreement was subsequently mailed to all pear handlers in the production area for their approval. The marketing agreement was not approved by handlers representing at least 50 percent of the volume of pears handled by all handlers during the representative period of July 1, 2003, through June 30, 2004.

Small Business Consideration

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action 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 so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $6,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments to the order on small businesses. The record evidence is that most of the proposed amendments are designed to enhance industry efficiencies and reduce costs, thereby improving grower returns.

The record indicates that there are approximately 1,850 pear growers in Oregon and Washington. Of that total, 1,345 growers report Bartlett or other summer/fall pear production, and 1,753 growers report winter pear production. Two-year average NASS figures (the 2002 crop year and preliminary figures for 2003) provides the following production profile for Washington and Oregon, respectively: bearing acres, 24,800 and 17,600; yield per acre, 16.8 tons and 11.8 tons; annual production, 417,500 tons and 207,500 tons. Total acres planted in pears for Washington and Oregon (including non-bearing acres) in 2002 were 26,586 and 22,822, respectively.

Summing average Washington and Oregon pear acreage for 2002 and 2003, and dividing by the number of growers (1,850), the estimated average acreage per grower in the two-state area is 26.7 total acres and 22.9 bearing acres. According to the 1997 Agricultural Census, the average Oregon and Washington pear grower had approximately 23 and 15 total acres, respectively. The sum of average Washington and Oregon pear production for 2002 and 2003, divided by the number of growers, yields an estimated average production per grower in the two-state area of 338 tons (676,000 pounds).

The average fresh market grower return for the two States has been between 20 and 22 cents per pound in recent years, and between 10 and 12 cents per pound for processing. Estimated 2-year average pear sales revenue per grower in the production area is approximately $101,000, which is between 1/7 and 1/8 of the revenue that would qualify a grower to be a large grower according to the SBA definition (if based on pear sales alone). According to the hearing record, roughly 75 percent of the fresh pear producers in the States of Oregon and Washington

qualify as small producers. One witness stated that a 1,000-acre farm represents the threshold between a small and a large producer (a substantially different definition from what the SBA uses).

There are 55 handlers that handle fresh pears produced in Oregon and Washington; 73 percent of these fall into the SBA definition of "small business." There are five processing plants in the production area, with one in Oregon and four in Washington. All five processors are larger than the SBA's definition of small business. According to information presented by processors testifying at the hearing, roughly 90 percent of pears received for processing come from small grower entities.

The proposals put forth at the hearing will streamline industry organization, but will not result in a significant change in industry production, harvest or distribution activities. In discussing the impacts of the proposed amendments on small growers and handlers, witnesses indicated that the changes are expected to result in lower costs.

When implemented, the amendments will result in the consolidation of marketing orders 927 and 931, regulating fresh winter pears and summer/fall pears, respectively. Program coverage will also be extended to pears for processing. The combined programs will be administered by two new administrative committees, one for fresh pears and one for pears for processing. Cost savings are expected to occur as a result of more efficient coordination of administrative activities between the two proposed committees.

Record evidence indicates the proposal to revise the order's inspection provisions may result in cost savings for handlers. Handlers within the production area typically have about 75 percent of their product inspected on a voluntary basis. The remaining 25 percent represents the amount of additional product that would be required to be inspected if regulations were in effect.

Handler witnesses also reported that inspection costs average 12½ cents per hundredweight, with a $9 minimum fee. In addition to paying the inspection fee, handlers may also experience delays in shipments while waiting for inspection to be completed. Handlers indicated that such delays could be longer for smaller shippers that do not have inspectors regularly stationed at their warehouses. This amendment seeks to reduce these costs by allowing alternatives to mandatory inspection.

Traditionally, the pear industry has used end-line inspection procedures. Under this scenario, samples of packed pears are examined at the end of the production process, and the results are certified by Federally licensed inspectors. The record shows that in recent years, the Federal-State Inspection Service has developed effective, less costly alternatives to the end-line inspection program. One alternative is the "Partners in Quality" program, a documented quality assurance system. Under this program, individual packing houses must demonstrate and document their ability to pack product that meets all relevant quality requirements. Effectiveness of the program is verified through periodic, unannounced audits of each packer's system by USDA-approved auditors.

Another program recently developed is the Customer Assisted Inspection Program (CAIP). Under CAIP, USDA inspectors oversee the in-line sampling and inspection process performed by trained company staff. USDA oversight ranges from periodic visits throughout the day to a continuous on-site presence. Witnesses at the hearing testified that the fresh pear industry should be able to utilize any method of inspection acceptable to the Federal-State Inspection Service. These alternative methods have been developed by USDA as a means of reducing costs to industry. When implemented, individual pear handlers will be able to choose the method of inspection best suited to their operations, thereby possibly reducing costs associated with inspection.

Additionally, the authority to eliminate inspection requirements is expected to have handler cost implications. However, any increase or decrease in costs cannot be determined until specific alternative methods are developed to assure compliance with any quality and size standards in effect.

The proposal to authorize container marking requirements is not expected to result in significant cost increases for fresh pear handlers. Testimony indicated that packing facilities are already configured for labeling and container marking. Witnesses noted that there would be little, if any, need for equipment changes or additions. Thus, the proposed change is not expected to have any adverse financial impact related to handling fresh pears. It should be noted that this amendment will only provide the committees with authority to recommend container markings. Implementation of this authority would require informal rulemaking in the future. The amendment itself will therefore not impose any new regulatory requirements on Oregon or Washington fresh pear handlers.

Witnesses explained that the winter, summer/fall, fresh and processed pear industries are closely inter-related. Growing, harvesting, packing, processing and marketing activities of these industries all impact each other. Thus, bringing all industry segments together under a single marketing program will be beneficial for the Oregon and Washington pear industry. Proponent witnesses stated that the combined amendments, if implemented, will help to improve the orderly marketing of product within the industry.

Similarly, coordinated marketing and distribution efforts for fresh varieties that appear in the marketplace simultaneously will assist in maximizing grower returns from each variety. While the industries currently undertake coordinated marketing and promotional activities, witnesses stated that combining these industries will further synchronize activities and facilitate industry discussions and decision-making.

The amendments will add authority to assess summer/fall pear handlers and undertake promotional activities on their behalf in a manner similar to that done currently for winter pears. When asked if assuming this authority would be acceptable to the summer/fall pear industry, witnesses supported promotional activities, including paid generic advertising, as a way to boost sales and maintain market share.

Post-harvest research will also benefit the pear industries by focusing on a section of the pear crop-to-market flow that, until now, has not benefited from research activities. Improved storage techniques resulting from industry-funded post-harvest research could, for example, benefit the pear industry by decreasing the loss of product due to storage, or by increasing the storability of product to help prolong the marketing season.

A significant market-facilitating function carried out by the current marketing order committees is the collection of statistical data. That function will continue under the amended marketing order and the authority to collect information will extend to additional varieties that are currently produced. Flexibility is provided for including other varieties in the future. Witnesses emphasized the importance and value of collecting and disseminating accurate statistical information to enable industry participants to make economic and marketing decisions.

The proposal to establish two administrative committees also includes the addition of a public member to each

of those committees. The benefit of adding a non-industry, consumer perspective to committee deliberations and decision-making could prove very beneficial. Witnesses stated that this additional perspective would improve the committees' understanding of the consumer in the marketplace and could enhance committee activities aimed at increasing consumer demand for Oregon and Washington pears.

The addition of a public member to each committee is not expected to result in any substantial cost increases. While these members will be entitled to reimbursement for certain expenses allowed for under the order, this expense is neither different nor any more burdensome than the current reimbursement arrangement for committee members.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments to the order on small entities. The record evidence is that most of the amendments are designed to reduce costs. While some of the proposals could impose some minimal costs, those costs would be outweighed by the benefits expected to accrue to the Oregon and Washington pear industry.

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 Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Committee meetings regarding these proposals as well as the hearing dates were widely publicized throughout the winter pear industry, and all interested persons were invited to attend the meetings and the hearing and participate in Committee deliberations on all issues. All Committee meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 35), any reporting and recordkeeping provision changes that are generated by the amendments will be submitted to the Office of Management and Budget (OMB). Current information collection requirements for Part 927 are approved by OMB under OMB number 0581–0089. Any changes in those requirements as a result of this proceeding will be submitted to OMB for approval.

Witnesses stated that existing forms could be adequately modified to serve the needs of the proposed fresh and processed pear committees. While conforming changes to the forms would need to be made (such as changing the name of the committee), the functionality of the forms would remain the same. Therefore, there will be no modification to reporting and recordkeeping burdens generated from these amendments.

Civil Justice Reform

The amendments to Marketing Agreement and Order 927 proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. The amendments will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

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.

Order Amending the Order Regulating Winter Pears Grown in Oregon and Washington

Findings and Determinations

The findings and determinations set forth hereinafter are supplementary and in addition to the findings and determination previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to Marketing Order No. 927 (7 CFR part 927), regulating the handling of winter pears grown in Oregon and Washington.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The marketing order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby further amended, regulates the handling of pears grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing order, as amended, and as hereby further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivision of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of pears grown in the production area; and

(5) All handling of pears grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make the amendments to this order effective not later than one day after publication in the **Federal Register**. A later effective date would unnecessarily delay implementation of the approved changes, which are expected to benefit the Oregon and Washington pear industry. Making the amendments effective as specified would allow the Oregon and Washington pear industries (all varieties of pears for the fresh market and pears for processing) to proceed with the combining of marketing orders 927 and 931 under the amended marketing order 927. Immediate implementation of the amendments is necessary in order to

execute administrative changes necessary for the establishment of two administrative committees and incorporating pears for processing under the provisions of the order.

In view of the foregoing, it is hereby found and determined that good cause exists for making these amendments effective one day after publication in the **Federal Register**, and that it would be contrary to the public interest to delay the effective date for 30 days after publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559).

(b) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping pears covered by the order as hereby amended) who, during the period July 1, 2003, through June 30, 2004, handled 50 percent or more of the volume of such pears covered by said order, as hereby amended, have not signed an amended marketing agreement;

(2) The issuance of this amendatory order, further amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period of July 1, 2003, through June 30, 2004 (which has been deemed to be a representative period), have been engaged within the production area in the production of such pears, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum;

(3) The issuance of this amendatory order, further amending the aforesaid order, is favored or approved by at least two-thirds of the producers of pears for processing from each of the States of Oregon and Washington, who participated in a referendum on the question of approval and who, during the period of July 1, 2003, through June 30, 2004 (which has been deemed to be a representative period), have been engaged within the production area in the production of such pears for processing, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum; and

(4) In the absence of a signed marketing agreement, the issuance of this amendatory order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers of pears in the production area.

Order Relative to Handling of Pears Grown in Oregon and Washington

It is therefore ordered, That on and after the effective date hereof, all handling of pears grown in Washington shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed marketing order amending the order contained in the Recommended Decision issued by the Administrator on January 5, 2005, and published in the **Federal Register** on January 13, 2005, (70 FR 2520) shall be and are the terms and provisions of this order amending the order and set forth in full herein.

List of Subjects in 7 CFR Part 927

Marketing agreements, Winter pears, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, Title 7 of Chapter XI of the Code of Federal Regulations is amended by revising part 927 to read as follows:

PART 927—PEARS GROWN IN OREGON AND WASHINGTON

Subpart—Order Regulating Handling

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927.1 Secretary.
927.2 Act.
927.3 Person 927.4 Pears.
927.5 Size.
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Expenses and Assessments

927.40 Expenses.
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927.47 Research and development.

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927.52 Prerequisites to recommendations.
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Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

Definitions

§ 927.1 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department of Agriculture who has been delegated, or to whom authority may hereafter be delegated, the authority to act for the Secretary.

§ 927.2 Act.

Act means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 927.3 Person.

Person means an individual partnership, corporation, association, legal representative, or any other business unit.

§ 927.4 Pears.

(a) *Pears* means and includes any and all varieties or subvarieties of pears with the genus *Pyrus* that are produced in the production area and are classified as:

(1) Summer/fall pears including Bartlett and Starkrimson pears;

(2) Winter pears including Beurre D'Anjou, Beurre Bosc, Doyenne du Comice, Concorde, Forelle, Winter

Nelis, Packham, Seckel, and Taylor's Gold pears; and

(3) Other pears including any or all other varieties or subvarieties of pears not classified as summer/fall or winter pears.

(b) The Fresh Pear Committee and/or the Processed Pear Committee, with the approval of the Secretary, may recognize new or delete obsolete varieties or subvarieties for each category.

§ 927.5 Size.

Size means the number of pears which can be packed in a 44-pound net weight standard box or container equivalent, or as "size" means the greatest transverse diameter of the pear taken at right angles to a line running from the stem to the blossom end, or such other specifications more specifically defined in a regulation issued under this part.

§ 927.6 Grower.

Grower is synonymous with producer and means any person engaged in the production of pears, either as owner or as tenant.

§ 927.7 Handler.

Handler is synonymous with shipper and means any person (except a common or contract carrier transporting pears owned by another person) who, as owner, agent, broker, or otherwise, ships or handles pears, or causes pears to be shipped or handled by rail, truck, boat, or any other means whatsoever.

§ 927.8 Ship or handle.

Ship or handle means to sell, deliver, consign, transport or ship pears within the production area or between the production area and any point outside thereof, including receiving pears for processing: *Provided*, That the term "'handle'" shall not include the transportation of pear shipments within the production area from the orchard where grown to a packing facility located within the production area for preparation for market or delivery for processing.

§ 927.9 Fiscal period.

Fiscal period means the period beginning July 1 of any year and ending June 30 of the following year or such may be approved by the Secretary pursuant to a joint recommendation by the Fresh Pear Committee and the Processed Pear Committee.

§ 927.10 Production area.

Production area means and includes the States of Oregon and Washington.

§ 927.11 District.

District means the applicable one of the following-described subdivisions of the production area covered by the provisions of this subpart:

(a) For the purpose of committee representation, administration and application of provisions of this subpart as applicable to pears for the fresh market, districts shall be defined as follows:

(1) *Medford District* shall include all the counties in the State of Oregon except for Hood River and Wasco counties.

(2) *Mid-Columbia District* shall include Hood River and Wasco counties in the State of Oregon, and the counties of Skamania and Klickitat in the State of Washington.

(3) *Wenatchee District* shall include the counties of King, Chelan, Okanogan, Douglas, Grant, Lincoln, and Spokane in the State of Washington, and all other counties in Washington lying north thereof.

(4) *Yakima District* shall include all of the State of Washington, not included in the Wenatchee District or in the Mid-Columbia District.

(b) For the purpose of committee representation, administration and application of provisions of this subpart as applicable to pears for processing, districts shall be defined as follows:

(1) The State of Washington.

(2) The State of Oregon.

(c) The Secretary, upon recommendation of the Fresh Pear Committee or the Processed Pear Committee, may reestablish districts within the production area.

§ 927.12 Export market.

Export market means any destination which is not within the 50 states, or the District of Columbia, of the United States.

§ 927.13 Subvariety.

Subvariety means and includes any mutation, sport, or other derivation of any of the varieties covered in § 927.4 which is recognized by the Fresh Pear Committee or the Processed Pear Committee and approved by the Secretary. Recognition of a subvariety shall include classification within a varietal group for the purposes of votes conducted under § 927.52.

§ 927.14 Processor.

Processor means any person who as owner, agent, broker, or otherwise, commercially processes pears in the production area.

§ 927.15 Process.

Process means to can, concentrate, freeze, dehydrate, press or puree pears, or in any other way convert pears commercially into a processed product.

Administrative Bodies

§ 927.20 Establishment and membership.

There are hereby established two committees to administer the terms and provisions of this subpart as specifically provided in §§ 927.20 through 927.35:

(a) A Fresh Pear Committee, consisting of 13 individual persons as its members is established to administer order provisions relating to the handling of pears for the fresh market. Six members of the Fresh Pear Committee shall be growers, six members shall be handlers, and one member shall represent the public. For each member there shall be two alternates, designated as the "first alternate" and the "second alternate," respectively. Each district shall be represented by one grower member and one handler member, except that the Mid-Columbia District and the Wenatchee District shall be represented by two grower members and two handler members.

(b) A Processed Pear Committee consisting of 10 members is established to administer order provisions relating to the handling of pears for processing. Three members of the Processed Pear Committee shall be growers, three members shall be handlers, three members shall be processors, and one member shall represent the public. For each member there shall be two alternates, designated as the "first alternate" and the "second alternate," respectively. District 1, the State of Washington, shall be represented by two grower members, two handler members and two processor members. District 2, the State of Oregon, shall be represented by one grower member, one handler member and one processor member.

(c) The Secretary, upon recommendation of the Fresh Pear Committee or the Processed Pear Committee may reapportion members among districts, may change the number of members and alternates, and may change the composition by changing the ratio of members, including their alternates. In recommending any such changes, the following shall be considered:

(1) Shifts in pear acreage within districts and within the production area during recent years;

(2) The importance of new pear production in its relation to existing districts;

(3) The equitable relationship between membership and districts;

(4) Economies to result for growers in promoting efficient administration due to redistricting or reapportionment of members within districts; and

(5) Other relevant factors.

§ 927.21 Nomination and selection of members and their respective alternates.

Grower members and their respective alternates for each district shall be selected by the Secretary from nominees elected by the growers in such district. Handler members and their respective alternates for each district shall be selected by the Secretary from nominees elected by the handlers in such district. Processor members and their respective alternates shall be selected by the Secretary from nominees elected by the processors. Public members for each committee shall be nominated by the Fresh Pear Committee and the Processed Pear Committee, each independently, and selected by the Secretary. The Fresh Pear Committee and the Processed Pear Committee may, each independently, prescribe such additional qualifications, administrative rules and procedures for selection for each candidate as it deems necessary and as the Secretary approves.

§ 927.22 Meetings for election of nominees.

(a) Nominations for members of the Fresh Pear Committee and their alternates shall be made at meetings of growers and handlers held in each of the districts designated in § 927.11 at such times and places designated by the Fresh Pear Committee.

(b) Nominations for grower and handler members of the Processed Pear Committee and their alternates shall be made at meetings of growers and handlers held in each of the districts designated in § 927.11 at such times and places designated by the Processed Pear Committee. Nominations for processor members of the Processed Pear Committee and their alternates shall be made at a meeting of processors at such time and place designated by the Processed Pear Committee.

§ 927.23 Voting.

Only growers in attendance at meetings for election of nominees shall participate in the nomination of grower members and their alternates, and only handlers in attendance at meetings for election of nominees shall participate in the nomination of handler members and their alternates, and only processors in attendance for election of nominees shall participate in the nomination of processor members and their alternates. A grower may participate only in the election held in the district in which he or she produces pears, and a handler may participate only in the election held in the district in which he or she handles pears. Each person may vote as a grower, handler or processor, but not a combination thereof. Each grower, handler and processor shall be entitled to cast one vote, on behalf of himself, his agents, partners, affiliates, subsidiaries, and representatives, for each nominee to be elected.

