
# Federal Register

7–7–04 Wednesday
Vol. 69 No. 129 July 7, 2004

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(ISSN 0097-6326)


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Vol. 69 No. 129 July 7, 2004

Pages 40763–41178

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# Rules and Regulations

Federal Register
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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 78

**[Docket No. 04–009–2]**

### Brucellosis in Cattle; State and Area Classifications; Wyoming

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Wyoming from Class Free to Class A. We determined that Wyoming no longer met the standards for Class Free status. The action was necessary to prevent the interstate spread of brucellosis.

**EFFECTIVE DATE:** The interim rule became effective on February 13, 2004.

**FOR FURTHER INFORMATION CONTACT:** Dr. Debra Donch, National Brucellosis Epidemiologist, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–6954.

**SUPPLEMENTARY INFORMATION:**

#### Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*.

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States according to the rate of *Brucella* infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

In an interim rule effective February 13, 2004, and published in the **Federal Register** on February 20, 2004 (69 FR 7863–7864, Docket No. 04–009–1), we amended the regulations in § 78.41 by changing the classification of Wyoming from Class Free to Class A. The action was necessary to prevent the interstate spread of brucellosis.

Comments on the interim rule were required to be received on or before April 20, 2004. We received three comments by that date. The comments were from private citizens and a cattle producer. The comments are discussed below.

Two commenters stated that our current system for controlling the spread of brucellosis is ineffective because it does not address the greater threat posed by Wyoming's infected wildlife. One commenter added that the brucellosis infected wildlife is in the Greater Yellowstone Area (GYA) and stated that a brucellosis control program in Wyoming should be based on the livestock's proximity to the GYA. The commenter proposed certain changes to our program, including stricter surveillance for cattle within a certain vicinity of GYA wildlife during elk and bison calving season, brucellosis testing based on proximity to the GYA, and focusing on early intervention for these cattle herds.

We acknowledge that infected wild elk and bison populations in the GYA may be a source of brucellosis transmission to Wyoming's cattle. Transmission of brucellosis from wild elk to cattle occurred in Wyoming in 2003 and Idaho in 2002. The Brucellosis Coordination Team appointed by the Governor of Wyoming and organizations like the Greater Yellowstone Interagency Brucellosis Committee are working to find ways to address the brucellosis situation in the GYA. APHIS' brucellosis program is designed so that it can be applied to all States, while leaving States some latitude to assess their own risks and implement additional regulations appropriate to individual needs. Furthermore, implementing a new program, as the commenter suggests, would require a separate action and cannot be done in this final rule.

The third commenter stated that all interstate movement of cattle should be prohibited. We do not believe that such an extreme step is warranted or necessary to prevent the spread of brucellosis in the United States.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

#### List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

## PART 78—BRUCELLOSIS

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 78 and that was published at 69 FR 7863–7864 on February 20, 2004.

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 30th day of June 2004.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 04–15333 Filed 7–6–04; 8:45 am]

BILLING CODE 3410–34–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2003–SW–46–AD; Amendment 39–13708; AD 2004–13–26]**

**RIN 2120–AA64**

## Airworthiness Directives; Kaman Aerospace Corporation Model K–1200 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) for Kaman Aerospace Corporation (Kaman) Model K–1200 helicopters. This action requires certain initial and repetitive visual inspections of the main rotor blade (blade) grips for a crack. If a crack is found, this AD requires replacing the blade grip before further flight. This amendment is prompted by an accident involving the loss of all blades because of a crack in a blade grip on the upper surface around the bolthole. The actions specified in this AD are intended to prevent failure of a blade grip, loss of a blade, and subsequent loss of control of the helicopter.

**DATES:** Effective July 22, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 22, 2004.

Comments for inclusion in the Rules Docket must be received on or before September 7, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–46–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

You may obtain the service information referenced in this AD from Kaman Aerospace Corporation, P.O. Box 2, Old Windsor Rd., Bloomfield, CT 06002–0002, telephone (888) 626–KMAX (5629), fax (880) 243–7047. You may examine this information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**FOR FURTHER INFORMATION CONTACT:** Richard Noll, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7160, fax (781) 238–7170.