§ 927.24 Eligibility for membership.

Each grower member and each of his or her alternates shall be a grower, or an officer or employee of a corporate or LLC grower, who grows pears in the district in which and for which he or she is nominated and selected. Each handler member and each of his or her alternates shall be a handler, or an officer or employee of a handler handling pears in the district in and for which he or she is nominated and selected. Each processor member and each of their alternates shall be a processor, or an officer or employee of a processor, who processes pears in the production area.

§ 927.25 Failure to nominate.

In the event nominations are not made pursuant to §§ 927.21 and 927.22 on or before June 1 of any year, the Secretary may select members and alternates for members without regard to nominations.

§ 927.26 Qualifications.

Any person prior to or within 15 days after selection as a member or as an alternate for a member of the Fresh Pear Committee or the Processed Pear Committee shall qualify by filing with the Secretary a written acceptance of the person's willingness to serve.

§ 927.27 Term of office.

The term of office of each member and alternate member of the Fresh Pear Committee and the Processed Pear Committee shall be for two years beginning July 1 and ending June 30: *Provided*, That the terms of office of one-half the initial members and alternates shall end June 30, 2006; and that beginning with the 2005–2006 fiscal period, no member shall serve more than three consecutive two-year terms unless specifically exempted by the Secretary. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. The terms of office of successor members and alternates shall be so determined that one-half of the total committee membership ends each June 30.

§ 927.28 Alternates for members.

The first alternate for a member shall act in the place and stead of the member for whom he or she is an alternate during such member's absence. In the event of the death, removal, resignation, or disqualification of a member, his or her first alternate shall act as a member until a successor for the member is selected and has qualified. The second alternate for a member shall serve in the place and stead of the member for whom he or she is an alternate whenever both the member and his or her first alternate are unable to serve. In the event that a member of the Fresh Pear Committee or the Processed Pear Committee and both that member's alternates are unable to attend a meeting, the member may designate any other alternate member from the same group (handler, processor, or grower) to serve in that member's place and stead.

§ 927.29 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate for a member of the Fresh Pear Committee or the Processed Pear Committee to qualify, or in the event of death, removal, resignation, or disqualification of any qualified member or qualified alternate for a member, a successor for his or her unexpired term shall be nominated and selected in the manner set forth in §§ 927.20 to 927.35. If nominations to fill any such vacancy are not made within 20 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations.

§ 927.30 Compensation and expenses.

The members and alternates for members shall serve without compensation, but may be reimbursed for expenses necessarily incurred by them in the performance of their respective duties.

§ 927.31 Powers.

The Fresh Pear Committee and the Processed Pear Committee shall have the following powers to exercise each independently:

(a) To administer, as specifically provided in §§ 927.20 to 927.35, the terms and provisions of this subpart:

(b) To make administrative rules and regulations in accordance with, and to effectuate, the terms and provisions of this subpart; and

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart.

§ 927.32 Duties.

The duties of the Fresh Pear Committee and the Processed Pear Committee, each independently, shall be as follows:

(a) To act as intermediary between the Secretary and any grower, handler or processor;

(b) To keep minutes, books, and records which will reflect clearly all of the acts and transactions. The minutes, books, and records shall be subject at any time to examination by the Secretary or by such person as may be designated by the Secretary;

(c) To investigate, from time to time, and to assemble data on the growing, harvesting, shipping, and marketing conditions relative to pears, and to furnish to the Secretary such available information as may be requested;

(d) To perform such duties as may be assigned to it from time to time by the Secretary in connection with the administration of section 32 of the Act to amend the Agricultural Adjustment Act, and for other purposes, Public Act No. 320, 74th Congress, approved August 24, 1935 (49 Stat. 774), as amended;

(e) To cause the books to be audited by one or more competent accountants at the end of each fiscal year and at such other times as the Fresh Pear Committee or the Processed Pear Committee may deem necessary or as the Secretary may request, and to file with the Secretary copies of any and all audit reports made;

(f) To appoint such employees agents, and representatives as it may deem necessary, and to determine the compensation and define the duties of each;

(g) To give the Secretary, or the designated agent of the Secretary, the same notice of meetings as is given to the members of the Fresh Pear Committee or the Processed Pear Committee;

(h) To select a chairman of the Fresh Pear Committee or the Processed Pear Committee and, from time to time, such other officers as it may deem advisable and to define the duties of each; and

(i) To submit to the Secretary as soon as practicable after the beginning of each fiscal period, a budget for such fiscal year, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period.

§ 927.33 Procedure.

(a) *Quorum and voting.* A quorum at a meeting of the Fresh Pear Committee or the Processed Pear Committee shall consist of 75 percent of the number of committee members, or alternates then serving in the place of any members, respectively. Except as otherwise provided in § 927.52, all decisions of the Fresh Pear Committee or the Processed Pear Committee at any meeting shall require the concurring vote of at least 75 percent of those members present, including alternates then serving in the place of any members.

(b) *Mail voting.* The Fresh Pear Committee or the Processed Pear Committee may provide for members voting by mail, telecopier or other electronic means, telephone, or telegraph, upon due notice to all members. Promptly after voting by telephone or telegraph, each member thus voting shall confirm in writing, the vote so cast.

§ 927.34 Right of the Secretary.

The members and alternates for members and any agent or employee appointed or employed by the Fresh Pear Committee or the Processed Pear Committee shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 927.35 Funds and other property.

(a) All funds received pursuant to any of the provisions of this subpart shall be used solely for the purposes specified in this subpart, and the Secretary may require the Fresh Pear Committee or the Processed Pear Committee and its members to account for all receipts and disbursements.

(b) Upon the death, resignation, removal, disqualification, or expiration of the term of office of any member or employee, all books, records, funds, and other property in his or her possession belonging to the Fresh Pear Committee or the Processed Pear Committee shall be delivered to his or her successor in office or to the Fresh Pear Committee or Processed Pear Committee, and such assignments and other instruments shall be executed as may be necessary to vest in such successor or in the Fresh Pear Committee or Processed Pear Committee full title to all the books, records, funds, and other property in the possession or under the control of such member or employee pursuant to this subpart.

Expenses and Assessments

§ 927.40 Expenses.

The Fresh Pear Committee and the Processed Pear Committee are authorized, each independently, to incur such expenses as the Secretary finds may be necessary to carry out their functions under this subpart. The funds to cover such expenses shall be acquired by the levying of assessments as provided in § 927.41.

§ 927.41 Assessments.

(a) Assessments will be levied only upon handlers who first handle pears. Each handler shall pay assessments on all pears handled by such handler as the pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the Fresh Pear Committee or the Processed Pear Committee during a fiscal period. The payment of assessments for the maintenance and functioning of the Fresh Pear Committee or the Processed Pear Committee may be required under this part throughout the period such assessments are payable irrespective of whether particular provisions thereof are suspended or become inoperative.

(b)(1) Based upon a recommendation of the Fresh Pear Committee or other available data, the Secretary shall fix three base rates of assessment for pears that handlers shall pay on pears handled for the fresh market during each fiscal period. Such base rates shall include one rate of assessment for any or all varieties or subvarieties of pears classified as summer/fall; one rate of assessment for any or all varieties or subvarieties of pears, classified as winter; and one rate of assessment for any or all varieties or subvarieties of pears classified as other. Upon recommendation of the Fresh Pear Committee or other available data, the Secretary may also fix supplemental rates of assessment on individual varieties or subvarieties categorized within the assessment classifications in this paragraph (b)(1) to secure sufficient funds to provide for projects authorized under § 927.47. At any time during the fiscal period when it is determined on the basis of a Fresh Pear Committee recommendation or other information that different rates are necessary for fresh pears or for any varieties or subvarieties, the Secretary may modify those rates of assessment and such new rate shall apply to any or all varieties or subvarieties that are shipped during the fiscal period for fresh market.

(2) Based upon a recommendation of the Processed Pear Committee or other available data, the Secretary shall fix three base rates of assessment for pears that handlers shall pay on pears handled for processing during each fiscal period. Such base rates shall include one rate of assessment for any or all varieties or subvarieties of pears classified as summer/fall; one rate of assessment for any or all varieties or subvarieties of pears, classified as winter; and one rate of assessment for

any or all varieties or subvarieties of pears classified as other. Upon recommendation of the Processed Pear Committee or other available data, the Secretary may also fix supplemental rates of assessment on individual varieties or subvarieties categorized within the assessment classifications defined in paragraph (b)(1) of this section to secure sufficient funds to provide for projects authorized under § 927.47. At any time during the fiscal period when it is determined on the basis of a Processed Pear Committee recommendation or other information that different rates are necessary for pears for processing or for any varieties or subvarieties, the Secretary may modify those rates of assessment and such new rate shall apply to any or all varieties or subvarieties of pears that are shipped during the fiscal period for processing.

(c) Based on the recommendation of the Fresh Pear Committee, the Processed Pear Committee or other available data, the Secretary may establish additional base rates of assessments, or change or modify the base rate classifications defined in paragraphs (a) and (b) of this section.

(d) The Fresh Pear Committee or the Processed Pear Committee may impose a late payment charge on any handler who fails to pay any assessment within the time prescribed. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, the Fresh Pear Committee or the Processed Pear Committee may impose an additional charge in the form of interest on such outstanding amount. The Fresh Pear Committee or the Processed Pear Committee, with the approval of the Secretary, shall prescribe the amount of such late payment charge and rate of interest.

(e) In order to provide funds to carry out the functions of the Fresh Pear Committee or the Processed Pear Committee prior to commencement of shipments in any season, handlers may make advance payments of assessments, which advance payments shall be credited to such handlers and the assessments of such handlers shall be adjusted so that such assessments are based upon the quantity of each variety or subvariety of pears handled by such handlers during such season. Further, payment discounts may be authorized by the Fresh Pear Committee or the Processed Pear Committee upon the approval of the Secretary to handlers making such advance assessment payments.

§ 927.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, the Fresh Pear Committee or the Processed Pear Committee may carryover such excess into subsequent fiscal periods as a reserve: *Provided,* That funds already in the reserve do not exceed approximately one fiscal period's expenses. Such reserve may be used to cover any expense authorized under this part and to cover necessary expenses of liquidation in the event of termination of this part. Any such excess not retained in a reserve or applied to any outstanding obligation of the person from whom it was collected shall be refunded proportionately to the persons from whom it was collected. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the Fresh Pear Committee or the Processed Pear Committee and its members to account for all receipts and disbursements.

§ 927.43 Use of funds.

From the funds acquired pursuant to § 927.41 the Fresh Pear Committee and the Processed Pear Committee, each independently, shall pay the salaries of its employees, if any, and pay the expenses necessarily incurred in the performance of the duties of the Fresh Pear Committee or the Processed Pear Committee.

§ 927.44 [Reserved]

§ 927.45 Contributions.

The Fresh Pear Committee or the Processed Pear Committee may accept voluntary contributions, but these shall only be used to pay expenses incurred pursuant to § 927.47. Furthermore, such contributions shall be free from any encumbrances by the donor, and the Fresh Pear Committee or the Processed Pear Committee shall retain complete control of their use.

Research and Development

§ 927.47 Research and development.

The Fresh Pear Committee or the Processed Pear Committee, with the approval of the Secretary, may establish or provide for the establishment of production and post-harvest research, or marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of pears. Such projects may provide for any form of marketing promotion, including paid advertising. The expense of such projects shall be paid from funds collected pursuant to §§ 927.41 and 927.45. Expenditures for a particular variety or subvariety of pears shall approximate the amount of assessments and voluntary contributions collected for that variety or subvariety of pears.

Regulation of Shipments

§ 927.50 Marketing policy.

(a) It shall be the duty of the Fresh Pear Committee to investigate, from time to time, supply and demand conditions relative to pears and each grade, size, and quality of each variety or subvariety thereof. Such investigations shall be with respect to the following:

(1) Estimated production of each variety or subvariety of pears and of each grade, size, and quality thereof;

(2) Prospective supplies and prices of pears and other fruits, both in fresh and processed form, which are competitive to the marketing of pears;

(3) Prospective exports of pears and imports of pears from other producing areas;

(4) Probable harvesting period for each variety or subvariety of pears;

(5) The trend and level of consumer income;

(6) General economic conditions; and

(7) Other relevant factors.

(b) On or before August 1 of each year, the Fresh Pear Committee shall recommend regulations to the Secretary if it finds, on the basis of the investigations specified in this section, that such regulation as is provided in § 927.51 will tend to effectuate the declared policy of the act.

(c) In the event the Fresh Pear Committee at any time finds that by reason of changed conditions any regulation issued pursuant to § 927.51 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

§ 927.51 Issuance of regulations; and modification, suspension, or termination thereof.

(a) Whenever the Secretary finds, from the recommendations and information submitted by the Fresh Pear Committee, or from other available information, that regulation, in the manner specified in this section, of the

shipment of fresh pears would tend to effectuate the declared policy of the act, he or she shall so limit the shipment of such pears during a specified period or periods. Such regulation may:

(1) Limit the total quantity of any grade, size, quality, or combinations thereof, of any variety or subvariety of pears grown in any district and may prescribe different requirements applicable to shipments to different export markets;

(2) Limit, during any period or periods, the shipment of any particular grade, size, quality, or any combination thereof, of any variety or subvariety, of pears grown in any district or districts of the production area; and

(3) Provide a method, through rules and regulation issued pursuant to this part, for fixing markings on the container or containers, which may be used in the packaging or handling of pears, including appropriate logo or other container markings to identify the contents thereof.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the Fresh Pear Committee, or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of fresh pears grown in any district in order to effectuate the declared policy of the act, he or she shall so modify, suspend, or terminate such regulation. If the Secretary finds, from the recommendations and information submitted by the Fresh Pear Committee, or from other available information, that a regulation obstructs or does not tend to effectuate the declared policy of the act, he or she shall suspend or terminate such regulation. On the same basis and in like manner, the Secretary may terminate any such modification or suspension.

§ 927.52 Prerequisites to recommendations.

(a) Decisions of the Fresh Pear Committee or the Processed Pear Committee with respect to any recommendations to the Secretary pursuant to the establishment or modification of a supplemental rate of assessment for an individual variety or subvariety of pears shall be made by affirmative vote of not less than 75 percent of the applicable total number of votes, computed in the manner described in paragraph (b) of this section, of all members. Decisions of the Fresh Pear Committee pursuant to the provisions of § 927.50 shall be made by an affirmative vote of not less than 80 percent of the applicable total number of votes, computed in the manner prescribed in paragraph (b) of this section, of all members.

(b) With respect to a particular variety or subvariety of pears, the applicable total number of votes shall be the aggregate of the votes allotted to the members in accordance with the following: Each member shall have one vote as an individual and, in addition, shall have a vote equal to the percentage of the vote of the district represented by such member; and such district vote shall be computed as soon as practical after the beginning of each fiscal period on either:

(1) The basis of one vote for each 25,000 boxes (except 2,500 boxes for varieties or subvarieties with less than 200,000 standard boxes or container equivalents) of the average quantity of such variety or subvariety produced in the particular district and shipped therefrom during the immediately preceding three fiscal periods; or

(2) Such other basis as the Fresh Pear Committee or the Processed Pear Committee may recommend and the Secretary may approve. The votes so allotted to a member may be cast by such member on each recommendation relative to the variety or subvariety of pears on which such votes were computed.

§ 927.53 Notification.

(a) The Fresh Pear Committee shall give prompt notice to growers and handlers of each recommendation to the Secretary pursuant to the provisions of § 927.50.

(b) The Secretary shall immediately notify the Fresh Pear Committee of the issuance of each regulation and of each modification, suspension, or termination of a regulation and the Fresh Pear Committee shall give prompt notice thereof to growers and handlers.

§ 927.54 [Reserved]

Inspection

§ 927.60 Inspection and certification.

(a) Handlers shall ship only fresh pears inspected by the Federal-State Inspection Service or under a program developed by the Federal-State Inspection Service: except, that such inspection and certification of shipments of pears may be performed by such other inspection service as the Fresh Pear Committee, with the approval of the Secretary, may designate. Promptly after shipment of any pears, the handler shall submit, or cause to be submitted, to the Fresh Pear Committee a copy of the inspection certificate issued on such shipment.

(b) Any handler may ship pears, on any one conveyance and in such quantity as the committee, with the approval of the Secretary, may prescribe, exempt from the inspection and certification requirements of paragraph (a) of this section.

(c) The Fresh Pear Committee may, with the approval of the Secretary, prescribe rules and regulations modifying or eliminating the requirement for mandatory inspection and certification of shipments: Provided, That an adequate method of ensuring compliance with quality and size requirements is developed.

Exceptions

§ 927.65 Exemption from regulation.

(a) Nothing contained in this subpart shall limit or authorize the limitation of shipment of pears for consumption by charitable institutions or distribution by relief agencies, nor shall any assessment be computed on pears so shipped. The Fresh Pear Committee or the Processed Pear Committee may prescribe regulations to prevent pears shipped for either of such purposes from entering commercial channels of trade contrary to the provisions of this subpart.

(b) The Fresh Pear Committee or the Processed Pear Committee may prescribe rules and regulations, to become effective upon the approval of the Secretary, whereby quantities of pears or types of pear shipments may be exempted from any or all provisions of this subpart.

Miscellaneous Provisions

§ 927.70 Reports.

(a) Upon the request of the Fresh Pear Committee or the Processed Pear Committee, and subject to the approval of the Secretary, each handler shall furnish to the aforesaid committee, respectively, in such manner and at such times as it prescribes, such information as will enable it to perform its duties under this subpart.

(b) All such reports shall be held under appropriate protective classification and custody by the Fresh Pear Committee or the Processed Pear Committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers are authorized subject to the prohibition of disclosure of individual handler's identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the pears received and of pears disposed of, by such handler as may be

necessary to verify reports pursuant to this section.

§ 927.71 Compliance.

Except as provided in § 927.65, no handler shall ship any pears contrary to the applicable restrictions and limitations specified in, or effective pursuant to, the provisions of this subpart.

§ 927.72 Duration of immunities.

The benefits, privileges, and immunities conferred by virtue of this subpart shall cease upon termination hereof, except with respect to acts done under and during the existence of this subpart.

§ 927.73 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remaining provisions and the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 927.74 Derogation.

Nothing contained in this subpart is or shall be construed to be in derogation of, or in modification of, the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 927.75 Liability.

No member or alternate for a member of the Fresh Pear Committee or the Processed Pear Committee, nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any party under this subpart or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate for a member, agent or employee, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 927.76 Agents.

The Secretary may name, by designation in writing, any person, including any officer or employee of the Government or any bureau or division in the Department of Agriculture to act as his or her agent or representative in connection with any of the provisions of this subpart.

§ 927.77 Effective time.