**SUPPLEMENTARY INFORMATION:** This amendment adopts a new AD for the Kaman Model K1200 helicopters. This action requires certain initial and repetitive inspections of the blade grips. This amendment is prompted by an accident involving the loss of all blades because of a blade grip crack on the upper surface around the bolthole of one blade.

The FAA has reviewed Kaman Service Bulletin No. 109 dated October 31, 2003, which describes visually inspecting blade grips for a crack before the next flight and before the first flight of each day.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, this AD is being issued to prevent failure of a blade grip leading to loss of a blade and subsequent loss of control of the helicopter. This AD requires, before further flight, removing the paint and primer from each blade grip; and using a light and 10x power or higher magnifying glass, visually inspecting each blade grip at the top (bolt) and bottom (nut) locations for a crack around the bolthole. Also, this AD requires, before the first flight of each day, removing corrosion preventative compound from each blade grip, and using a light and 10x power or higher magnifying glass, visually inspecting each blade grip at the top (bolt) and bottom (nut) locations for a crack around the bolthole. After each inspection, if a crack is not detected, applying corrosion protection compound over the exposed area is required. If a crack is found, this AD requires replacing the blade grip before further flight. Accomplish the actions in accordance with the service bulletin described previously.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, before further flight, and before the first flight of each day, visually inspecting each blade grip for a crack and replacing any cracked blade grip are required, and this AD must be issued immediately.

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

The FAA estimates that this AD will affect 23 helicopters. The initial inspection of the blade grip will take approximately 2 work hours, and the daily inspection will take approximately ½ work hour to do at an average labor rate of $65 per work hour. Based on these figures, we estimate the total cost impact of the AD on U.S. operators will be $197,340 for the first year ($2,990 for the initial inspection plus $194,350 for the repetitive inspections ($747.50 each day and assuming each helicopter is flown 260 days per year)).

### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2003–SW–46–AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**2004–13–26 Kaman Aerospace Corporation:** Amendment 39–13708. Docket No. 2003–SW–46–AD.

*Applicability:* Model K–1200 helicopters, certificated in any category.

*Compliance:* Required as indicated.

To prevent failure of a blade grip, blade contact with the opposite rotor mast, blade failure, and loss of control of the helicopter, accomplish the following:

(a) Before further flight, unless accomplished previously, remove the paint topcoat and primer from each blade grip; and using a light and 10x power or higher magnifying glass, visually inspect each blade grip in accordance with the Accomplishment Instructions; paragraph 1. and 2.a., of Kaman Aerospace Corporation Service Bulletin No. 109, dated October 31, 2003 (SB).

**Note:** Do not damage or remove the sealant around the blade grip bolt heads and nuts.

(1) If a crack is detected, remove the grip and replace it with an airworthy grip.

(2) If no crack is detected, cover the exposed area with corrosion preventative compound.

(b) Before the first flight of each day, remove corrosion preventative compound from each blade grip using acetone. Using a light and 10x power or higher magnifying glass, visually inspect each blade grip for a crack in the area depicted in Figure 1 of the SB.

(1) If a crack is detected, remove the grip and replace it with an airworthy grip.

(2) If no crack is detected, cover the exposed area with corrosive preventative compound.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

(d) Special flight permits will not be issued.

(e) The inspections shall be done in accordance with Kaman Aerospace Corporation Service Bulletin No. 109, dated October 31, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Kaman Aerospace Corporation, P.O. Box 2, Old Windsor Rd., Bloomfield, CT 06002–0002, telephone (888) 626–KMAX (5629), fax (880) 243–7047. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(f) This amendment becomes effective on July 22, 2004.

Issued in Fort Worth, Texas, on June 24, 2004.

**Kim Smith,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 04–15127 Filed 7–6–04; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 172

**[Docket No. 1999F–0719]**

### Food Additives Permitted for Direct Addition to Food for Human Consumption; Olestra; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of May 24, 2004 (69 FR 29428). The final rule amended the food additive regulations to allow for the safe use of olestra as a replacement for fats and oils in prepackaged, unpopped popcorn kernels that are ready-to-heat. The initial action was in response to a food additive petition (FAP) filed by the Procter and Gamble Co. The final rule published with an inadvertent error. This document corrects that error.

**EFFECTIVE DATE:** July 7, 2004.

**FOR FURTHER INFORMATION CONTACT:** Joyce A. Strong, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 04–11502, appearing on page 29428 in the **Federal Register** of May 24, 2004, the following correction is made:

1. On page 29429, under **SUPPLEMENTARY INFORMATION**, in the second column, in the first line of the first complete paragraph, the phrase "noted in the FAP" is corrected to read "noted in the notice of filing".

Dated: July 1, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04–15424 Filed 7–6–04; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 510 and 522

### Implantation or Injectable Dosage Form New Animal Drugs; Cloprostenol Sodium

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Parnell Laboratories (Aust) Pty. Ltd. The ANADA provides for the veterinary prescription use of cloprostenol sodium injectable solution in cattle for manipulation of the estrous cycle.

**DATES:** This rule is effective July 7, 2004.

**FOR FURTHER INFORMATION CONTACT:** Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov.*

**SUPPLEMENTARY INFORMATION:** Parnell Laboratories (Aust) Pty. Ltd., Century Estate, unit 6, 476 Gardeners Rd., Alexandria, New South Wales 2015, Australia, filed ANADA 200–310 for the use of ESTROPLAN (cloprostenol sodium) Injection by veterinary prescription for manipulation of the estrous cycle of cattle. Parnell Laboratories (Aust) Pty. Ltd.'s ESTROPLAN Injection is approved as a generic copy of Schering-Plough Animal Health Corp.'s ESTRUMATE, approved under NADA 113–645. The ANADA is approved as of May 13, 2004, and the regulations are amended in 21 CFR 522.460 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, Parnell Laboratories (Aust) Pty. Ltd., is not currently listed in the animal drug regulations as a sponsor of an approved application. At this time, 21 CFR 510.600(c) is being amended to add entries for the firm.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects**

*21 CFR Part 510*

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

*21 CFR Part 522*

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

## PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding an entry for "Parnell Laboratories (Aust) Pty. Ltd."; and in the table in paragraph (c)(2) by numerically adding an entry for "068504" to read as follows:

**§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.**

* * * * *

(c) * * *

(1) * * *

| Firm name and address | Drug labeler code |
|---|---|
| * * * * * | |
| Parnell Laboratories (Aust) Pty. Ltd., Century Estate, unit 6, 476 Gardeners Rd., Alexandria, New South Wales 2015, Australia | 068504 |
| * * * * * | |

(2) * * *

| Drug labeler code | Firm name and address |
|---|---|
| * * * * * | |
| 068504 | Parnell Laboratories (Aust) Pty. Ltd., Century Estate, unit 6, 476 Gardeners Rd., Alexandria, New South Wales 2015, Australia |
| * * * * * | |

## PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 522 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

**§ 522.460 [Amended]**

■ 4. Section 522.460 is amended in paragraph (a)(2) by removing "No. 000061" and by adding in its place "Nos. 000061 and 068504".

Dated: June 17, 2004.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 04–15425 Filed 7–6–04; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 524

### Ophthalmic and Topical Dosage Form New Animal Drugs; Diclofenac

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by IDEXX Pharmaceuticals, Inc. The NADA provides for topical use of diclofenac cream in horses for the control of pain and inflammation associated with osteoarthritis in tarsal, carpal, metacarpophalangeal, metatarsophalangeal, and proximal interphalangeal (hock, knee, fetlock, and pastern) joints.