The provisions of this subpart and of any amendment thereto shall become effective at such time as the Secretary may declare, and shall continue in force until terminated in one of the ways specified in § 927.78.

§ 927.78 Termination.

(a) The Secretary may at any time terminate this subpart.

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart whenever he or she finds that such operation obstructs or does not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart applicable to fresh pears for market or pears for processing at the end of any fiscal period whenever the Secretary finds, by referendum or otherwise, that such termination is favored by a majority of growers of fresh pears for market or pears for processing, respectively: *Provided*, That such majority has during such period produced more than 50 percent of the volume of fresh pears for market or pears for processing, respectively, in the production area. Such termination shall be effective only if announced on or before the last day of the then current fiscal period.

(d) The Secretary shall conduct a referendum within every six-year period beginning on May 21, 2005, to ascertain whether continuance of the provisions of this subpart applicable to fresh pears for market or pears for processing are favored by producers of pears for the fresh market and pears for processing, respectively. The Secretary may terminate the provisions of this subpart at the end of any fiscal period in which the Secretary has found that continuance of this subpart is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production of fresh pears for market or pears for processing in the production area: *Provided*, That termination of the order shall be effective only if announced on or before the last day of the then current fiscal period.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 927.79 Proceedings after termination.

(a) Upon the termination of this subpart, the members of the Fresh Pear Committee or the Processed Pear Committee then functioning shall continue as joint trustees for the purpose of liquidating all funds and property then in the possession or under the control of the Fresh Pear Committee or the Processed Pear Committee, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The joint trustees shall continue in such capacity until discharged by the Secretary; from time to time account for all receipts and disbursements; deliver all funds and property on hand, together with all books and records of the Fresh Pear Committee or the Processed Pear Committee and of the joint trustees, to such person as the Secretary shall direct; and, upon the request of the Secretary, execute such assignments or other instruments necessary and appropriate to vest in such person full title and right to all of the funds, property, or claims vested in the Fresh Pear Committee or the Processed Pear Committee or in said joint trustees.

(c) Any funds collected pursuant to this subpart and held by such joint trustees or such person over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the joint trustees or such other person in the performance of their duties under this subpart, as soon as practicable after the termination hereof, shall be returned to the handlers pro rata in proportion to their contributions thereto.

(d) Any person to whom funds, property, or claims have been transferred or delivered by the Fresh Pear Committee or the Processed Pear Committee or its members, upon direction of the Secretary, as provided in this section, shall be subject to the same obligations and duties with respect to said funds, property, or claims as are imposed upon the members or upon said joint trustees.

§ 927.80 Amendments.

Amendments to this subpart may be proposed from time to time by the Fresh Pear Committee or the Processed Pear Committee or by the Secretary.

Dated: May 13, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–9961 Filed 5–17–05; 9:47 am]

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Federal Register

Friday,
May 20, 2005

Part IV

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0034; FRL–7911–8]

RIN 2060–AM85

National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: On April 22, 2004, the EPA issued national emission standards to control hazardous air pollutants emitted from iron and steel foundries. This action amends the work practice requirements for materials certification and scrap selection/inspection programs. The direct final amendments add clarification and flexibility but do not materially change the requirements of the rule.

DATES: The direct final rule amendments will be effective on August 18, 2005 without further notice, unless we receive adverse comments by June 20, 2005, or by July 5, 2005 if a public hearing is requested. If such comments are received, we will publish a timely withdrawal in the **Federal Register** indicating which amendments will become effective and which amendments are being withdrawn due to adverse comment. Any distinct amendment, paragraph, or section of the direct final amendments for which we do not receive adverse comment will become effective on August 18, 2005. The incorporation by reference of certain publications listed in the direct final rule amendments is approved by the Director of the Federal Register as of August 18, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2002–0034, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov*.
- Fax: (202) 566–1741.
- Mail: Air and Radiation Docket, Docket ID OAR–2002–0034, U.S. EPA, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: EPA, 1301 Constitution Avenue, NW., Room B102, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2002–0034. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other information, such as copyrighted materials, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy form at the Air and Radiation Docket, Docket ID No. OAR–2002–0034, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavender, Emissions, Monitoring and Analysis Division (C339–02), Office of Air Quality Planning and Standards, EPA, Research Triangle Park, NC 27711, telephone number (919) 541–2364, fax number (919) 541–1903, e-mail address: *cavender.kevin@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	NAICS code [1]	Examples of regulated entities
Industry	331511	Iron foundries. Iron and steel plants. Automotive and large equipment manufacturers.
	331512	Steel investment foundries.
	331513	Steel foundries (except investment).
Federal government		Not affected.
State/local/tribal government		Not affected.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in §§ 63.7681 and 63.7682 of the national emission standards for hazardous air pollutants (NESHAP) for iron and steel foundries. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. *Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of today's direct final rule

amendments will be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the direct final rule amendments will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the direct final rule amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by July 19, 2005. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule amendments that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the direct final rule amendments may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

Comments. We are issuing the amendments as a direct final rule without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal for the amendments contained in the direct final rule in the event that adverse comments are filed. If we receive any adverse comments on one or more distinct amendments, we will publish a timely withdrawal in the **Federal Register** informing the public which amendments will become effective and which amendments are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on the direct final rule. Any parties interested in commenting must do so at this time.

Outline. The information presented in this preamble is organized as follows:

I. Background
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I. Background

On April 22, 2004 (69 FR 21906), we issued the NESHAP for iron and steel foundries (40 CFR part 63, subpart EEEEE). The NESHAP establish emissions limits and work practice standards for hazardous air pollutants (HAP) from foundry operations. The NESHAP implement section 112(d) of the CAA by requiring all iron and steel foundries that are major sources of HAP to meet standards reflecting the application of the maximum achievable control technology (MACT).

After publication of the NESHAP, the American Foundry Society, the Alliance of Automobile Manufacturers, and the Steel Founders' Society of America filed petitions for reconsideration of the final rule. One of the petitions requested clarification of certain aspects of the scrap certification and scrap selection/inspection work practice standards in 40 CFR 63.7700 concerning:

- Use of multiple scrap acquisition options;
- Requirements for "certified" metal ingots, oil filters, and organic liquids; and
- Classification of "cleaned" scrap materials.

We agree with the petitioner(s) that certain changes are needed to clarify these aspects of the work practice standards. The changes to the NESHAP in today's direct final rule amendments are expected to resolve issues associated with the work practice standards which require implementing guidance or minor changes in regulatory language.

Because the work practice standards will become effective on April 22, 2005 (1 year after promulgation), the clarifications contained in the direct final rule amendments are time-critical. Today's direct final rule amendments will reduce compliance uncertainties and improve understanding of the rule requirements.

II. Summary of Direct Final Rule Amendments

The work practice standards in 40 CFR 63.7700(a) require the owner or operator to comply with the scrap certification requirements in 40 CFR 63.7700(b) or the scrap selection/inspection requirements in 40 CFR 63.7700(c). According to one petitioner, the requirements in 40 CFR 63.7700(a) may be interpreted to require a foundry to either comply with the certification requirements in 40 CFR 63.7700(b) for the entire foundry's scrap material and melt only those materials that are "certified," or to comply with scrap selection/inspection requirements in 40 CFR 63.7700(c) for all scrap materials—even if a significant portion of the scrap material used by the foundry meets the requirements in 40 CFR 63.7700(b).

The requirements in 40 CFR 63.7700(a) were never intended to prevent a foundry from having segregated scrap storage areas, piles or bins, with the scrap material in some of these areas being subject to scrap certification requirements in 40 CFR 63.7700(b) and scrap material in other areas subject to scrap selection/inspection requirements in 40 CFR 63.7700(c). For example, we did not intend to require inspections of pig iron or other "certifiable" scrap simply because a foundry also recycled internal oily turnings. Consequently, we have revised the language in 40 CFR 63.7700(a) to clarify that the scrap requirements apply to each type of scrap material received or each scrap storage area, pile, or bin as long as the scrap material subject to certification requirements in 40 CFR 63.7700(b) remains segregated from scrap material subject to selection/inspection plans in 40 CFR 63.7700(c).

We have also clarified the requirement in 40 CFR 63.7700(b) that the foundry operate by a written certification that it purchases and uses only "certified" metal ingots, pig iron, slitter, or other materials that do not use post-consumer automotive body scrap, post-consumer engine blocks, oil filters, oily turnings, lead components, mercury switches, plastics, or organic liquids. The petitioner specifically asked EPA to identify who must certify the metal ingots, to clarify the "no organic liquids" restriction, and to modify the regulatory language to clarify that the prohibited material include only "used" oil filters.

We agree with the petitioner's concerns and have clarified the regulatory text of 40 CFR 63.7700(b). It is not our intent to require a separate certification for metal ingots. Accordingly, we have deleted the word "certified" from 40 CFR 63.7700(b). We have clarified the restriction on oil filters by adding the term "post-consumer" to signify that used filters

are the materials of concern. We have clarified the "no organic liquids" requirement by using the term "free organic liquids." The direct final rule amendments define "free organic liquids" as any material that fails the "Paint Filter Liquids Test" by EPA Method 9095A (incorporated by reference-see 40 CFR 63.14). If any portion of the material passes through and drips from the filter within the 5-minute test period, the material contains free liquids. EPA Method 9095A is available in EPA publication SW–846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," (Revision 1, December 1996).

The petitioner also stated that the regulatory language in 40 CFR 63.7700(b) does not allow for the recycling and use of materials if they have been processed to remove contaminants of concern. In support, the petitioner explained that some suppliers dismantle or crush and then wash post-consumer engine blocks prior to shipment as scrap material. Similarly, some scrap suppliers process oily turnings or used oil filters to make them environmentally acceptable for melting. In response to the petitioner's concerns, we have added a provision to 40 CFR 63.7700(b) to allow for the use of "cleaned" scrap material. The new provision states that any post-consumer engine blocks, post-consumer oil filters, or oil turnings that are processed and/or cleaned to the extent practicable such that the materials do not include lead components, mercury switches, plastics, or free organic liquids can be included in the certification.

The work practice standards in 40 CFR 63.7700(c)(1) require the owner or operator to operate according to a materials acquisition program to limit the organic contaminants in the scrap. The requirements for material to be charged to a scrap preheater, electric arc furnace, or electric induction furnace are more stringent than those required for scrap material that is to be charged to a cupola furnace. During conversations with the petitioners, concerns were raised that the requirements in 40 CFR 63.7700(c)(1) may be interpreted to require a foundry to exclusively comply with either the requirements in 40 CFR 63.7700(c)(1)(i) or (ii) for the entire foundry's scrap material—even if the foundry operates both a cupola and one of the other furnace types. This was not our intent. As such, we have added the words "as applicable" to 40 CFR 63.7700(c)(1) to clarify that a foundry may process scrap that meets 40 CFR 63.7700(c)(1)(i) and scrap that meets 40 CFR 63.7700(c)(1)(ii) in the appropriate furnaces.

During discussions with the petitioners regarding clarification of the work practice requirements, questions were raised regarding the ability to perform inspections at the scrap supplier's facility. In many cases, foundry representatives visit the supplier's facility to personally select and inspect scrap materials. To clarify our intent that the NESHAP allow inspections to take place at the supplier's facility, we have expanded 40 CFR 63.7700(c)(3) to specifically address this situation. The direct final rule amendments state that the visual inspections may be performed at the scrap supplier's facility. However, the inspection procedures in the foundry's scrap inspection/selection plan must include an explanation of how the periodic inspections ensure that not less than 10 percent of scrap purchased from each supplier is subject to inspection. This provision is needed to maintain consistency with the inspection requirements for scrap received at the facility gate.

III. Summary of Environmental, Energy, and Economic Impacts

The direct final rule amendments will have no effect on environmental, energy, or non-air health impacts because none of the changes affect the stringency of the existing work practice standards. No costs or economic impacts are associated with the direct final rule amendments.

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 EPA must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

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

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

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this action is not a "significant regulatory action" under the terms of Executive Order 12866, and is, therefore, not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The OMB has previously approved the information collection requirements contained in the existing rule (40 CFR part 63, subpart EEEEE) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0543, EPA ICR number 2096.02. A copy of the approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the direct final rule amendments.

For the purposes of assessing the impacts of today's direct final rule amendments on small entities, small entity is defined as: (1) A small business having 500 or fewer employees, as defined by the Small Business Administration for NAICS codes 331511, 331512 and 331513; (2) a

government jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and that is not dominant in its field.

After considering the economic impacts of today's direct final rule amendments on small entities, the EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities" (5 U.S.C. 603 and 604). Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

We conclude that there will be a positive impact on small entities because the direct final rule amendments clarify the rule requirements to reduce compliance uncertainties. The changes do not impose new costs or requirements. We have, therefore, concluded that today's direct final rule amendments will relieve regulatory burden for all 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, the 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 by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the 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 the 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 the 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.

The EPA has determined that the direct final rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector in any 1 year. No new costs are attributable to the direct final rule amendments. Thus, the direct final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. The EPA has also determined that the direct final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the direct final rule amendments are not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (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."

The direct final rule amendments do not have federalism implications. They 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. None of the affected plants are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the direct final rule amendments.

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

Executive Order 13175 (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." The direct final rule amendments do not have tribal implications, as specified in Executive Order 13175, because tribal governments do not own or operate any sources subject to the direct final rule amendments. Thus, Executive Order 13175 does not apply to the direct final rule amendments.

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

Executive Order 13045 (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 EPA 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.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The direct final rule amendments are not subject to Executive Order 13045 because the NESHAP (and the direct final rule amendments) are based on technology performance and not on health or safety risks.

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

These direct final rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because

they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 112(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C 272 note) directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The direct final rule amendments involve technical standards. The direct final rule amendments incorporate by reference the "Paint Filter Liquids Test" of EPA Method 9095A in EPA Publication SW–846, "Methods for Evaluating Solid Waste, Physical/Chemical Methods (Revision 1, December 1996). Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Method 9095A. The search and review results have been documented and placed in the docket for public review.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this direct final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the direct final rule in the **Federal Register**. A "major rule" cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: May 6, 2005.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Section 63.14 is amended by adding new paragraph (k)(2) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(k) * * *

(2) Method 9095A, "Paint Filter Liquids Test," (Revision 1, December 1996) as published in EPA Publication SW–846: "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," IBR approved for §§ 63.7700(b) and 63.7765.

Subpart EEEEE—[Amended]

■ 3. Section 63.7700 is amended by:
■ a. Revising paragraph (a).
■ b. Revising paragraph (b).
■ c. Revising the introductory text of paragraph (c)(1).
■ d. Revising paragraph (c)(3)(i)
■ e. Adding paragraph (c)(3)(iv).

The revisions and additions read as follows:

§ 63.7700 What work practice standards must I meet?

(a) For each segregated scrap storage area, bin or pile, you must either comply with the certification requirements in paragraph (b) of this section, or prepare and implement a plan for the selection and inspection of scrap according to the requirements in paragraph (c) of this section. You may have certain scrap subject to paragraph (b) of this section and other scrap subject to paragraph (c) of this section at your facility provided the scrap remains segregated until charge make-up.

(b) You must prepare and operate at all times according to a written certification that the foundry purchases and uses only metal ingots, pig iron, slitter, or other materials that do not include post-consumer automotive body scrap, post-consumer engine blocks, post-consumer oil filters, oily turnings, lead components, mercury switches, plastics, or free organic liquids. For the purpose of this paragraph (b), "free organic liquids" is defined as material that fails the paint filter test by EPA Method 9095A, "Paint Filter Liquids Test" (Revision 1, December 1996), as published in EPA Publication SW–846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (incorporated by reference—see § 63.14). Any post-consumer engine blocks, post-consumer oil filters, or oily turnings that are processed and/or cleaned to the extent practicable such that the materials do not include lead components, mercury switches, plastics, or free organic liquids can be included in this certification.

(c) * * *

(1) A materials acquisition program to limit organic contaminants according to the requirements in paragraph (c)(1)(i) or (ii) of this section, as applicable.

* * * * *

(3) * * *

(i) The inspection procedures must identify the location(s) where inspections are to be performed for each type of shipment. Inspections may be performed at the scrap supplier's facility. The selected location(s) must provide a reasonable vantage point, considering worker safety, for visual inspection.

* * * * *

(iv) If the inspections are performed at the scrap supplier's facility, the inspection procedures must include an explanation of how the periodic inspections ensure that not less than 10 percent of scrap purchased from each supplier is subject to inspection.

* * * * *

■ 4. Section 63.7735 is amended by revising paragraph (a) to read as follows:

§ 63.7735 How do I demonstrate initial compliance with the work practice standards that apply to me?

(a) For each iron and steel foundry subject to the certification requirement in § 63.7700(b), you have demonstrated initial compliance if you have certified in your notification of compliance status that: "At all times, your foundry will purchase and use only metal ingots, pig iron, slitter, or other materials that do not include post-consumer automotive body scrap, post-consumer engine blocks, post-consumer oil filters, oily turnings, lead components, mercury switches, plastics, or free organic liquids."

* * * * *

■ 5. Section 63.7765 is amended by adding, in alphabetical order, a

definition for the term, "Free organic liquids" to read as follows:

§ 63.7765 What definitions apply to this subpart?

* * * * *

Free organic liquids means material that fails the paint filter test by EPA Method 9095A (incorporated by reference—see § 63.14). That is, if any portion of the material passes through and drops from the filter within the 5-minute test period, the material contains free liquids.

* * * * *

[FR Doc. 05–9591 Filed 5–19–05; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0034; FRL–7911–9]

RIN 2060–AM85

National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: On April 22, 2004, the EPA issued national emission standards for hazardous air pollutants (NESHAP) for iron and steel foundries. This proposed action would amend the work practice requirements for materials certification and scrap selection/inspection programs. The proposed amendments add clarification and flexibility but do not materially change the requirements of the rule.

In the Rules and Regulations section of this **Federal Register**, we are issuing these amendments as a direct final rule. We are making these amendments as a direct final rule without prior proposal because we view the revisions as noncontroversial and anticipate no adverse comments. We have explained our reasons for these revisions in the direct final rule amendments.

If we receive any significant, adverse comments on one or more distinct amendments in the direct final rule, we will publish a timely notice of withdrawal in the **Federal Register** informing the public which amendments will become effective and which amendments are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule. If no significant adverse comments are received, no further action will be taken on this proposal, and the direct final rule will become effective as provided in that notice.

The regulatory text for the proposal is identical to that for the direct final rule published in the Rules and Regulations section of this **Federal Register**. For further supplementary information, see the direct final rule.