**DATES:** This rule is effective July 7, 2004.

**FOR FURTHER INFORMATION CONTACT:** Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7543, e-mail: *mberson@cvm.fda.gov.*

**SUPPLEMENTARY INFORMATION:** IDEXX Pharmaceuticals, Inc., 4249–105 Piedmont Pkwy., Greensboro, NC 27410, filed NADA 141–186 that provides for use of SURPASS (1 % diclofenac sodium) Topical Cream in horses for the control of pain and inflammation associated with osteoarthritis in tarsal, carpal, metacarpophalangeal, metatarsophalangeal, and proximal interphalangeal (hock, knee, fetlock and pastern) joints. The NADA is approved

as of May 13, 2004, and the regulations are amended in 21 CFR part 524 by adding § 524.590 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning May 13, 2004.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects in 21 CFR Part 524**

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

## PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 524 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

■ 2. Section 524.590 is added to read as follows:

**§ 524.590 Diclofenac.**

(a) *Specifications.* Each gram of cream contains 10 milligrams diclofenac sodium.

(b) *Sponsor.* See No. 065274 in § 510.600(c) of this chapter.

(c) *Conditions of use in horses*—(1) *Amount.* Apply a 5-inch (5″) ribbon of cream twice daily over the affected joint for up to 10 days and rub thoroughly into the hair covering the joint until it disappears.

(2) *Indications for use in horses.* For the control of pain and inflammation associated with osteoarthritis in tarsal, carpal, metacarpophalangeal, metatarsophalangeal, and proximal interphalangeal (hock, knee, fetlock and pastern) joints.

(3) *Limitations.* Not for use in horses intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: June 17, 2004.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 04–15426 Filed 7–6–04; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 151

**[USCG–2002–13147]**

**RIN 1625–AA51**

## Penalties for Non-Submission of Ballast Water Management Reports

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule; correction.

**SUMMARY:** The Coast Guard is correcting a final rule that appeared in the **Federal Register** of June 14, 2004 (69 FR 32864). The final rule changes regulations for vessels equipped with ballast water tanks bound for ports or places within the United States. These corrections clarify the final rule.

**DATES:** This correction is effective on June 14, 2004.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call Mr. Bivan Patnaik, Project Manager, Environmental Standards Division, Coast Guard, telephone 202–267–1744, e-mail: *bpatnaik@comdt.uscg.mil.* If you have questions on viewing the docket, call Ms. Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 04–13173 appearing on page 32864 of the **Federal Register** of Monday, June 14, 2004, the following corrections are made:

■ 1. On page 32865, the paragraph beginning at the end of the second column and continuing in the third column is corrected to read as follows:

"Although, the penalty amount of $25,000 was discussed in the notice of proposed rulemaking, the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, requires the Coast Guard to adjust penalties for violating Federal laws set by Congress long ago where the deterrent value of the penalties have weakened with time due to inflation. As such, we have changed the monetary amount authorized by NISA, from $25,000 to $27,500. With respect to the commenters' concern about the penalty amount, we believe there is some confusion. The penalty is not $27,500; rather, the penalty is not to exceed $27,500. We have the discretion to issue a penalty of up to $27,500, depending on the facts of each individual case."

■ 2. On page 32866, the first paragraph of the third column, remove the three asterisks in the first sentence.

■ 3. On page 32867, in the second full paragraph of the second column, remove the word "COPT" and in its place, add the word "COTP".

■ 4. To clarify the Coast Guard's response to comments submitted in the Comments on Definitions section on page 32867, the second paragraph of the third column is corrected as follows:

The Coast Guard disagrees with this comment. "Ports and places" are defined in § 151.2025 and are defined in the exact way as in 33 CFR 160.204 of, "Notification of Arrivals, Departures, Hazardous Conditions, and Certain Dangerous Cargoes." The Coast Guard must evaluate the BWM operations of all vessels operating within U.S. waters. Therefore, MODUs or OSVs servicing OCS facilities within the EEZ while moving from one COTP zone to another, must submit ballast water reporting forms. MODUs or OSVs servicing OCS facilities outside the EEZ will not be required to submit ballast water reporting forms, however, upon returning to ports or places of the U.S they will have to submit ballast water reporting forms. Regulatory language in § 151.2041 will be amended to reflect this clarification. If, after a period of time we determine that we are receiving data that does not benefit our evaluation, we will then revisit the program and adjust it accordingly.