DATES: *Comments.* Comments must be received on or before June 20, 2005, unless a hearing is held. If a hearing is held, comments must be received on or before July 5, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2002–0034, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov*.
- Fax: (202) 566–1741.
- Mail: Air and Radiation Docket, Docket ID OAR–2002–0034, U.S. EPA, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: U.S. EPA, 1301 Constitution Ave., NW., Room B102, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2002–0034. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other information, such as copyrighted materials, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy form at the Air and Radiation Docket, Docket ID No. OAR–2002–0034, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavender, Emissions, Monitoring and Analysis Division (C339–02), Office of Air Quality Planning and Standards, EPA, Research Triangle Park, NC 27711, telephone number (919) 541–2364, fax number (919) 541–1903, e-mail address: *cavender.kevin@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	NAICS code [1]	Examples of regulated entities
Industry	331511	Iron foundries. Iron and steel plants. Automotive and large equipment manufacturers.
	331512	Steel investment foundries.
	331513	Steel foundries (except investment).
Federal government		Not affected.
State/local/tribal government		Not affected.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in § 63.7682 of the NESHAP for iron and steel foundries. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Comments. Do not submit information containing CBI to EPA through EDOCKET, regulations.gov or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. OAR–2004–0034. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the proposed amendments will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by May 31, 2005, a public hearing will be held on June 3, 2005. If a public hearing is requested, it will be held at 10 a.m. at the EPA Facility Complex in Research Triangle Park, North Carolina or at an alternate site nearby.

I. Statutory and Executive Order Reviews

For information regarding other statutory and executive order reviews associated with this action, please see the direct final rule amendments located in the Rules and Regulations section of today's **Federal Register**.

A. Paperwork Reduction Act

This proposed action does not impose any new information collection burden. The Office of Management and Budget has previously approved the information collection requirements contained in the existing rule (40 CFR part 63, subpart EEEEE) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0543, EPA ICR number 2096.02. A copy of the approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act 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 not-for-profit enterprises, and small governmental jurisdictions.

For the purposes of assessing the impacts of today's proposed amendments on small entities, small entity is defined as: (1) A small business according to the U.S. Small Business Administration size standards for NAICS codes 331511, 331512, and 331513 of 500 or fewer employees; (2) a government jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and that is not dominant in its field.

After considering the economic impacts of today's proposed amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities" (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive effect on the small entities subject to the rule. The proposed amendments would clarify the rule requirements to reduce compliance uncertainties. The changes do not impose new costs or requirements.

Although the proposed rule amendments would not have a significant economic impact on a substantial number of small entities, we nonetheless tried to reduce the impact of the proposed amendments on small entities. We held meetings with the petitioners to discuss the proposed amendments and have included provisions that address their concerns. We continue to be interested in the potential impacts of the proposed amendments on small entities and welcome comments on issues related to such impacts.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 6, 2005.

Stephen L. Johnson,

Administrator.

[FR Doc. 05–9592 Filed 5–19–05; 8:45 am]

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Federal Register

Friday,
May 20, 2005

Part V

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 1005 and 1007

Milk in the Appalachian and Southeast Marketing Areas; Partial Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005 and 1007

[Docket No. AO–388–A15 and AO–366–A44; DA–03–11]

Milk in the Appalachian and Southeast Marketing Areas; Partial Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; partial recommended decision.

SUMMARY: This document recommends adoption of provisions that would expand the Appalachian milk marketing area, eliminate the ability to simultaneously pool the same milk on the Appalachian or Southeast order and a State-operated milk order that has marketwide pooling, and amend the transportation credit provisions of the Southeast and Appalachian orders. This decision does not recommend adopting a proposal that would merge the Appalachian and Southeast milk marketing areas and a proposal that would create a "Mississippi Valley" marketing order. Proposals regarding the producer-handler provisions of the Appalachian and Southeast orders will be addressed in a separate decision.

DATES: Comments must be submitted on or before July 19, 2005.

Comments (6 copies) should be filed with the Hearing Clerk, United States Department of Agriculture, STOP 9200–Room 1083, 1400 Independence Avenue, SW., Washington, DC 20250–9200. You may send your comments by the electronic process available at the Federal eRulemaking portal: *http://www.regulations.gov* or by submitting comments to *amsdairycomments@usda.gov*. Reference should be made to the title of action and docket number.

FOR FURTHER INFORMATION CONTACT: Antoinette M. Carter or Jack Rower or Gino M. Tosi, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, STOP 0231–Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–3465 or (202) 720–3257 or (202) 690–1366, e-mail address: *antoinette.carter@usda.gov*, or *jack.rower@usda.gov* or *gino.tosi@usda.gov*.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees.

For the purposes of determining which dairy farms are "small businesses," the $750,000 per year criterion was used to establish a marketings guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During February 2004, the milk of 7,311 dairy farmers was pooled on the Appalachian (Order 5) and Southeast (Order 7) milk orders (3,395 Order 5 dairy farmers and 3,916 Order 7 dairy farmers). Of the total, 3,252 dairy farmers (or 96 percent) and 3,764 dairy farmers (or 96 percent) were considered small businesses on the Appalachian and Southeast orders, respectively.

During February 2004, there were a total of 36 plants regulated by the Appalachian order (25 fully regulated plants, 7 partially regulated plants, 1 producer-handler, and 3 exempt plants) and a total of 51 plants regulated by the Southeast order (32 fully regulated plants, 6 partially regulated plants, and 13 exempt plants). The number of plants meeting the small business criteria under the Appalachian and Southeast orders were 13 (or 36 percent) and 13 (or 25 percent), respectively.

The proposed amendments adopted in this proposed rule would expand the Appalachian milk marketing area to include 25 counties and 14 cities in the State of Virginia that currently are not in any Federal milk marketing area. This decision recommends the adoption of a proposal that would amend the producer milk provisions of the Appalachian and Southeast milk orders to prevent producers who share in the proceeds of a state marketwide pool from simultaneously sharing in the proceeds of a Federal marketwide pool on the same milk. In addition, this decision recommends adopting proposed amendments to the transportation credit provisions of the Appalachian and Southeast orders.

The proposed amendments to expand the Appalachian marketing area would likely continue to regulate under the Appalachian order two fluid milk distributing plants located in Roanoke, Virginia, and Lynchburg, Virginia, and shift the regulation of a distributing plant located in Mount Crawford, Virginia, from the Northeast order to the Appalachian order.

The proposed amendments would allow the Kroger Company's (Kroger) Westover Dairy plant, located in Lynchburg, Virginia, that competes for a milk supply with other Appalachian order plants to continue to be regulated under the order if it meets the order's minimum performance standards. The plant has been regulated by the Appalachian order since January 2000. In addition, the proposed amendments

would remove the disruption that occurs as a result of the Dean Foods Company's (Dean Foods) Morningstar Foods plant, located in Mount Crawford, Virginia, shifting its regulatory status under the Northeast order.

The Appalachian order currently contains a "lock-in" provision that provides that a plant located within the marketing area that meets the order's minimum performance standard will be regulated by the Appalachian order even if the majority of the plant's Class I route sales are in another marketing area. The proposed expansion along with the lock-in provision would regulate fluid milk distributing plants physically located in the marketing area that meet the order's minimum performance standard even if the majority of their sales are in another Federal order marketing area. Accordingly, the proposed amendments would regulate under the Appalachian order Kroger's Westover Dairy, located in Lynchburg, Virginia; Dean Foods' Morningstar Foods plant, located in Mount Crawford, Virginia; and National Dairy Holdings' Valley Rich Dairy, located in Roanoke, Virginia. Based on Small Business Administration criteria these are all large businesses.

This decision recommends proposed amendments to the transportation credit provisions of the Appalachian and Southeast orders. The Appalachian and Southeast orders contain provisions for a transportation credit balancing fund from which payments are made to handlers to partially offset the cost of moving bulk milk into each marketing area to meet fluid milk demands.

The proposed amendments would increase the maximum rate of the transportation credit assessment of the Appalachian and Southeast orders by 3 cents per hundredweight. Specifically, the proposed amendments would increase the maximum rate of assessment for the Appalachian order from 6.5 cents per hundredweight to 9.5 cents per hundredweight while increasing the maximum rate of assessment for the Southeast order from 7 cents per hundredweight to 10 cents per hundredweight. Increasing the transportation assessment rates will tend to minimize the exhaustion of the transportation credit balancing fund when there is a need to import supplemental milk from outside the marketing areas to meet Class I needs.

Currently, the Appalachian and Southeast orders provide that transportation credits shall apply to the milk of a dairy farmer who was not a "producer" under the order during more than two of the immediately preceding months of February through May but not more than 50 percent of the milk production of the dairy farmer, in aggregate, was received as producer milk under the order during those two months. The proposed amendments recommended for adoption in this decision would provide the Market Administrator of the Appalachian order and the Market Administrator of the Southeast order the discretionary authority to adjust the 50 percent milk production standard.

This decision recommends adoption of proposals seeking to prohibit the simultaneous pooling of the same milk on the Appalachian or Southeast milk marketing orders and on a State-operated order that provides for the marketwide pooling of milk. Since the 1960's, the Federal milk order program has recognized the harm and disorder that result to both producers and handlers when the same milk of a producer is simultaneously pooled on more than one Federal order. When this occurs, producers do not receive uniform minimum prices, and handlers receive unfair competitive advantages.

The need to prevent "double pooling" became critically important as distribution areas expanded, orders merged, and a national pricing surface was adopted. Milk already pooled under a State-operated program and able to simultaneously be pooled under a Federal order has essentially the same undesirable outcomes that Federal orders once experienced and subsequently corrected. Accordingly, proposed amendments to eliminate the "double pooling" of the same milk on the Appalachian or Southeast order and a State-operated milk order that has marketwide pooling is recommended for adoption.

The proposed amendments would be applied to all Appalachian and Southeast order participants (producers and handlers), which consist of both large and small business. Since the proposed amendments recommended for adoption would be subject to all the orders' producers and handlers regardless of their size, the provisions are not expected to provide a competitive advantage to any participant. Accordingly, the proposed amendments should not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these proposed amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This notice does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities. Also, parties may suggest modifications of this proposal for the purpose of tailoring their applicability to small businesses.

Prior documents in this proceeding:

Notice of Hearing: Issued January 16, 2004; published January 23, 2004 (69 FR 3278).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Appalachian and Southeast marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250–9200, by the 60th day after publication of this decision in the **Federal Register**. Six copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Atlanta, Georgia, on February 23–26, 2004, pursuant to a notice of hearing issued January 16, 2004 (69 FR 3278).

The material issues on the hearing record relate to:

1. Merger of the Appalachian and Southeast Marketing Areas.

a. Merging the Appalachian and Southeast milk marketing areas and remaining fund balances.

b. Expansion of the Appalachian marketing area.

c. Transportation credits provisions.

2. Promulgation of a new "Mississippi Valley" milk order.

3. Eliminating the simultaneous pooling of the same milk on a Federal milk order and a State-operated milk order that provides for marketwide pooling.

4. Producer-handler provisions.

This partial recommended decision deals only with Issues 1 through 3. Issue No. 4 will be addressed separately in a forthcoming decision.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Merger of the Appalachian and Southeast Marketing Areas

1a. Merging the Appalachian and Southeast Milk Marketing Areas and Remaining Fund Balances

This decision recommends denial of a proposal that would merge the current Appalachian marketing area and Southeast milk marketing area into a single marketing area under a proposed order. Accordingly, a proposal that would combine the fund balances of the current Appalachian and Southeast orders is rendered moot and is not recommended for adoption.

The Appalachian marketing area consists of the States of North Carolina and South Carolina, parts of eastern Tennessee, Kentucky excluding southwest counties, 7 counties in northwest/central Georgia, 20 counties in southern Indiana, 8 counties and 2 cities in Virginia, and 2 counties in West Virginia. The Southeast order marketing area consists of the entire States of Alabama, Arkansas, Louisiana, Mississippi, Georgia (excluding 4 northern counties), southern Missouri, western/central Tennessee, and southern Kentucky.

A witness testifying on behalf of Southern Marketing Agency, Inc. (SMA), presented testimony in support of Proposals 1 and 2 as contained in the hearing notice published in the **Federal Register** (69 FR 3278). Proposal 1 would merge the current Appalachian and Southeast marketing areas into a single marketing area (hereafter referred to as the proposed merged milk order) and Proposal 2 would combine the remaining balances of funds of the current Appalachian and Southeast orders if the proposed merged order was adopted. According to the witness, SMA is a marketing agency whose cooperative members include Arkansas Dairy Cooperative Association, Inc., Dairy Farmers of America, Inc. (DFA), Dairymen's Marketing Cooperative, Inc., Lone Star Milk Producers, Inc., Maryland & Virginia Milk Producers Cooperative Association, Inc. (MD&VA), and Southeast Milk, Inc. (SMI) (proponent cooperatives).

The witness for the proponent cooperatives said SMA was created in response to a changing market structure and is an extension of the cooperatives' initiative to consolidate and seek enhanced marketing efficiencies. The witness indicated that SMA pools certain costs and returns for its cooperative member producers supplying distributing plants fully regulated under the Appalachian and Southeast milk orders. SMA considers the Appalachian and Southeast orders one market in terms of the distribution of revenues, the allocation and pooling of marketing costs, milk supply and demand, and the development of its annual budget, the witness explained.

The proponent cooperatives' witness stated that the proposed order merger would create a milk market which would be commonly supplied and deserving of a common blend price. The witness testified that the continued existence of the separate Appalachian and Southeast Federal milk orders across a functionally single fluid milk marketing area inhibits market efficiency in supplying and balancing the market, creates unjustified blend price differences, encourages uneconomic movements of milk, and results in the inequitable sharing of the Class I proceeds of what should be a single market.

The proponent cooperatives' witness stated that different blend prices and different and separate pool qualification requirements constitute disruptive conditions that would be removed by a merger of the orders. The witness asserted that the proposed merger would allow producer milk to flow more freely between pool plants and provide for the equal sharing of balancing costs across all producers in the proposed merged order.

The proponent cooperatives' witness stressed that the adoption of the proposed merged order would assure producers that milk would be sold at reasonable minimum prices and producers would share pro rata in the returns from sales of milk including milk not needed for fluid use. The witness further stated that handlers would be assured that competitors would pay a single set of minimum prices for milk set by the established order. The witness stated that a merged order is in the public interest because it assures that an adequate supply of high quality milk will be available for consumers.

The proponent cooperatives' witness noted that the adoption of a new Federal order is contingent upon being able to show that interstate commerce occurs in the proposed marketing area. It is the opinion of the witness that "interstate commerce" does exist due to the movement of bulk and packaged milk products within, into, and out of the Appalachian and the Southeast marketing areas—the proposed marketing area.

The proponent cooperatives' witness noted a trend of larger geographical areas being served by fewer Federal milk marketing orders. Specifically, the witness said between 1996 and 2003 the number of dairy farmers in the southeastern states of Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, and Virginia declined from 11,712 to 7,180. This decrease, the witness explained, parallels the trend of a drop in the number of dairy farmers pooled on the current Appalachian and Southeast orders. The witness stated that based on the final decision for Federal Order Reform (issued March 12, 1999, and published April 2, 1999 (64 FR 16025)) 8,180 dairy farmers were expected to pool their milk on the consolidated Appalachian and Southeast orders. However, the witness noted only 7,243 dairy producers supplied milk to the two orders during December 2003.

The proponent cooperatives' witness stressed that there is an acute milk deficit in the Appalachian and Southeast Federal orders. Referencing data obtained from the USDA National Agricultural Statistics Service (NASS) for the states of Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, and Virginia (southeast region), the witness testified that a decline in dairy farmers led to a decline in milk production in the southeast region. The witness noted milk production decreased from 13,518 million pounds in 1996 to 10,671 million pounds in 2003 a decline of 21 percent. The witness asserted that this decline coupled with an increase in population has resulted in a major

expansion of the milkshed for the southeastern region of the United States.

According to the proponent cooperatives' witness, 9,071.9 million pounds of Class I producer milk was pooled on the combined Appalachian and Southeast orders during 2003. The witness said marketings of milk produced in the southeastern region was 10,671 million pounds in 2003, which means 85 percent of Grade A milk production was needed for Class I use on an annual basis.

In 1996, the proponent witness testified, it was anticipated that 72 fluid milk processing plants were or would become fully regulated distributing plants on the consolidated Appalachian and Southeast orders. However, the witness noted, only 52 remained regulated by the orders during December 2003. The witness indicated that of the fully regulated pool plants existing in both January 1996 and December 2003, more than two-thirds have experienced at least one ownership change and some have experienced several ownership changes.

The proponent cooperatives' witness cited a set of criteria used for consolidation of orders during the reform process. The witness said this list included overlapping route sales and areas of milk supply, the number of handlers within a market, the natural boundaries, the cooperative associations operating in the service area, provisions common to the existing orders, milk utilization in common dairy products, disruptive marketing conditions, and transportation differences.

The proponent cooperatives' witness testified that significant competition for sales between plants exists between the Appalachian and Southeast orders. The witness noted that the "corridor of competition" is the shared border of the Appalachian and Southeast. The witness testified that Federal milk order data for 2003 shows Class I disposition on routes inside the Southeast order by Appalachian order pool plants was 11.25 percent of the total Class I route disposition by all plants in the Southeast order. According to the witness, Class I route disposition in the Southeast order by Appalachian order pool plants has increased in total by 11.1 percentage points since January 2000 (*i.e.*, 5.9 percentage points from 2000 to 2001, 2.1 percentage points from 2001 to 2002, and 1.9 percentage points from 2002 to 2003). In addition, the stated record data reveals that Class I route disposition by Appalachian order pool plants into the Southeast order was 63.9 percent of the total Class I disposition by all nonpool plants for the Southeast order during 2003.

According to the proponent cooperatives' witness, all of the distributing plants currently regulated under the Appalachian and Southeast orders are expected to be fully regulated by the proposed merged order. Using December 2003 data, the witness stated that the proposed merged order would have had a Class I route distribution of 773.4 million pounds. The witness added that 86.58 percent of Class I sales would have been from milk produced in the proposed marketing area. The witness stated that the proposed Southeast order would rank third in the total number of pool plants regulated by a Federal milk order.

The proponent cooperatives' witness stated that there is substantial and significant overlap of the supply of producer milk for the Appalachian and Southeast orders. The witness noted Federal order data for 2000 through 2003 shows that dairy farmers located in southern Indiana, central Kentucky, central Tennessee, central North Carolina, western South Carolina, and central and southern Georgia have supplied milk to plants regulated under Appalachian or Southeast orders. The witness said milk of dairy farmers located in the Central marketing area and Southwest marketing area, and dairy farmers located in northwestern Indiana and south central Pennsylvania, have supplied fluid milk plants regulated by the Appalachian and Southeast orders.

In December 2003, the witness stated, dairy farmers located in 28 states supplied milk to handlers under the Appalachian or Southeast orders. Sixteen of the 28 states supplied milk to both orders and 13 states were located wholly or partially within the proposed merged order marketing area, the witness noted.

The witness for the proponent cooperatives testified that the proposed order would rank second in Class I utilization representing 19.5 percent of total Class I sales in all Federal milk orders. Using annual Federal milk order data, the witness noted that for 2003, Class I utilization for the Appalachian and Southeast orders was 70.36 percent and 65.47 percent, respectively. The witness said the combined Class I utilization for the proposed merged order would have been 67.77 percent for 2003 or 9,071.9 million pounds of 13,385.7 million pounds of producer milk pooled.

The proponent cooperatives' witness noted that milk not needed for fluid uses in the Appalachian order is primarily used in Class II and Class IV while milk not needed for fluid uses in the Southeast order is primarily used in Class III. For 2003, the witness noted that non-fluid milk utilization for the Appalachian order was 14.41 percent Class II, 7.11 percent Class III, and 8.12 percent Class IV, while the non-fluid milk utilization for the Southeast order was 9.97 percent Class II, 17.79 percent Class III, and 6.78 percent Class IV. The witness stressed that these differing uses of milk result in different blend prices between the Appalachian and Southeast orders which leads to disorderly marketing conditions. The witness emphasized that differences in blend prices between the two orders is largely due to significant differences in uses and prices in the manufacturing classes and is not necessarily due to significant differences in Class I milk utilization.

The witness explained that SMA in April 2002 began the common pooling of the costs and returns to supply the customers of member cooperatives in the separate orders in an effort to alleviate disruptive blend price differences. The witness testified that while this procedure has resolved some blend price differences, their procedure does not result in removing inequitable blend prices for all producer milk pooled on the separate orders.

Regarding the commonality of cooperative associations in the two marketing areas, the proponent cooperatives' witness stated that cooperative membership is an indication of market association and provides support for the consolidation of marketing areas. The witness noted that the six SMA member cooperatives accounted for approximately 734 million pounds of producer milk during November 2003, which represents about 67 percent of the total producer milk that would be pooled on the proposed Southeast order. Also, the witness stated these cooperatives market milk of other cooperatives whose member producers' milk would be pooled on the proposed Southeast order. Using November 2003, the witness stated approximately 871 million pounds or 79 percent of the producer milk pooled under the proposed Southeast order would be represented by these proponent cooperatives.

The witness for the proponent cooperatives pointed out that the regulatory provisions of the Appalachian and Southeast orders are similar in most respects except for the qualification standards for producer milk and a producer. While not a Federal milk order regulatory provision, the proponent witness stated that the common handling of cost and returns for milk that would be pooled on the proposed merged order recognized

similar marketing conditions within the proposed order marketing area.

The proponent cooperative witness testified that the proposed merged order should retain the Appalachian order pool plant provisions. The witness recommended adopting provisions that would allow the pooling of a supply plant operated by a cooperative association that is located outside the marketing area but within the State of Virginia. The witness stated that the proposed merged order should include the Appalachian order "split" pool plant provision which would continue to provide for defining that portion of a pool plant designated as a "nonpool plant" that is physically separate and operates separately from the pool portion of such plant.

The proponent cooperatives' witness stated that lock-in provisions be included in the proposed merged order. According to the witness, distributing plants in the Southeastern markets have been "locked in" or fully regulated as pool plants under the order in which they are physically located since the mid-1980s. The witness testified that unit pooling distributing plants on the basis of their physical location should be retained in the merged order. The witness noted that the Appalachian and Southeast orders currently provide that two or more plants operated by the same handler that are located within the marketing area may qualify for pool status as a unit by meeting the in-area Class I route disposition standards specified for pool distributing plants.

The witness for the proponent cooperatives explained that lock-in provisions help to preserve the viability of capital investments in pool distributing plants. The witness indicated that lock-in provisions in the Southeast and Appalachian orders adequately provide for regulatory stability for pool plants on the edge of a market area that may shift regulatory status between two orders due to changes in route disposition patterns.

The proponent cooperatives' witness recommended changing the "touch base" requirement of the producer milk provision from a "days" production standard to a "percentage" production standard. This change, the witness stated, will accommodate pooling the milk of large producers who ship multiple loads of milk per day. The witness proposed that individual producers deliver 15 percent of their monthly milk production (equivalent to approximately 4.5 days of milk production) to a pool plant during January through June and 33 percent (equivalent to about 10 days of milk production) of their monthly milk production during the months of July through December. The witness stated that the 33 percent production standard is a reasonable minimum requirement for establishing a producer's association with the market during the short production months of July through December. Under their proposal, the milk of a dairy farmer would be eligible for diversion to a nonpool plant the first day of the month during which the milk of such dairy farmer meets the order's touch base requirements.

The proponent cooperatives' witness indicated that their proposal contains current Southeast order language that limits the total amount of producer milk that may be diverted by a pool plant operator or cooperative association to 33 percent during the months of July through December and 50 percent during January through June.

The proponent cooperatives' witness proposed that the reserve balances of the marketing services, administrative expense, producer-settlement funds, and the transportation credit balancing funds that have accrued in the individual Appalachian and Southeast orders, be merged or combined in their entirety if the proposed merged order is adopted. The witness explained that the handlers and producers servicing the milk needs of the individual orders would continue to furnish the milk needs of the proposed marketing area.

According to the proponent cooperatives' witness, it would be appropriate to combine the reserve balances of the orders' marketing service funds since marketing service programs for producers would continue under the proposed order. In regards to the administrative expense funds, the witness stated that it would be equitable and more efficient to combine the remaining administrative funds accumulated under the individual orders. In addition, the witness indicated that this would enable the producer-settlement funds and the transportation credit funds of the proposed merged order to continue without interruption.

Witnesses for Maryland & Virginia Milk Producers Cooperative, Inc. (MD&VA), Arkansas Dairy Cooperative, Inc. (ADC), Lone Star Milk Producers, Inc. (Lone Star), and Dairymen's Marketing Cooperative, Inc. (DMC), testified in support of consolidating the current Appalachian and Southeast milk orders into a single milk order. According to witnesses, MD&VA is comprised of 1,450 to 1,500 dairy farmers, ADC has 160 member dairy farmers, Lone Star is comprised of about 160 member dairy farmers, and DMC is comprised of 168 member dairy farmers. The witnesses indicated that all of the cooperatives are members of SMA and that the milk of their dairy farmer members is shipped to plants regulated by the Appalachian or Southeast orders.

The MD&VA witness asserted that the consolidation of the current Appalachian and Southeast orders is necessary due to changes in the marketing structure (*i.e.*, milk production and processing sectors) in the southeastern United States. The witness was of the opinion that the area covered by the two current orders is essentially a single market and that all of the producers delivering milk to the market should share a common Federal order blend price.

The witnesses for MD&VA, ADC, Lone Star, and DMC stated the producer milk requirements under the current Appalachian and Southeast Orders make it difficult to ensure the pooling of milk on the orders. The witnesses contended a merger of the Appalachian and Southeast orders would enhance market equity, allow for increased efficiencies in supplying a deficit milk region, and eliminate the disruptive and disorderly marketing conditions that currently exist in the Appalachian and Southeast orders by eliminating blend price differences.

Witnesses representing Georgia Milk Producers, Inc. (GMP), testified in opposition to the merger as proposed in Proposals 1 and 2. The witness was of the opinion that USDA had made a mistake in 2000 when the western part of the current Southeast order, which had a lower Class I utilization, was added to the Southeast order which had a higher Class I utilization.

Other testimony presented on behalf of GMP, and relying on 1997 data, indicated that milk production in Georgia fell short of Georgia's fluid milk demand by about 122 million pounds as compared to only 4 to 11 million pound supply shortfalls in the other states included in the proposed merged order area. The witness stated that the widening supply-demand gap will accelerate as population increases and milk production declines in Georgia. The GMP witness stated that: "Based on the decline in production in the region compared to the growth in demand, USDA has not sufficiently considered the needs of the dairy farmers in the states covered by the Order." According to the witness, GMP dairy farmers have lost income each time the Southeast Federal Order has been expanded.

The GMP witness testified that a rejection of the proposed merged order together with the creation of a new Mississippi Valley Order, as offered by Proposal 5, would be the first step to

help rectify the mistake made in Federal milk order reform. The witness supported raising the utilization in the most deficit areas of the Southeastern States by creating a Mississippi Valley order and combining the high utilization areas of the remainder of Order 7 into a new smaller Southeast Order.

The GMP witness asserted that historically, the larger the marketing area, the higher the balancing costs in a deficit market. The witness further asserted that transportation credits shift part of that cost to the entire market rather than to the dairy farmers in the order who are members of cooperatives. The witness testified that transportation credits unintentionally encourage the importation of milk rather than encourage increased production of local milk.

A witness representing the Kroger Company (Kroger) testified in support of the proposed merger of the Appalachian and Southeast orders. According to the witness, Kroger owns and operates Winchester Farms Dairy, in Winchester, Kentucky, and Westover Dairy, in Lynchburg, Virginia. The witness stated that both plants are pool distributing plants regulated on the Appalachian Federal milk order. The witness stated that Kroger owns and operates Heritage Farms Dairy in Murfreesboro, Tennessee, and Centennial Farms Dairy in Atlanta, Georgia, both fully regulated distributing plants under the Southeast milk order.

According to the Kroger witness, their Winchester, Kentucky, plant was associated with the Ohio Valley order (now part of the Mideast order) from 1982 to 1988, with the Louisville-Lexington-Evansville order from 1988 through 1999, and with the Appalachian order since 2000. The witness indicated that previous decisions by USDA adopted pool plant provisions that allowed their Winchester, Kentucky, plant to be regulated under the Appalachian order. According to the witness, being regulated by the Appalachian order retains that plants ability to procure milk with a higher blend price when compared with the Mideast order.

The Kroger witness indicated that with the exception of the Murfeesboro, Tennessee, plant, which has a minority supply of milk from independent producers, all of the Kroger pool distributing plants are supplied by Dairy Farmers of America. The witness indicated that if their Winchester plant were to again be associated with the Mideast order, the returns to the milk supplying cooperative would be reduced due to the lower Mideast order blend price. The witness requested that the current Appalachian order pool plant definition be included in the proposed merged order. This request, according to the witness, would permit their plant located in Winchester, Kentucky, to continue its association with the proposed merged order rather than with the Mideast order.

A witness representing Dairy Farmers of America (DFA) testified that the proponents do not anticipate any difficulties from merging of the two orders or expanding the proposed merged area to include additional Virginia counties. According to the witness, the Virginia State Milk Commission has been able to simultaneously operate a producer base milk pricing program for producers supplying milk to plants with Class I sales within the State. The witness indicated that DFA opposes any change to the proposed merged order provisions that may cause conflicts between the operations of the Virginia State Milk Commission and the Federal milk marketing order program.

A witness representing Prairie Farms testified in opposition to Proposals 1 and 2. The witness indicated that the fluid milk industry would be better served by more Federal milk marketing orders covering smaller areas rather than fewer Federal milk marketing orders covering large areas. The witness indicated that Federal milk order reform left "dead zones" in the State of Illinois and Missouri, near St Louis. According to the witness, this area is not able to attract a fluid milk supply and experiences weekly fluid milk deficits.

The Prairie Farms witness indicated that the low per capita milk production in Illinois, in combination with economic incentives to move the milk produced in Illinois and eastern Missouri into the Appalachian and Southeast orders, has caused disorderly marketing conditions. The witness indicated that the blend price differences between the Upper Midwest order and the Central order are not sufficient to cover the transportation cost of moving milk to the "dead zones". The witness testified that at an October 31, 2001, meeting, DFA—Prairie Farms' major supplier—indicated that they would no longer be able to provide supplemental milk supplies to Prairie Farms due to the lack of incentives and expenses.

The Prairie Farms witness stated that today's dairy environment shows that the current order system needs to be reconfigured and inequities fixed system-wide. The witness asserted that the consequences for nearby marketing areas and adjacent orders must be considered when revising or merging orders. The witness indicated that market efficiency suffers and difficulties occur in supplying and balancing the market at all Federal milk order borders. The witness indicated that the lines drawn between marketing areas create unjustified blend price differences, encourage uneconomic movements of milk, and result in the inequitable sharing of Class I proceeds.

A witness representing Dean Foods testified in opposition to the proposed merger of the Appalachian and the Southeast market areas. According to the witness, more and smaller order areas create more flexible incentives to deliver milk to Federal order pool plants. According to the witness, relative blend prices determine where milk is shipped and pooled. According to the witness the disincentives associated with increased transportation costs increase faster than the incentives from the higher location value of the merged order blend price. The witness cited the St. Louis/southern Illinois area and its chronic milk deficit as a prime example of these phenomena.

Post-hearing briefs addressing Proposals 1 and 2 were submitted by SMA, Dean Foods, and Prairie Farms. The proponent cooperatives for the proposed order merger, submitted a post-hearing brief reiterating their support for the merger of the Appalachian and Southeast orders. The brief described conditions existing in the Appalachian and Southeast orders as disruptive and disorderly, and asserted that these conditions are symptoms of a market that has changed significantly since the orders were promulgated by Federal order reform, effective January 1, 2000.

According to the proponent cooperatives' brief, a merger of the existing orders would bring blend price uniformity, recognize inter-order competition and integrate Class I sales within the proposed merged order, recognize common supply areas within the proposed merged order, and allow producer milk to move more freely between pool plants within the proposed marketing areas. In addition, proponents contended it would equalize the costs of balancing within the proposed marketing area, erase the artificial line that separates a common milk market, and recognize the common pooling of costs and returns for producer milk within the proposed merged order. The brief asserts that no additional parties would become regulated as a result of the proposed merged order. According to the proponent cooperatives' brief, other options that forestall a complete merger

are inadequate to correct the present disruptive and disorderly conditions in the separate orders.

Opposition to proposal 1 was reiterated by Dean Foods and Prairie Farms in a joint post-hearing brief. The brief suggested that blend price differences between orders cause milk to move to where it is most needed. The Dean Foods and Prairie Farms stated that without blend price differences milk movements between and within marketing areas are impaired. The opponents brief suggested a national hearing in order to consider simultaneously all marketing regions because the results of one proceeding directly affects other regions. The brief stated that combining the Appalachian and Southeast marketing areas was considered but was not adopted under Federal milk order reform.

The Dean Foods and Prairie Farms joint brief stated that market administrator data demonstrates that moving milk to where it is needed through blend price differences effectively moves milk from the west to the east for the Southeast marketing area and from north to south for the Appalachian marketing area. The brief offered the St. Louis area as an example of blend price differences that are sometimes too small to cover additional costs of transporting milk to major metropolitan area for fluid use. The brief indicated that similar problems could result elsewhere if the two orders are merged.

In their joint brief, Dean Foods and Prairie Farms suggested that although a majority of dairy market participants may favor a merger, it is important to consider the minority opinion. The brief also requested the inclusion of the Kentucky counties of Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Marshall, and McCracken in the Southeast marketing area if Proposal 1 is denied and Proposal 5 is adopted.

Dean Foods and Prairie Farms' joint brief contended that the proposal to merger the Appalachian and Southeast orders brings forth a significant policy and legal question the Department must address prior to issuing a decision on the merits of the proposal. The proposed merger, if adopted, would cause the number of Federal orders to fall to below the minimum number of 10 required by Congress in the 1996 Farm Bill, they stated.

A written statement submitted on behalf of LuVel Dairy Products, Inc., requested that the administrative requirements of the producer-settlement fund be modified to extend the time period in which payments to the fund are due by one full business day and to allow payments due to the fund to be submitted overnight instead of through the electronic wiring of funds. However, this was not a noticed proposal and no evidence or witness was available to testify regarding this written request.

The 1996 Farm Bill mandated that Federal milk orders be consolidated to not less than 10 or more than 14. The Federal order reform final decision issued March 12, 1999 and published in the **Federal Register** April 2, 1999, (64 FR 16026) meet the requirements set forth in the 1996 Farm Bill through the consolidation of the 31 Federal milk orders into 11 orders. The Agricultural Marketing Agreement Act of 1937 (AMAA), as amended, provides the Department the authority to issue and amend orders. Accordingly, the merger proposal may be considered by the Department.

This decision does not recommend merging the Southeast and Appalachian marketing areas. Record evidence of this proceeding does not substantiate the need for merging these two separate marketing order areas. Overlap of Class I route disposition between the two orders is relatively unchanged since the separate orders were created in 2000. The overlap in milk supply areas for plants in the Appalachian and Southeast orders remains minimal and unchanged since 2000. Blend price differences and other marketing conditions of the two orders raised by the proponents are not significantly different from conditions existing in 2000. The proponents have not demonstrated that the current marketing conditions are disorderly. The proponents have not made a convincing case that the current marketing conditions are disorderly.

The AMAA provides that milk orders may be issued where the marketing of milk is in the current of interstate or foreign commerce or where it directly burdens, obstructs, or affects interstate or foreign commerce. Federal milk orders define the terms under which handlers in a specified market purchase milk from dairy farmers. The orders are designed to promote the orderly exchange of milk between dairy farmers (producers) and the first buyers (handlers) of milk. Record evidence of this proceeding does not support a finding that the current Appalachian and Southeast milk orders are not achieving the goal of orderly marketing.

In determining whether Federal milk order marketing areas should be merged, the Department generally has considered the extent to which Federal order markets share common characteristics such as overlapping sales and procurement areas, and other commonly shared structural relationships. The most important of these factors are evidence of overlapping sales patterns among handlers of Class I milk and overlapping milk procurement area. The measures of association between the Appalachian and Southeast milk order marketing areas in terms of overlapping route sales and milk procurement have not change significantly since the consolidated orders became effective in January 2000.

Several criteria were used by the Department in determining which of the 31 milk order marketing areas exhibited a sufficient measure of association in terms of sales, procurement area, and other structural relationships to warrant consolidation or mandated by the 1996 Farm Bill into the current 10 milk marketing areas. These criteria included overlapping route disposition, overlapping areas of milk supply, number of handlers within a market, natural boundaries, cooperative associations, common regulatory provisions, and milk utilization in common dairy products.

The primary factors during reform that supported the creation of the consolidated Appalachian milk order and the consolidated Southeast milk order were overlapping route sales and milk procurement areas between the marketing areas. The determinations were based on an analysis of milk sales and procurement area overlap between the pre-reform orders using 1997 data. Specifically, the Federal order reform final decision issued March 1999, stated that the primary factors for the consolidation of the (1) Tennessee Valley, (2) Louisville-Lexington-Evansville, and the (3) Carolina marketing areas into the current Appalachian milk order were commonality of overlapping route disposition and milk procurement between the two marketing areas. The decision found that there was "a stronger relationship between the three marketing areas involved than between any one of them and any other marketing area on the basis of both criteria." (64 FR 16059)

For the Southeast order, the Federal order reform final decision stated that the basis for the adopted Southeast marketing area which consolidated the former Southeast marketing area with additional counties in Arkansas, Kentucky, and Missouri was "overlapping route dispositions within the marketing area to a greater extent than with other marketing areas. Procurement of producer milk also overlaps between the states within the market." (64 FR 16064)

Proposals to merge the Appalachian and Southeast order marketing areas into a single marketing area were considered during the Federal order reform process. Dairy Farmers of America, Inc., and Carolina-Virginia Milk Producers Association submitted comments requesting that the proposed consolidated Appalachian order marketing area and the proposed consolidated Southeast order marketing area be combined into a single consolidated Southeast marketing area. Also, the Kentucky Farm Bureau Federation requested a single Federal order consisting of the proposed consolidated Appalachian and Southeast marketing areas including all of the State of Kentucky.