■ 5. On page 32869, in the middle column, in amendatory instruction numbers 1 and 4, remove the word "continues".

**§ 151.2041 [Amended]**

■ 6. On page 32870, in the second column, correct the section heading for § 151.2041 and paragraph (a) by removing the phrase "bound for ports or places in the United States" and add in its place the phrase "bound for ports or places of the United States".

Dated: June 23, 2004.

**Howard L. Hime,**

*Acting Director of Standards, Marine Safety, Security and Environmental Protection.*

[FR Doc. 04–15033 Filed 7–6–04; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[CGD05–04–067]**

**RIN 1625–AA87 (Formerly 1625–AA00)**

## Security Zone; Captain of the Port Hampton Roads Zone, Hampton Roads, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing security zones around passenger vessels and vessels carrying Certain Dangerous Cargo (CDC) while they are in the navigable waters of the Captain of the Port (COTP) Hampton Roads zone. These security zones mitigate potential terrorist acts and enhance the public and maritime safety and security. These security zones prohibit entry into or movement within 500-yards of passenger vessels and vessels carrying CDC unless traveling at the minimum speed to navigate safely. No vessel or person may approach within 100 yards of a passenger vessel or vessel carrying CDC unless authorized by the COPT Hampton Roads or his or her designated representative.

**DATES:** This rule is effective July 7, 2004.

**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 CGD05–04–067 and are available for inspection or copying at Coast Guard Marine Safety Office Hampton Roads, 200 Granby Street, Suite 700, Norfolk, Virginia 23510, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Mike Dolan, Chief of Waterways Management, USCG Marine Safety Office Hampton Roads, at (757) 668–5590.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On May 4, 2004, we published a notice of proposed rulemaking (NPRM) entitled, "Security Zone; Captain of the Port Hampton Roads Zone," in the **Federal Register** (69 FR 24549). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Upon implementation of this rule, the Captain of the Port will have increased ability to provide for the safety and security of passenger vessels and vessels carrying Certain Dangerous Cargo (CDC). Given the urgent need to improve maritime and homeland security measures, this rule should be made effective as soon as possible.

### Background and Purpose

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted terrorists' desire and ability to utilize multiple means in different geographic areas to successfully carry out their mission.

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation has issued several warnings concerning the potential for additional terrorist attacks within the United States. The October 2002 attack on a tank vessel, MV LIMBURG, off the coast of Yemen, and the prior attack on the USS COLE demonstrate the maritime terrorism threat. These attacks manifest a continuing threat to U.S. maritime assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002).

The U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD more recently issued Advisory 03–06 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States.

The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the Al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

Due to increased awareness that future terrorist attacks are possible, the Coast Guard, as lead federal agency for maritime homeland security, has determined that the Captain of the Port must have the means to be aware of, detect, deter, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while maintaining our freedoms and sustaining the flow of commerce. The security zones are established around all passenger vessels or vessels carrying CDC that are anchored, moored, or underway within the Captain of the Port Hampton Roads zone. A security zone is a tool available to the Coast Guard that may be used to control vessel traffic operating in the vicinity of passenger vessels and vessels carrying CDC.

### Discussion of Comments and Changes

No comments were received on the notice of proposed rulemaking. No changes have been made to the regulatory text.

### Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary. This finding is based on the relatively small percentage of ships that would fall within the applicability of the regulation, the relatively small size of the limited access area around each ship, the minimal amount of time that vessels will be restricted in course or speed when the zone is being enforced, and the ease with which vessels may transit around the affected area. In addition, vessels that may need to enter the zones may request permission on a case-by-case basis from the COTP Hampton Roads or his designated representatives.

**Small Entities**

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

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

This rule affects the following entities, some of which might be small entities: The owners or operators of vessels intending to transit in the security zone near a passenger vessel or a vessel that is carrying CDC. We received no comments on the impact of this rule on small entities.