The proponents for merging the two consolidated marketing areas contended that common procurement areas between the orders would result in different blend prices paid to producers if the orders were not consolidated. The Federal order reform final decision rejected this assertion stating that "As discussed in the proposed rule, consolidating the Carolina and Tennessee Valley markets with the Southeast does not represent the most appropriate consolidation option because of the minor degree of overlapping route disposition and producer milk between these areas." Accordingly, the merger proposals were not adopted during Federal order reform.

Record evidence indicates that the Appalachian and Southeast order marketing areas share minor and unchanged commonality in sources of milk supply, fluid milk route sales, and market participants (cooperative associations and handlers). However, as discussed later in this decision, such measures of association between the Appalachian and Southeast orders can only support a finding to maintain two separate Federal orders with some minor modifications.

Overlapping Route Sales and Milk Supply. Current proponents of merging the Appalachian and Southeast marketing areas contend that there is substantial overlap in route sales and milk supply areas between the orders. The movements of packaged fluid milk between Federal milk order marketing areas provide evidence that plants from more than one Federal milk order are in competition with each other for fluid milk sales. Overlapping sales patterns can result in the regulatory shifting of handlers between orders and tends to cause disorderly marketing conditions by the changed price relationships between competing handlers and neighboring dairy farmers. As discussed later in this decision, there is no evidence of disorder occurring within the Appalachian and Southeast order marketing areas as a result of plants shifting regulation to other orders.

Overlapping milk supply principally applies when the major proportions of a market's milk is supplied by the same area. The cost of a handler's milk is influenced by the location of the milk supply which affects other competitive factors. The common pooling of milk produced within the same procurement area facilitates the uniform pricing of producer milk among dairy farmers. However, all marketing areas having overlapping procurement areas do not warrant consolidation. An area that supplies a minor proportion of an adjoining area's milk needs from minor proportions of its own total milk supply and has minimal competition among handlers in the adjacent marketing area for fluid sales, supports concluding that the two marketing areas are clearly separate and distinct.

Based on record evidence of Federal milk order data, Table 1 illustrates that the Appalachian and Southeast milk orders have experienced no significant change in overlapping route disposition or milk procurement since the orders were consolidated.

TABLE 1: Overlapping Route Sales and Milk Supply Appalachian (Order 5) and Southeast (Order 7) Milk Orders

Route Disposition (Share of Class I Sales)		
Date	From Order 5 to Order 7 (Percent)	From Order 7 to Order 5 (Percent)
Annual Average - 2000	11.4	1.9
Annual Average - 2001	12.2	2.4
Annual Average - 2002	12.2	1.9
Annual Average - 2003	12.4	2.0
Overlapping Milk Supply (Share of Total Producer Milk)		
Date	**From Order 5 to Order 7 (Percent)**	**From Order 7 to Order 5 (Percent)**
Annual Average - 2000	3.1	8.5
Annual Average - 2001	3.2	6.9
Annual Average - 2002	3.2	6.8
Annual Average - 2003	3.2	4.3

Source: Appalachia and Southeast Market Administrator Data

For the 2000 through 2003 period, route sales by distributing plants regulated by the Appalachian order into the Southeast marketing area averaged about 12 percent, while the route sales from plants regulated by the Southeast order into the Appalachian marketing area averaged about 2 percent. Record data also indicates that the majority of the Class I sales by distributing plants regulated by the Appalachian and Southeast orders are within each of the respective orders. For the 4-year period, Appalachian order handlers accounted for about 75 percent of the total Class I sales within the order's marketing area and plants regulated by the Southeast order accounted for about 85 percent of the order's total Class I sales.

Of the total producer milk pooled on the Appalachian order, the amount of producer milk produced in the Southeast marketing area decreased from 8.5 percent in 2000 to 4.3 percent in 2003. The milk produced in the Appalachian marketing area that was pooled on the Southeast order accounted for about 3.2 percent of the total producer milk pooled on the Appalachian order for the same 4-year period.

In summary, the Table 1 data illustrates that route sales from Appalachian order handlers into the Southeast marketing area increased slightly (1 percentage point) from 2000 to 2003, while route sales from the Southeast order regulated plants into the Appalachian marketing area remained relatively unchanged for the 4-year period. Likewise, the data in Table 1 shows that producer milk pooled on the Appalachian order that originated from the Southeast marketing area declined each year since 2000, while the producer milk pooled on the Southeast order that originated from the Appalachian marketing area has remained unchanged since the orders were consolidated in January 2000.

Table 2, which is based on Federal milk order record data, further details the source of producer milk pooled on the Appalachian and Southeast orders.

Table 2: Source of Producer Milk for the Appalachian and Southeast Orders by Order and Unregulated Areas

Appalachian Order Producer Milk:

Year	Percent From Inside Order Area	Percent From Northeast Order Area	Percent From Mideast Order Area	Percent From Southeast Order Area	Percent From All Other Orders & Unregulated Areas
2000	51.9	6.7	9.1	8.5	23.9
2001	47.9	6.9	11.4	6.9	26.8
2002	46.7	7.3	14.6	6.8	24.6
2003	45.1	5.8	19.2	4.3	25.6

Southeast Order Producer Milk:

Year	Percent From Inside Order Area	Percent From Central Order Area	Percent From Southwest Order Area	Percent From Appalachian Order Area	Percent From All Other Orders & Unregulated Areas
2000	66.5	8.9	17.1	3.1	4.4
2001	59.8	9.8	20.1	3.2	7.1
2002	57	10.5	21.8	3.2	7.5
2003	58.1	14.2	17.5	3.2	7.1

Source: Appalachia and Southeast Market Administrator Data

The Table 2 data illustrates that the share of total producer milk pooled on the Appalachian order produced within the marketing area during 2000 through 2003 has declined from about 51 percent to about 45 percent. The amount of producer milk produced in the Southeast marketing area as a share of the total amount of producer milk pooled on the Appalachian order also has declined from 8.5 percent in 2000 to 4.3 percent in 2003. At the same time, the amount of producer milk produced in the Mideast marketing area that was pooled on the Appalachian order increased from 9.1 percent in 2000 to 19.2 percent in 2003.

During 2000 through 2003, the Northeast, Southeast, and Mideast marketing areas accounted for about 27 percent of the total producer milk pooled on the Appalachian order. Of the total producer milk pooled on the Appalachian order that was produced outside the Appalachian marketing area during this period, 12.7 percent was produced in the Southeast marketing area and 12.8 percent in the Northeast marketing area, and 26 percent in the Mideast marketing area. In addition, record data indicates that approximately half of the pooled milk on the Appalachian order is produced in counties within the marketing area and 20 percent to 25 percent of the total pooled milk is supplied by Federally unregulated areas, mainly from counties in the State of Virginia, Pennsylvania and New York.

For the 4-year period of 2000 through 2003, record data reveals the share of the total Southeast order producer milk produced within the marketing area declined from about 67 percent in 2000 to about 58 percent in 2003. However, this decline was not supplied by producer milk that was produced in the Appalachian marketing area which remained relatively unchanged at about 3 percent from 2000 through 2003. Record data reveals that the supplemental milk for the Southeast order is produced primarily in the Central and Southwest marketing areas. Specifically, the share of producer milk produced in the Central marketing area that was pooled on the Southeast order increased from 8.9 percent in 2000 to 14.2 percent in 2003. In addition, producer milk produced in the Southwest marketing area that was pooled on the Southeast order was about 17 percent in 2000, increased to about 22 percent in 2002, and declined to about 17 percent in 2003.

The record data clearly reveals the degree of overlap in milk supply between the Appalachian and Southeast milk order marketing areas has

decreased over the 4-year period since Federal order reform while the degree of overlap between the Appalachian and Mideast orders has increased each year. The data further reveals that the primary out-of-area sources of supplemental milk for the Appalachian order marketing area are the Northeast and Mideast regions. In contrast, the primary out-of-area sources of milk supply for the Southeast order marketing area are the Southwest and Central marketing areas.

Record data reveals that the minimal overlap in milk supply areas that exists between the Appalachian and Southeast milk order marketing areas is primarily concentrated along the Tennessee and Kentucky borders. Such overlap is typical for adjoining marketing areas. The Federal order reform final decision addressed the issue of overlapping milk supply areas among adjacent orders by stating that "an area that supplies a minor proportion of an adjoining area's milk supply with a minor proportion of its own total milk production while handlers located in the area are engaged in minimal competition with handlers located in the adjoining area likely does not have a strong enough association with the adjoining area to require consolidation. For a number of the consolidated areas it would be very difficult, if not impossible, to find a boundary across which significant quantities of milk are not procured for other marketing areas." (64 FR 16045) Accordingly, the overlap existing between the Appalachian and Southeast milk order marketing areas does not warrant an order merger.

Based on the record data, this decision finds that the overlap in route sales and milk procurement areas between the Appalachian and Southeast milk order marketing areas does not support merging the two orders.

Milk Utilization. During 2000 through 2003, the 4-year weighted average Class I utilizations for the Appalachian and Southeast orders were 66.9 percent and 63.1 percent, respectively. The level of Class I utilization is a factor considered in determining whether orders should be merged but does not form the basis for adopting a merger because it is a function of how much milk is pooled on an order.

From 2000 through 2004, the non-Class I use of milk (Class II, Class III, and Class IV) of the Appalachian and Southeast marketing areas have been different. During this 5-year period, Appalachian order Class II, Class III and Class IV utilization rates averaged 14.5 percent, 7.30 percent, and 10.1 percent, respectively. For the same period, the Class II, Class III, and Class IV utilization rates for the Southeast order averaged 10.8 percent, 17.3 percent, and 8.5 percent, respectively. This data illustrates that the Appalachian marketing area is balanced primarily by Class II and Class IV while in the Southeast marketing area is balanced by Class II and Class III.

Blend Prices. Proponent cooperatives contend that the differences in blend prices between the Appalachian and Southeast milk orders result in disruptive marketing conditions. The blend price of an order is a function of the utilization of milk in the respective classes (Class I, Class II, Class III, and Class IV) at the corresponding class prices. The blend prices for the Appalachian and Southeast order have differed due to the Orders' different class utilization of milk. The magnitude of the blend price differences is primarily attributed to the differences between the class prices since the Appalachian marketing area is mainly balanced by Class II and Class IV and the Southeast marketing area by Class II and Class III The blend price difference further illustrates that the Appalachian and Southeast milk orders have separate and distinct market characteristics.

For the 5-year period of 2000 to 2004, the annual average blend price of the Appalachian order has been higher than that of the Southeast order blend price. This is in part due to the Appalachian order having a greater percentage of milk utilized in Class I compared to the Southeast order over the past five years. The range of the blend price differences for the Appalachian and Southeast orders is mainly due to differences in the Class III and Class IV prices (*i.e.*, the "balancing" class of milk). When the Class III price goes up relative to the Class IV price, the blend price difference between the two orders narrows due to the predominance of milk utilized in Class III among the non-Class I uses in the Southeast marketing area.

Blend price differences between the Appalachian and Southeast orders have narrowed since the orders were consolidated in 2000. The differences in the weighted average blend prices for the two orders was $0.36 per cwt in 2000, $0.24 per cwt in 2001, $0.21 per cwt in 2002, $0.09 per cwt in 2003, and $0.08 per cwt in 2004. Over the 2000 to 2004 period, the Appalachian order blend price exceeded the Southeast order blend price by an average of $0.20 per cwt.

A 1995 final decision that consolidated five former Southeastern orders (Georgia, Alabama-West Florida, New Orleans-Mississippi, Greater Louisiana, and Central Arkansas) with unregulated counties of four states to form the Southeast order addressed the issue of blend price differences among orders (60 FR 25014). The decision stated that blend price differences between orders may be caused by a number of factors including order provisions, institutional factors, the location of surplus milk and differences in class prices. The decision concluded that the five separate orders were encouraging plants to shift regulation among the orders which resulted in disorderly marketing conditions as producers and handler inequity greatly increased.

The current Southeast and Appalachian orders do not experience disorderly marketing conditions as a result of plants shifting regulation between orders. This may be attributed to the current lock-in and unit pooling provisions contained in the Appalachian and Southeast orders' pooling provisions. The lock-in provisions provide that a plant located within a marketing area that meets the minimum performance standards of the order will be regulated by that order even if the majority of its sales occur in another marketing area. Also, the unit pooling provisions allow two or more plants located in the marketing area and operated by the same handler to qualify for pool status as a unit by meeting the order's total and in-area route disposition standards as if they were a single distributing plant.

A plant shifting regulation to an order with a lower blend price could jeopardize the plant's ability to maintain a milk supply. Current Appalachian and Southeast order provisions allow a plant that meets the performance standards of the order and is physically located within the order marketing area to be regulated by the order even if the majority of its sales are in another marketing area. The provisions were adopted into the southeastern orders and retained in the consolidated Appalachian and Southeast orders to allow plants that are associated with the market and are servicing the market's fluid needs to be regulated under the order in which they are physically located.

If these provisions were not present in the Appalachian and Southeast orders, then plants could shift regulation between orders because of blend price differences which could cause disorderly marketing conditions to occur. Since record data indicates that the Appalachian and Southeast orders' blend price differences are continuing to decrease and there are provisions that prevent plants from shifting regulation among orders, this decision finds that

the blend price differences between the two orders do not form a contributing basis for merging the two marketing areas.

An analysis of the record data reveals that the proposed order merger would likely lower the blend price paid to dairy farmers of the Appalachian milk order and increase the blend price paid to dairy farmers of the Southeast order. The gains to Southeast order dairy farmers would be offset by losses to Appalachian order dairy farmers by a similar magnitude.

If the two orders are merged and assuming no significant depooling in the Federal order system, it is projected that for the period of 2005 through 2009 the blend price paid to dairy farmers of the current Appalachian order would be reduced by about $0.07 per cwt on average, while the blend price paid to dairy farmers of the current Southeast order would be increased by $0.07 per cwt on average. The $0.07 per cwt decline in the current Appalachian order blend price would cause average order pool receipts to decline by about 11 million pounds and average order pool revenues to fall by $6.6 million. For the current Southeast order, the $0.07 per cwt blend price increase would increase average order pool receipts by an average of 11 million pounds, resulting in an average gross pool revenue increase of $6.5 million per year.

Record testimony by proponent cooperatives indicates that SMA has, through its pooling of costs and returns, reduced their pay price differences to their member producers. Thus, a merger of the Appalachian and Southeast orders would merely increase the blend price for Southeast order nonmember producers while reducing the blend price received by Appalachian order nonmember producers. In effect, while benefiting certain producers, the proposed merged order would negatively affect certain other dairy farmers.

Based on this analysis, the absence of disorderly marketing conditions, together with the minimal and unchanged overlap between the Appalachian and Southeast orders in Class I sales and milk procurement area, the two orders should not be merged.

Cooperative Associations. Record evidence clearly demonstrates that there is a strong cooperative association commonality between the Appalachian and Southeast order marketing areas. During December 2003, there were a total of 14 cooperatives marketing the milk of members on the Appalachian and Southeast orders and 9 of these cooperatives marketed milk on both orders. A number of these cooperatives are members of SMA and others cooperatives have the milk of their members that is pooled on the Appalachian and Southeast orders marketed by SMA.

The evidence indicates that proponent cooperatives market the majority of the milk pooled on the Appalachian and Southeast orders. For example, for December 2003, proponent cooperatives marketed 62.23 percent of the total producer milk pooled on the Appalachian order and 69.68 percent of the total producer milk pooled on the Southeast order. While commonality of cooperative associations can be significant it is not a primary criteria used to determine whether orders should be merged.

The record indicates that the proposed merger could likely provide some administrative relief to SMA in marketing the milk of their cooperative members. However, this outcome is at the expense of independent dairy farmers who are currently associated with the Appalachian order.

Market and Structural Changes. Record evidence indicates that there have been several market and structural changes in the Southeast and Appalachian markets since the Federal Order Reform process began in 1996 and the implementation of the consolidated orders in January 2000. These changes include fewer and larger producers and producer organizations, handler consolidations, and other plant ownership changes.

From January 2000 through December 2003, the number of dairy farmers pooled on the Appalachian and Southeast milk orders decreased. For the Southeast, the decline was 13.6 percent from 4,213 to 3,658, and the number of dairy farmers pooled on the Appalachian order decrease by 15.6 percent from 4,974 to 4,200. Milk production in the Appalachian and Southeast marketing areas has decreased since the Federal orders were consolidated. This decrease in milk production has caused additional supplemental milk to be imported into these deficit milk production markets.

The record reveals that producer organizations associated with the Appalachian and Southeast order marketing areas changed since the Federal order reform process. In 1996, there were 14 cooperative associations marketing the milk of their members on what is now the Appalachian order and nine Southeast order cooperatives. During December 2003, the number of cooperative associations marketing members' milk on the Appalachian and Southeast orders was 12 and 11, respectively. In 2002, five cooperative associations formed SMA, which markets the majority of the raw milk supplied to plants regulated by the Appalachian and Southeast orders.

The number of pool distributing plants on the Appalachian and Southeast orders for 1996 was 29 and 36, respectively. For December 2003 the number of pool distributing plants for the orders was 24 and 27, respectively. The plant changes that have occurred include ownership changes, new plant openings, as well as plant closings.

Taken singularly or as a whole, the structural changes that have occurred from 1996 to present have had no significant impact on overlapping route disposition and overlapping procurement patterns of the Appalachian and Southeast orders.

Other order provisions. Proponent cooperatives' proposal to combine the balances of the Producer Settlement Funds, the Transportation Credit Balancing Funds, the Administrative Assessment Funds, and the Marketing Service Funds of the Appalachian and Southeast milk orders for the proposed merged order is not adopted in this decision. The proposal is moot since this decision does not recommend merging the two orders.

Proponent cooperatives offered order provisions for inclusion in the proposed merged order. These recommendations included adopting for the proposed merged order provisions that currently are included in the Appalachian order and/or the Southeast order. The proponent cooperatives recommended that the proposed merged order include pool plant provisions currently in the Appalachian order, and proposed the "touch-base" requirement of the producer milk provisions include a "percentage" production standard instead of a "days" production standard. Since this decision does not recommend adopting the proposal to merge the Appalachian and Southeast marketing areas, the recommendations concerning order provisions for the proposed merged order are moot.