**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.

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

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.503 to read as follows:

**§ 165.503 Security Zone; Captain of the Port Hampton Roads Zone.**

(a) *Definitions.* As used in this section—

*Certain dangerous cargo* or *CDC* means a material defined as CDC in 33 CFR 160.204.

*Designated Representative* of the Captain of the Port is any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port (COTP), Hampton Roads, Virginia to act on his or her behalf.

*Passenger vessel* means a vessel defined as a passenger vessel in 46 CFR part 70.

(b) *Location.* All navigable waters of the Captain of the Port Hampton Roads zone (defined in 33 CFR 3.25–10) within 500 yards around a passenger vessel or vessel carrying a CDC, while the passenger vessel or vessel carrying CDC is transiting, moored or anchored.

(c) *Regulations.* (1) No vessel may approach within 500 yards of a passenger vessel or vessel carrying a CDC within the Captain of the Port Hampton Roads zone, unless traveling at the minimum speed necessary to navigate safely.

(2) Under § 165.33, no vessel or person may approach within 100 yards of a passenger vessel or vessel carrying a CDC within the Captain of the Port Hampton Roads zone, unless authorized by the COTP Hampton Roads or his or her designated representative.

(3) The COTP Hampton Roads may notify the maritime and general public by marine information broadcast of the periods during which individual security zones have been activated by providing notice in accordance with 33 CFR 165.7.

(4) A security zone in effect around a moving or anchored vessel will be enforced by a law enforcement vessel. A security zone in effect around a moored vessel will be enforced by a law enforcement agent shoreside, a law enforcement vessel waterside, or both.

(5) Persons desiring to transit the area of the security zone within 100 yards of a passenger vessel or vessel carrying a CDC must contact the COTP Hampton Roads on VHF–FM channel 16 (156.8 MHz) or telephone number (757) 668–5555 or (757) 484–8192 to seek permission to transit the area. All persons and vessels must comply with the instructions of the COTP or the COTP's designated representative.

(d) *Enforcement.* The COTP will enforce these zones and may enlist the aid and cooperation of any Federal, state, county, or municipal law enforcement agency to assist in the enforcement of the regulation.

Dated: June 28, 2004.

**Robert R. O'Brien, Jr.,**

*Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.*

[FR Doc. 04–15415 Filed 7–6–04; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

[OAR–2004–0068; FRL–7782–2]

RIN 2060–AK35

## Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule; amendments.

**SUMMARY:** New source performance standards (NSPS) limiting emissions of nitrogen oxides ($NO_X$) from industrial-commercial-institutional steam generating units capable of combusting more than 100 million British thermal units (Btu) per hour were proposed on June 19, 1984, and were promulgated on November 25, 1986. The standards limit $NO_X$ emissions from the combustion of fossil fuels, as well as the combustion of fossil fuels with other fuels or wastes. The standards include provisions for facility-specific $NO_X$ standards for steam generating units which simultaneously combust fossil fuel and chemical by-product waste under certain conditions. The amendments promulgate a facility-specific $NO_X$ standard for a steam generating unit which simultaneously combusts fossil fuel and chemical by-product waste at the Weyerhaeuser Company facility located in New Bern, North Carolina.

**DATES:** The direct final rule will be effective on September 7, 2004, without further notice, unless EPA receives significant adverse written comments by August 6, 2004. If EPA receives such comments, it will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment.

**ADDRESSES:** Submit your comments, identified by Docket ID No. OAR–2004–0068, 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: *air-and-r-docket@epa.gov.*
- Fax: (202) 566–1741.
- Mail: EPA Docket Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a duplicate copy, if possible.
- Hand Delivery: Air and Radiation Docket, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B–108, 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.

We request that a separate copy also be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

*Instructions:* Direct your comments to Docket ID No. OAR–2004–0068. 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. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

*Docket:* All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket, 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. James A. Eddinger, Combustion Group, Emission Standards Division (C439–01), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5426; facsimile number (919) 541–5450; electronic mail address *eddinger.jim@epa.gov.*

**SUPPLEMENTARY INFORMATION:** *Regulated Entities.* The only regulated entity that will be affected by the direct final rule amendment is the Weyerhaeuser Company facility located in New Bern, North Carolina.

*Comments.* We are publishing the direct final rule without prior proposal because we view it as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rules section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal in the event that adverse comments are filed. If we receive any adverse comments on a specific element of the direct final rule, 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. Any of the distinct amendments in the direct final rule for which we do not receive adverse comment will become effective on the date set out above. We will not institute a second comment period on the direct final rule. Any parties interested in commenting must do so at this time.

*World Wide Web (WWW).* In addition to being available in the docket, electronic copies of today's action will be posted on the Technology Transfer Network's (TTN) policy and guidance information page *http://www.epa.gov/ttn/caaa.* 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 is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by September 7, 2004. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule 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 that are subject to today's action may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

## I. Background

The objective of the NSPS, promulgated on November 25, 1986, is to limit $NO_X$ emissions from the combustion of fossil fuel. For steam generating units combusting by-product waste, the requirements of the NSPS vary depending on the operation of the steam generating units. During periods when only fossil fuel is combusted, the steam generating unit must comply with the $NO_X$ emission limits in the NSPS for fossil fuel. During periods when only by-product waste is combusted, the steam generating unit may be subject to other requirements or regulations which limit $NO_X$ emissions, but it is not subject to $NO_X$ emission limits under the NSPS. In addition, if the steam generating unit is subject to federally enforceable permit conditions limiting the amount of fossil fuel combusted in the steam generating unit to an annual capacity factor of 10 percent or less, the steam generating unit is not subject to $NO_X$ emission limits under the NSPS when it simultaneously combusts fossil fuel and by-product waste.

With the exception noted above, during periods when fossil fuel and by-product waste are simultaneously combusted in a steam generating unit, the unit must generally comply with $NO_X$ emission limits under 40 CFR 60.44b(e) of the NSPS. Under 40 CFR 60.44b(e) the applicable $NO_X$ emission limit depends on the nature of the by-product waste combusted. In some situations, however, "facility-specific" $NO_X$ emission limits developed under 40 CFR 60.44b(f) may apply. The order for determining which $NO_X$ emission limit applies is as follows. A steam generating unit simultaneously combusting fossil fuel and by-product waste is expected to comply with the $NO_X$ emission limit under 40 CFR 60.44b(e); only in a few situations may $NO_X$ emission limits developed under 40 CFR 60.44b(f) apply. An equation in 40 CFR 60.44b(e) is included to determine the $NO_X$ emission limit applicable to a steam generating unit when it simultaneously combusts fossil fuel and by-product waste.

Only where a steam generating unit which simultaneously combusts fossil fuel and by-product waste is unable to comply with the $NO_X$ emission limit determined under 40 CFR 60.44b(e), might a facility-specific $NO_X$ emission limit under 40 CFR 60.44b(f) apply. That section permits a steam generating unit to petition the Administrator for a facility-specific $NO_X$ emission limit. A facility-specific $NO_X$ emission limit will be proposed and promulgated by the Administrator for the steam generating unit, however, only where the petition is judged to be complete. To be considered complete, a petition for a facility-specific $NO_X$ standard under 40 CFR 60.44b(f) consists of three components. The first component is a demonstration that the steam generating unit is able to comply with the $NO_X$ emission limit for fossil fuel when combusting fossil fuel alone. The purposes of this provision are to ensure that the steam generating unit has installed best demonstrated $NO_X$ control technology, to identify the $NO_X$ control technology installed, and to identify the manner in which this technology is operated to achieve compliance with the $NO_X$ emission limit for fossil fuel.

The second component of a complete petition is a demonstration that the $NO_X$ control technology does not enable compliance with the $NO_X$ emission limit for fossil fuel when the steam generating unit simultaneously combusts fossil fuel with chemical by-product waste under the same conditions used to demonstrate compliance on fossil fuel alone. In addition, this component of the petition must identify what unique and specific properties of the chemical by-product waste are responsible for preventing the steam generating unit from complying with the $NO_X$ emission limit for fossil fuel.