The proponent cooperatives requested that the proposed merged order contain transportation credit provisions currently applicable to the Appalachian and Southeast milk orders, with certain modifications. The proponent cooperatives requested the transportation credit provisions be modified to increase the maximum rate of assessment to $0.10 per cwt, change the months a producer's milk is not allowed to be associated with the market for such producer to be eligible for transportation credits, and provide the Market Administrator the authority

to adjust the 50-percent production eligibility standard. They also supported the proposed changes for the individual orders if their order merger proposal was not adopted.

Proponent cooperatives contended that by adopting transportation credits provisions in the Appalachian and Southeast orders the Secretary established the inextricable and common supply relationship between the orders. The proponents state that the proposed merger simply extends that recognition to provide common uniform prices and terms of trade for all dairy farmers delivering milk to the market, and a common set of producer qualification requirements.

This decision finds that the inclusion of transportation credit provisions in the Appalachian and Southeast orders is not a basis for merging the two orders. Such provisions were incorporated and established in the orders based on the prevailing marketing conditions of each individual order. Also, record indicates that the orders' transportation credit balancing funds have functioned differently since 2000 with respect to the assessment rates at which handlers made payments and the payments from the orders' transportation credit balancing fund for each year since 2001. The Appalachian order waived the collection of assessments at least two months of each year from 2001 through 2003. The Southeast order, while collecting assessments at the maximum rate of $0.07 per cwt, has prorated payments from the fund each year since 2001.

As discussed later in this decision, proposed amendments to the transportation credit provision of the Appalachian and Southeast orders are recommended for adoption. The proposed amendments are warranted due to the declining milk production within the Appalachian and Southeast marketing areas and the anticipated growing need of importing milk produced outside the marketing areas to supply the fluid needs of the markets.

1b. Expansion of the Appalachian Marketing Area

While the proposal for merging the Appalachian and Southeast milk marketing area is not recommended for adoption, this decision recommends expanding the current boundaries of the Appalachian milk marketing area to include certain unregulated counties and cities in the State of Virginia.

Expansion of the marketing area adjoining the Appalachian marketing area was contained in the proposal published in the hearing notice as Proposal 3. The proposal would have expanded the proposed merged order to included 25 currently unregulated counties and 14 currently unregulated cities in the State of Virginia. Similarly, a proposal published in the notice of hearing as Proposal 4 sought the expansion of the marketing area by adding an area adjoining the Appalachian marketing area that includes two unregulated cities and two unregulated counties in State of Virginia. Proposal 3, which also was supported by proponents of Proposal 4, is adopted.

Proponent cooperatives of Proposal 3 offered that the merger of the Appalachian and Southeast marketing area be expanded to include the Virginia counties of Allegheny, Amherst, Augusta, Bathe, Bedford, Bland, Botetourt, Campbell, Carroll, Craig, Floyd, Franklin, Giles, Grayson, Henry, Highland, Montgomery, Patrick, Pittsylvania, Pulaski, Roanoke, Rockbridge, Rockingham, Smyth, and Wythe) and Virginia cities of Bedford, Buena Vista, Clinton Forge, Covington, Danville, Galax, Harrisonburg, Lexington, Lynchburg, Martinsville, Radford, Roanoke, Salem and Staunton.

The proponent cooperatives' witness testified that the addition of the 25 counties and the 14 cities would properly change the regulatory status of a Dean Foods' Morningstar Foods plant located at Mount Crawford, Virginia, from the Northeast order to the Appalachian order. Also, the witness stated the proposed expansion would have the effect of fully and continuously regulating under the Appalachian order two fluid milk distributing plants (the Kroger Company's Westover Dairy plant, located in Lynchburg, Virginia, and the National Dairy Holdings' Valley Rich Dairy plant, located in Roanoke, Virginia) under the proposed merged order.

The witness said the Dean Foods Company's Mount Crawford plant alternates between partially regulated and fully regulated status under the Northeast milk order. According to the witness, in order for the plant to procure an adequate supply of milk, producers delivering to it must receive a blend price comparable with the blend price generated under the proposed merged order, if adopted.

The proponent cooperatives' witness stated that the milk supply located near Dean Foods' Mount Crawford, Virginia, plant is an attractive source of supply for plants that are fully regulated by the Appalachian order that are located in southern Virginia, North Carolina, South Carolina, and eastern Tennessee. The witness indicated that the impact of this proposal on the Virginia State Milk Commission and Virginia base-holder producers would be insignificant. The witness was of the opinion that, if there were any impact on Virginia base-holders producers, it would be positive—reflecting the higher blend price at Mount Crawford, Virginia, for the plants under the proposed merged order versus the Northeast order.

The proponent cooperatives submitted a post-hearing brief supporting the expansion of the proposed mergéd order area to include the additional 25 counties and 14 cities in Virginia.

A witness representing the Kroger Company (Kroger) testified in support of Proposal 4 to expand the proposed merged order to include two currently unregulated counties (Campbell and Pittsylvania), and two currently unregulated cities (Lynchburg and Danville) in the State of Virginia. The witness stated that Kroger owns and operates four pool distributing plants associated with the Southeast and Appalachian milk orders, including Westover Dairy located in Lynchburg, Virginia. The witness also testified in support of adopting the current Appalachian order pool plant definition.

According to the Kroger witness, the Appalachian order pool distributing plant provisions require that at least 25 percent of a plant's total route disposition must be to outlets within the marketing area. This requirement, explained the witness, has restricted Kroger's ability to expand its Class I sales into areas outside the Appalachian marketing area, including the area directly associated with the plant's physical location (Lynchburg, Virginia).

The Kroger witness noted that Westover Dairy has been a fully regulated plant on the Appalachian order since January 2000, and prior to reform, the plant was regulated on the Carolina order—one of the former orders combined to form the Appalachian order. According to the Kroger witness, the total in-area route disposition standard increased from 15 percent to 25 percent when the consolidated and reformed Appalachian order became effective in January 2000. This change, the witness contended, has created an undue hardship on Westover Dairy and has force it to relinquish sales in areas outside of the Appalachian market to maintain its pool status under the order.

The witness concluded by stating that Kroger prefers Proposal 3—the larger expansion—which would not only expand the order area to include their plant located at Lynchburg, Virginia, but would allow a further expansion of

Class I sales into other surrounding areas.

The witnesses for MD&VA, ADC, Lone Star, and DMC testified in support of Proposal 3 to expand the proposed Southeast milk order area to include certain unregulated counties and cities in the State of Virginia as proposed by the proponent cooperatives. The witnesses stated that the cooperatives were not opposed to the expansion of the proposed Southeast milk marketing area into the smaller territory in the State of Virginia as proposed by Kroger but stated the larger expanded area in Proposal 3 was preferable.

The MD&VA witness explained that some of the its member producers are located in the proposed expanded area and that the cooperative delivers the milk of producers holding Virginia Milk Commission base to plants fully regulated under the Appalachian milk order. According to the witness, the milk of MD&VA member producers is marketed to Dean Foods' Morningstar Foods plant located in Mount Crawford, Virginia, which would become a pool distributing plant if the proposed merged order and the expansion to Virginia counties and cities are adopted.

Witness appearing on behalf of Dean Foods and Prairie Farms stated they were not opposed to Proposals 3 and 4. Thus, there was no opposition to the adoption of these proposals.

This decision recommends adopting proposed amendments to the Appalachian order that would expand the marketing area to include 25 currently unregulated counties and 14 cities in the State of Virginia. The proposed amendments would cause the full and continuous regulation under the Appalachian order of three fluid milk distributing plants, one of which has been shifting regulatory status under the Northeast order. The plants are located in Lynchburg, Virginia, Roanoke, Virginia, and Mount, Crawford, Virginia. Because of Appalachian order's lock-in provision, these plants, which would be physically located within the Appalachian marketing area, would continue to be regulated under the Appalachian order even if the majority of their sales are in another Federal order marketing area.

The proposed expansion would continue the regulation of two fluid milk distributing plants (Kroger's Westover Dairy plant, Lynchburg, Virginia, and National Dairy Holdings' Valley Rich Dairy plant, Roanoke, Virginia) under the Appalachian order. The proposed expansion also would shift the regulation of the Dean Foods' Morningstar Foods plant, Mount Crawford, Virginia, from the Northeast order to the Appalachian order.

The Kroger's Westover Dairy plant has been regulated by the Appalachian order since the order was consolidated in January 2000. Current Appalachian order pool plant provisions require that at least 25 percent of a distributing plant's total Class I sales be to outlets within the marketing area. Prior to the reform of Federal milk orders, the former orders that were combined into the Appalachian order contained a 15 percent in-area route disposition standard for pool distributing plants.

Record evidence indicates that the current in-area Class I route sales standard likely is limiting the growth potential of Kroger's Westover Dairy plant, located in Lynchburg, Virginia. It is not the intent of Federal milk orders to inhibit the growth of handlers. Federal orders are designed to provide for the orderly exchange of milk from the dairy farmer to the first buyer (handler). The orders also provide minimum performance standards to ensure that the fluid needs of the market are satisfied. Accordingly, the adoption of the expansion proposal should ensure that Kroger's Westover Dairy plant is able to maintain a milk supply in competition with nearby Appalachian order plants.

In the case of Dean Foods' Morningstar Foods plant in Mount Crawford, Virginia, the proposed amendments would eliminate the current disruption and disorder caused by the plant shifting its regulatory status from fully to partially regulated under the Northeast order. Such shifting from fully to partially regulated status under an order may cause financial harm to producers supplying that plant.

The record indicates that the Kroger's Westover Dairy plant and Dean Foods' Morningstar plant are supplied by producers located near the plants and that the plants compete with other Appalachian order plants in milk procurement. This decision finds that orderly market conditions would be preserved by the adoption of the proposed expansion amendments. The regulation of no other plants should be affected by the adoption of these proposed amendments. In addition, the proposed expansion of the Appalachian marketing area is not expected to have a negative impact on the blend price paid to producers.

1c. Transportation Credits Provisions

The maximum rates of the transportation credit assessment for the Appalachian and Southeast orders should each be increased by 3-cents per hundredweight. Increasing the transportation assessment rates will tend to minimize the exhaustion of the *transportation credit balancing fund* when the need for importing supplemental bulk milk from outside of the marketing areas to meet Class I needs occurs. Additionally, the Market Administrators of the orders should be given the discretionary authority to increase or decrease the 50 percent production standard for determining the milk of a dairy farmer that is eligible for transportation credits. Such dairy farmer should not have been a producer under the order during more than two of the immediately preceding months of February through May for the milk of the dairy farmer to be eligible for receipt of a transportation credit.

The Appalachian and Southeast orders each contain a transportation credit balancing fund from which a payment is made to partially offset the cost of moving milk into each marketing area to meet fluid milk demands. The fund is the mechanism through which handlers deposit on a monthly basis payment at specified rates for eventual payout as defined by a specified formula. The orders' transportation credit provisions provide payments typically during the short production months of July through December to handlers who incur hauling costs importing supplemental milk to meet the fluid demands of the market.

Transportation credit payments are restricted to bulk milk received from plants regulated by other Federal orders or shipped directly from farms of dairy farmers located outside the marketing areas and who are not regularly associated with the market. The handler payments into the funds are applicable to the Class I milk of producers who supply the market throughout the year. The Market Administrators of the orders are authorized to adjust payments to and from the relevant *transportation credit balancing fund.*

The transportation credit provisions of the Appalachian and Southeast orders differ by the assessment rate at which handlers make payments to the *transportation credit balancing fund.* The maximum rate of assessment for the Appalachian order is $0.06 per cwt while the maximum rate of assessment for the Southeast order is $0.07 per cwt.

A feature of the proposal for merging the Appalachian and Southeast orders was providing for a maximum transportation assessment rate of 10-cents for the proposed Southeast order. This would essentially represent a 3-cent per cwt increase from the current Southeast order, and a 3.5-cent increase from the Appalachian order. While there was no separate proposal for

increasing the assessment rate for the transportation credit fund, it was made clear by the proponents that in the absence of adopting the proposed merger an increase in the transportation credit assessment rate was warranted and supported for the current orders.

With regard to the transportation credit issue, the proponent cooperatives' witness testified that the maximum transportation credit assessment rate should be increased to $0.10 per cwt. According to the witness, the increase is necessary to eliminate insufficient funding for transportation credit claims that would likely have been paid had sufficient funds been available. According to the witness, that the transportation credit rate of $0.07 per cwt for the current Southeast order has been at the maximum rate since the inception of the order, but that payments from the transportation credit balancing fund were exhausted in 2001, 2002, and 2003 resulting in a prorating of dollars from the transportation credit balancing fund to the amount of transportation claims submitted for receipt of the credit. In contrast, the witness noted, the transportation credit fund for the Appalachian order has been sufficiently funded since 2000 thus enabling the payment of all claims.

The proponent cooperatives' witness was of the opinion that the exhaustion of transportation credit funding in the Southeast order resulted in inequitable supplemental milk costs to handlers between the two orders. The witness testified that handlers procuring supplemental milk supplies for the Appalachian order were reimbursed at 100 percent of their claimed credits while handlers procuring supplemental milk supplies for the Southeast order were reimbursed at approximately 50 percent of their claimed credits. According to the witness, the unequal payout between the two orders results in disorderly marketing conditions exhibited by inequitable costs for producer milk among handlers.

Dean Foods and Prairie Farms voiced opposition to the proponents' proposed amendments to increase the maximum rate of assessments and increase the amount of milk that would be eligible for transportation credits. Dean Foods and Prairie Farms pointed out that the proposals to incorporate transportation credit provisions into the Southeastern orders were strongly opposed by some fluid milk processors and some dairy farmers. They noted that the intent and purpose of transportation credit provisions was to only pay a portion of the cost associated with hauling supplemental milk to the markets to meet fluid needs.

In their brief, Dean Foods and Prairie Farms stated there is no reason to increase the rate of assessment. Changing the rate of assessment, they contended, would effectively change the system of pricing without considering the impact on other marketing orders.

In opposition to any change in the rate of transportation credits, a witness for Georgia Milk Producers, Inc. (GMP), testified that increasing the assessment rate would generate more revenue to be paid to truck drivers instead of paying higher prices to local dairy farmers. According to the witness, the price of milk paid to local dairy farmers should be increased rather than subsidizing additional outlays for transportation costs.

The GMP witness suggested that instead of increasing the transportation credit assessment rate, a financial incentive should be initiated for dairy farmers to encourage milk production during the fall months when fluid milk demands are highest. According to the witness, if the incentive plan still does not cover the local milk production deficits, only then should the assessment rate for transportation credits be increased. The witness was of the opinion that an incentive plan encouraging local milk production would reduce hauling costs because less milk would be imported into the Southeast market. The witness also was of the opinion that a financial incentive plan would lower balancing costs by encouraging the movement of milk supplies located near processing plants.

Current Appalachian and Southeast order transportation credit provisions have been a feature of the orders, or predecessor orders, since 1996. The need for transportation credits arose from the consistent need to import milk from many areas outside of these marketing areas during certain months of the year when milk production in the areas is not sufficient to meet Class I demands. The transportation credit provisions provide payments to handlers to cover some of the costs of importing supplemental milk supplies into the Appalachian and Southeast marketing areas need during the short production months of July through December. The provisions also are designed to limit the ability of producers who are not normally pooled on these orders from pooling their milk on the Appalachian and Southeast orders during the flush production months when such milk is not needed to supply fluid needs.

While Federal milk order reform made modifications to certain features of the transportation credit fund provisions of the Appalachian and Southeast orders, the maximum assessment rate at which payments are collected was not modified. The current maximum rate of $0.065 cents per cwt for the Appalachian order has been sufficient to meet most of the claims made by handlers applying for transportation credit. The record reveals that since implementation of milk order reform in January 2000, the market administrator for the Appalachian order waived assessing handlers in at least two months of each year from 2001 through 2003.

For the current Southeast order, the current maximum transportation credit rate of $0.07 per cwt has not been sufficient to cover hauling cost claims by handlers. As a result, the market administrator of the Southeast order has prorated payments from the transportation credit balancing fund since 2001.

Even though this decision does not recommend the merging of the current Southeast and Appalachian marketing area, the fundamental purposed of the transportation credit fund provisions of the orders are strongly supported by the proponent cooperatives. This support is independent of providing for a new and larger Southeast milk marketing order.

An increase in the maximum transportation credit assessment rate for the Appalachian and Southeast orders is warranted on the basis of declining milk production within the Appalachian and Southeast marketing areas. For example, the final decision of Federal milk order reform anticipated that the about two-thirds of the milk supply for the Appalachian order would be produced within the marketing areas, with supplemental milk supplies from unregulated area to the north in Virginia and Pennsylvania (based on 1997 data). Since implementation of order reform in January 2000, record evidence reveals that only 50 percent of the Appalachian milk supply is produced within the marketing area. The trend of lower in-area milk production strongly suggests that the anticipated future needs of relying on milk supplies from outside the marketing area will only grow and that such growth necessarily warrants an increase in the Appalachian transportation credit assessment rate. The Southeast marketing area exhibits the same trend.

To the extent that assessments are not needed to meet expected transportation credit claims, provisions that provide authority to the market administrator to set the assessment rate at a level deemed sufficient or to waive assessments should be allowed. Additionally, the transportation credit provisions of the Appalachian and Southeast orders

prevent the accumulation of funds beyond actual handler claims. In this regard, increasing the transportation credit rate will not result in an unwarranted accumulation of funds beyond what is needed to pay handler claims.

As part of the proposed merged marketing areas and orders, the proponent cooperatives' witness proposed that any producer that is located outside of the marketing area, would be eligible for transportation credits if that producer did not pool more than 50 percent of the producers farm milk production during the months of March and April. The witness testified that the market administrator should also be given the discretionary authority to adjust the 50 percent limit based on the prevailing supply and demand conditions for milk in the area.

The current transportation credit provisions of the Appalachian and Southeast orders specify that transportation credits will apply to the milk of a dairy farmer who was not a "producer" under the order during more than 2 of the immediately preceding months of February through May, and not more than 50 percent of the production of the dairy farmer during those two months, in aggregate, was received as producer milk under the orders during those two months. These provisions provide the basis for determining the milk of a dairy farmer that is truly supplemental to the market's fluid needs. The provision specifies the months of February through May—the period when milk production is greatest—as the months used to determine the eligibility of a producer whose milk is needed on the market.

The market administrators of the orders should be given discretional authority to adjust the 50 percent eligibility standard for producer milk receiving transportation credits based on the prevailing marketing conditions within the marketing area. The market administrator should have the authority to increase or decrease this requirement because it is consistent with authorities already provided for supply plant performance standards and diversion limit standards. Accordingly, the proposed change to the transportation credit provisions of the Appalachian and Southeast orders is recommended for adoption.

This decision does not recommend changing the period the milk of a dairy farmer is not allowed to be associated with the market for such dairy farmer's milk to be eligible for transportation credits. If the months were modified from February through May to March and April, the definition of supplemental milk under the transportation credit provisions would effectively change. Supplemental milk for purposes of determining the eligibility of transportation credits is that milk that is not regularly associated with the market. The proposed change would allow supplemental milk to be delivered to a pool plant all twelve months, potentially lowering the uniform price during those high production months by pooling additional milk when is not needed for fluid use.

By retaining the months of February through May and allowing the Market Administrators of the Appalachian and Southeast orders to adjust the 50 percent production standard, the current definition of supplemental milk remains intact. The orders' market administrator would be allowed to increase or decrease the 50 percent production standard, if warranted, based on current marketing conditions.

2. Promulgation of a New "Mississippi Valley" Milk Order

A proposal, published in the hearing notice as Proposal 5, seeking to split from the current Southeast marketing area and forming a new Mississippi Valley milk marketing area and order is not recommended for adoption.

A witness appearing on behalf of Dean Foods and Prairie Farms testified in support of Proposal 5. In splitting the current Southeast marketing area, a new marketing area, to be named the Mississippi Valley order, would include the area of the existing Southeast marketing area west of the Alabama-Mississippi borderline including the States of Mississippi, Louisiana, Arkansas. According to the witness, this new marketing area would extend northward through the relevant portions of Tennessee and Kentucky, and would include southern Missouri. The second order, according to the witness, would consist of the remainder of the current Southeast marketing area, *i.e.*, Georgia, a portion of the western panhandle of Florida, and Alabama.

The Dean Foods-Prairie Farms witness, and others supporting the adoption of Proposal 5, asserted that increasing the number of Federal milk marketing areas and orders would provide the economic incentives for more efficient movement of milk and increase the blend price received by producers who supply the needs of the Class I market. According to the witnesses, splitting the Southeast order into two orders would reduce transportation costs and improve the efficient operation of the transportation credit balancing fund in each proposed new marketing area by more efficiently attracting milk to the Class I market and decreasing the need for hauling milk from longer distances.

The Dean Foods-Prairie Farms witness testified that there are two major incentives to ship milk to distributing plants—the blend price paid by pool distributing plants and the blend price paid for diverted milk. According to the witness, there are two disincentives to ship milk to a pool distributing plant under any order—the net transportation cost of shipping milk and the alternative blend prices in other markets that may attract milk to plants in those other markets. The witnesses cited milk deficit areas in southern Illinois and St. Louis, Missouri, as examples of areas where, in the opinion of the witnesses, blend price differences result in a failure to attract enough milk to adequately serve the Class I market. The witness asserted that the establishment of a Mississippi Valley order would likely result in blend price differences between the new areas which would provide producers the economic incentives of receiving higher blend prices while incurring lower transportation costs.

The Dean Foods-Prairie Farms witness testified that a national hearing may be justified to more fully consider the border, pricing, and milk deficit issues and alternatives to proposals (like Proposals 1 and 5) advanced to merge or to split the Southeast marketing area. According to the witness, when marketing area borders are changed, such change affects all marketing areas in the Federal order milk order system. The witness was of the opinion that considering border issues would necessarily require a broad rethinking of the marketing areas of the entire Federal order program and that a national hearing may be the most appropriate venue to consider these affects.

A witness for GMP testified that the expansions of the Southeast marketing area prior to Federal milk order reform, and as a result of Federal order reform, have successively reduced income to Georgia producers. The witness explained that the expansions of the marketing area have discouraged local milk production and encouraged movements of milk from outside the marketing area. According to the witness, the declining ability of local production to meet the Class I needs of the market, and the increased balancing requirements of an expanded marketing area, have increased costs while reducing revenues to Georgia dairy farmers.

In the opinion of the GMP witness, the establishment of a separate Mississippi Valley marketing area and order and a smaller Southeast marketing area would have positive benefits for Georgia milk producers. The witness explained that as a smaller Southeast marketing area, the Georgia market would likely experience lower balancing costs and expanded local production to meet the growing Class I needs of the market.

A witness for proponents of Proposal 1 testified in opposition to adopting a new Mississippi Valley marketing area by splitting it from the current Southeast marketing area. According to the witness, the proposed new marketing area would not lead to lower transportation costs but instead may lead to increased administrative difficulties with transportation credit balancing funds. The witness was of the opinion that blend price enhancement for the proposed smaller Southeast marketing area would be achieved at the expense of producers pooled on the proposed new Mississippi Valley order.

The opposition witness was of the opinion that blend prices for the proposed smaller Southeast marketing area may increase to levels that would exacerbate differences between the blend prices of the new smaller Southeast and the Appalachian order and may give rise to unintended market disruptions. The witness was of the opinion that a smaller Southeast marketing area and order also may result in administrative difficulties in the operation of transportation credit balancing funds among the three orders and may lead to the inefficient movements of milk. The witness expressed the opinion that splitting the Southeast marketing area would not address the concerns that proponents of Proposal 1 have raised regarding overlapping sales and inefficient milk movement issues between the Appalachian and Southeast marketing areas. The witness indicated that these issues would remain unresolved if the Southeast marketing area was split and if the Southeast and Appalachian marketing areas were not merged.

A post hearing brief by the proponents of Proposal 5 reiterated their position that creating more, rather than fewer, blend price differences will provide incentives to ship milk to markets where the milk is demanded. In addition, the brief reiterated that splitting the Southeast marketing area will reduce transportation costs and result in more efficient movement of milk in a smaller Southeast marketing area and a Mississippi Valley marketing area. The brief also called for the including the Kentucky counties of Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Marshall, and McCracken into the smaller Southeast order if Proposal 5 is adopted.

The proposal to split the current Southeast marketing area hinges on the assertions that geographically smaller marketing areas tend to reduce transportation and balancing costs and increase blend prices for pooled producers in each of the newly defined marketing areas. The record does not contain specific evidence to support these conclusions. The record lacks evidence to support concluding that the adoption of Proposal 5 would lower transportation costs, increase local milk production, and reduce balancing costs. The same is true for concluding that local milk production would be encouraged and increased to the extent that transportation expenses, and the need for continued transportation credit fund payments, would be significantly reduced while bringing forth a sufficient supply of milk to meet the Class I needs of the proposed marketing areas.

Opponents of Proposal 5 argued that blend price increases from splitting the Southeast marketing area may not occur and that lower transportation cost may not be realized. However, the record does not contain information necessary for determining if either the positions of the proponents or opponents of Proposal 5 are valid.

This decision does not recommend the adoption of Proposal 5. The record is insufficiently persuasive in demonstrating the efficiencies in milk movements for handlers as advanced by its proponents.

3. Eliminating the Simultaneous Pooling of the Same Milk on a Federal Milk Order and a State-operated Milk Order that Provides for Marketwide Pooling

A proposal, published in the hearing notice as Proposal 6, seeking to prohibit the simultaneous pooling of the same milk on the Appalachian or Southeast milk marketing orders and on a State-operated order that provides for the marketwide pooling of milk is recommended for adoption. Currently, neither the Appalachian or Southeast orders have a provision that would prevent the simultaneous pooling of the same milk on the order and on a State-operated order that provides for marketwide pooling.

The proponents of Proposal 6, Deans Foods and Prairie Farms testified that the simultaneous pooling of milk on more than one marketing order was prohibited between all Federal milk orders. According to the Dean Food-Prairie Farms' witnesses, a loophole was inadvertently created during the consolidation of Federal orders permitting double pooling of the same milk on a Federal milk marketing order and on a State-operated order that, like a Federal order, provides for the marketwide pooling of producer milk. (The double pooling of milk has become known as "double dipping")

According to the Dean Food-Prairie Farms' witnesses, this loophole has been exploited for financial gain by some parties at the expense of pooled producers in other Federal orders until prohibited by subsequent milk order amendments. The proponents testified that proposals similar to Proposal 6 have been adopted in the Upper Midwest, Pacific Northwest, and Central Federal milk orders.

Proponents testified that prohibition of double dipping in the Southeast and Appalachian orders would close a potential loophole in these orders or in a successor order if these orders were merged. The witnesses testified that the pooling of milk regulated by Virginia and Pennsylvania milk programs would not be affected by the prohibition of double pooling. According to the witnesses, milk that is pooled on these State milk programs does not receive extraordinary benefits that would have an impact on Federal milk order pools. No opposition testimony was presented.

Since the 1960's the Federal milk order program has recognized the harm and disorder that resulted to both producers and handlers when the same milk of a producer was simultaneously pooled on more than one Federal order. When this occurs, producers do not receive uniform minimum prices, and some handlers receive unfair competitive advantages. The need to prevent "double pooling" became critically important as distribution areas expanded, orders merged, and a national pricing system was adopted. Milk already pooled under a State-operated program and able to simultaneously be pooled under a Federal order creates the same undesirable outcomes that allowing milk to be pooled on two Federal orders used to cause and subsequently corrected.

There are other State-operated milk order programs that provide for marketwide pooling. For example, New York operates a milk order program for the western region of that State. A key feature explaining why this State-operated program has operated for years alongside the Federal milk order program is the provision in the State pool that excludes milk from the State pool when the same milk is already pooled under a Federal order. Other

States with marketwide pooling similarly do not allow double-pooling of Federal order milk.

The record supports that the Appalachian, Southeast, and possible successor orders should be amended to preclude the ability to simultaneously pool the same milk on the order if the milk is already pooled on a State-operated order that provides for marketwide pooling. Proposal 6 offers a reasonable solution for prohibiting the same milk to draw pool funds from Federal and State marketwide pools simultaneously. It is consistent with the current prohibition against allowing the same milk to participate simultaneously in more than one Federal order pool. Adoption of Proposal 6 will not establish any barrier to the pooling of milk from any source that actually demonstrates performance in supplying the Appalachian and Southeast markets' Class I needs.

Evidence presented at the hearing establishes that milk that can be pooled simultaneously on a State-operated order and a Federal order, would render the Appalachian and Southeast milk orders unable to establish prices that are uniform to producers and to handlers. This shortcoming of the pooling provisions allows milk which was pooled on a state order to be pooled milk on a Federal order. Such milk therefore could not provide a reasonable or consistent service to meet the needs of the Class I market because it was committed to the State order.

No record evidence was presented illustrating or documenting current double pooling of milk in the Appalachian and Southeast orders. Consequently, it is determined that emergency marketing conditions do not exist and the adoption of Proposal 6 should be included as part of the issuance of a recommended decision.

4. Producer-Handler Provisions

A decision considered at the hearing regarding the regulatory status of producer-handlers will be addressed in a separate decision.

Conforming Change

This decision recommends amending the Appalachian and Southeast orders to appropriately reference the Deputy Administrator of Dairy Programs.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Appalachian and Southeast orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Recommended Marketing Agreements and Order Amending the Orders

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended, regulating the handling of milk in the Appalachian and Southeast marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1005 and 1007

Milk marketing orders.

For the reasons set forth in the preamble 7 CFR Parts 1005 and 1007 are amended as follows:

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

1. The authority citation for 7 CFR part 1005 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 1005.2 is amended by revising the Virginia counties and cities to read as follows:

§ 1005.2 Appalachian marketing area.

* * * * *

Virginia Counties and Cities

Alleghany, Amherst, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Campbell, Carroll, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Henry, Highland, Lee, Montgomery, Patrick, Pittsylvania, Pulaski, Roanoke, Rockbridge, Rockingham, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe; and the cities of Bedford, Bristol, Buena Vista, Clifton Forge, Covington, Danville, Galax, Harrisonburg, Lexington, Lynchburg, Martinsville, Norton, Radford, Roanoke, Salem, Staunton, and Waynesboro.

* * * * *

3. Section 1005.13 is amended by revising the introductory text and adding a new paragraph (e), to read as follows:

§ 1005.13 Producer milk.

Except as provided for in paragraph (e) of this section, *Producer milk* means the skim milk (of the skim equivalent of components of skim milk) and butterfat contained in milk of a producer that is:

* * * * *

(e) Producer milk shall not include milk of a producer that is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program imposed under the authority of a State government maintaining marketwide pooling of returns.

* * * * *

§ 1005.81 [Amended]

4. In § 1005.81(a), remove "$0.065" and add, in its place, "$0.095".

§ 1005.82 [Amended]

5. In § 1005.82, paragraph (b) is revised by removing the words "Director of the Dairy Division" and adding, in their place, the words "Deputy Administrator of Dairy Programs" and adding a new paragraph (c)(2)(iv) to read as follows:

§ 1005.82 Payments from the transportation credit balancing fund.

* * * * *

(c) * * *

(2) * * *

(iv) The market administrator may increase or decrease the milk production standard specified in paragraph (c)(2)(ii) of this section if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

* * * * *

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

6. Section 1007.13 is amended by revising the introductory text and adding a new paragraph (e), to read as follows:

§ 1007.13 Producer milk.

Except as provided for in paragraph (e) of this section, *Producer milk* means the skim milk (of the skim equivalent of components of skim milk) and butterfat contained in milk of a producer that is:

* * * * *

(e) Producer milk shall not include milk of a producer that is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program imposed under the authority of a State government maintaining marketwide pooling of returns.

* * * * *

§ 1007.81 [Amended]

7. In § 1007.81(a), remove "$0.07" and add, in its place, "$0.10".

§ 1007.82 [Amended]

8. In § 1007.82, paragraph (b) is revised by removing the words "Director of the Dairy Division" and adding, in their place, the words "Deputy Administrator of Dairy Programs" and adding a new paragraph (c)(2)(iv) to read as follows:

§ 1007.82 Payments from the transportation credit balancing fund.

* * * * *

(c) * * *

(2) * * *

(iv) The market administrator may increase or decrease the milk production standard specified in paragraph (c)(2)(ii) of this section if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

* * * * *

Dated: May 13, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–9962 Filed 5–19–05; 8:45 am]

BILLING CODE 3410–02–P

Federal Register

Friday,
May 20, 2005

Part VI

The President

Memorandum of May 13, 2005—
Assignment of Function To Submit a Report to the Congress

Federal Register
Vol. 70, No. 97
Friday, May 20, 2005

Presidential Documents

Title 3—

The President

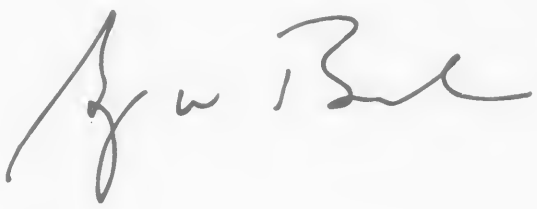
Memorandum of May 13, 2005

Assignment of Function to Submit a Report to the Congress

Memorandum for the Director of the Office of Management and Budget

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, the function of the President of providing to the Congress a report under section 9012 of the Department of Defense Appropriations Act, 2005 (Public Law 108–287) is assigned to the Director of the Office of Management and Budget.

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



THE WHITE HOUSE,
Washington, May 13, 2005.

[FR Doc. 05–10284
Filed 5–19–05; 9:25 am]
Billing code 3110–01–P

Federal Register

Friday,
May 20, 2005

Part VII

The President

Notice of May 19, 2005—Continuation of the National Emergency Protecting the Development Fund for Iraq and Certain Other Property in Which Iraq Has an Interest

Federal Register
Vol. 70, No. 97
Friday, May 20, 2005

Presidential Documents

Title 3—

The President

Notice of May 19, 2005

Continuation of the National Emergency Protecting the Development Fund for Iraq and Certain Other Property in Which Iraq Has an Interest

On May 22, 2003, by Executive Order 13303, I declared a national emergency protecting the Development Fund for Iraq and certain other property in which Iraq has an interest, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (IEEPA). I took this action to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq constituted by the threat of attachment or other judicial process against the Development Fund for Iraq, Iraqi petroleum and petroleum products, and interests therein, and proceeds, obligations, or any financial instruments of any nature whatsoever arising from or related to the sale or marketing thereof.

On August 28, 2003, in Executive Order 13315, I expanded the scope of this national emergency to block the property of the former Iraqi regime, its senior officials and their family members as the removal of Iraqi property from that country by certain senior officials of the former Iraqi regime and their immediate family members constitutes an obstacle to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq.

On July 29, 2004, in Executive Order 13350, I amended the Annex to Executive Order 13315 to include certain persons determined to have been subject to economic sanctions pursuant to Executive Orders 12722 and 12724. Because of their association with the prior Iraqi regime, I determined that these persons present an obstacle 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 and, therefore, such persons should be subject to sanctions under Executive Order 13315.

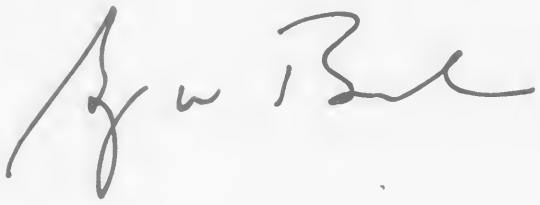
Executive Order 13350 also amended Executive Order 13290 of March 20, 2003, in which, consistent with section 203(a)(1)(C) of IEEPA, 50 U.S.C. 1702(a)(1)(C), I ordered that certain blocked funds held in the United States in accounts in the name of the Government of Iraq, the Central Bank of Iraq, Rafidain Bank, Rasheed Bank, or the State Organization for Marketing Oil be confiscated and vested in the Department of the Treasury. I originally exercised these authorities pursuant to Executive Order 12722. In light of the changed circumstances in Iraq and my decision to terminate the national emergency declared in Executive Order 12722, I determined that the exercise of authorities in Executive Order 13290 should continue in order to address the national emergency declared in Executive Order 13303 of May 22, 2003, as expanded in scope in Executive Order 13315 of August 28, 2003, regarding the obstacles posed to the orderly reconstruction of Iraq. Executive Order 13350 amends Executive Order 13290 to that effect.

On November 29, 2004, in Executive Order 13364, I modified the scope of this national emergency to address the unusual and extraordinary threat to the national security and foreign policy of the United States posed by

the threat of attachment or other judicial process against the Central Bank of Iraq. I also determined that, consistent with United Nations Security Council Resolutions 1483 and 1546, the steps taken in Executive Order 13303 to deal with this national emergency need to be limited so that such steps do not apply with respect to any final judgment arising out of a contractual obligation entered into by the Government of Iraq, including any agency or instrumentality thereof, after June 30, 2004, and so that, with respect to Iraqi petroleum and petroleum products and interests therein, such steps shall apply only until title passes to the initial purchaser.

Because the obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on May 22, 2003, and the measures adopted on that date, August 28, 2003, July 29, 2004, and November 29, 2004, to deal with that emergency must continue in effect beyond May 22, 2005. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency protecting the Development Fund for Iraq and certain other property in which Iraq has an interest.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
May 19, 2005.

[FR Doc. 05–10373
Filed 5–19–05; 2:45 pm]
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H.R. 1268/P.L. 109–13

Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (May 11, 2005; 119 Stat. 231)

Last List May 9, 2005

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