The third component of a complete petition consists of data and/or analysis to support a facility-specific $NO_X$ standard for the steam generating unit when it simultaneously combusts fossil fuel and chemical by-product waste and operates the $NO_X$ control technology in

the same manner in which it would be operated to demonstrate and maintain compliance with the $NO_X$ emission limit for fossil fuel, if only fossil fuel were combusted. This component of the petition must identify the $NO_X$ emission limit(s) and/or operating parameter limits, and appropriate testing, monitoring, reporting and recordkeeping requirements which will ensure operation of the $NO_X$ control technology and minimize $NO_X$ emissions at all times.

Upon receipt of a complete petition, the Administrator will propose a facility-specific $NO_X$ standard for the steam generating unit when it simultaneously combusts chemical by-product waste with fossil fuel. The $NO_X$ standard will include the $NO_X$ emission limit(s) and/or operating parameter limit(s) to ensure operation of the $NO_X$ control technology at all times, as well as appropriate testing, monitoring, reporting and recordkeeping requirements.

The Weyerhaeuser Company has submitted a petition for a facility-specific $NO_X$ standard for the No. 2 Power Boiler at its kraft pulp mill in New Bern, North Carolina. The No. 2 Power Boiler combusts residual oil and a byproduct/waste gas from a foul condensate steam stripper. The foul condensate steam stripper was installed to comply with the maximum achievable control technology (MACT) standards for kraft pulping systems under 40 CFR part 63, subpart S. While the No. 2 Power Boiler complies with Subpart Db of 40 CFR part 60 while firing residual oil, the combustion of stripper off-gas along with residual fuel oil in the No. 2 Power Boiler results in a $NO_X$ emission rate in excess of the NSPS limit for the standard. Based on a review of the Weyerhaeuser Company's petition for an alternative $NO_X$ standard, EPA's Office of Air Quality Planning and Standards has determined the petition to be complete and an alternative facility-specific standard to be appropriate. An alternative $NO_X$ standard is provided in the final rule amendment.

## II. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review*

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

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

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

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and 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.

Pursuant to the terms of Executive Order 12866, it has been determined that the direct final rule does not constitute a "significant regulatory action" because it does not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

### *B. Paperwork Reduction Act*

The Office of Management and Budget approved the information collection requirements contained in the standards under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, at the time the rules were promulgated on November 25, 1986.

This action does not impose any new information collection requirements of the standards and will have no impact on the information collection estimate of project cost and hour burden made and approved by OMB during the development of the standards and guidelines. Therefore, the information collection requests have not been revised.

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 our regulations are listed in 40 CFR part 9 and 40 CFR chapter 15.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the direct final rule on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 100 or 1,000 employees, or fewer than 4 billion kilowatt (kW)-hr per year of electricity usage, depending on the size definition for the affected North American Industry Classification System (NAICS) code; (2) a small governmental 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 that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the direct final rule on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. The direct final rule will not impose any requirements on small entities because it does not impose any additional regulatory requirements.

### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us 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 objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal

governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our 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 amendment contains no Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year, nor does the direct final rule significantly or uniquely impact small governments, because it contains no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of sections of the UMRA do not apply to the direct final rule.

*E. Executive Order 13132: Federalism*

Executive Order 13132 (64 FR 43255, August 10, 1999) requires us 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" are 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 does not have federalism implications. It will not have new 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. Today's action codifies a facility-specific $NO_X$ standard. There are minimal, if any, impacts associated with this action. Thus, Executive Order 13132 does not apply to the direct final rule.

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

Executive Order 13175 (65 FR 67249, November 6, 2000) requires us 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 does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the direct final rule.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks 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 we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we 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 we considered.

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 is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

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

The direct final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in our regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The direct final rule amendments do not involve technical standards. Therefore, the direct final rule is not subject to NTTAA.

*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 the 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**. The direct final rule is not a "major rule" as defined by 5 U.S.C. section 804(2).

**List of Subjects in 40 CFR Part 60**

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 23, 2004.

**Jeffrey R. Holmstead,**

*Assistant Administrator.*

■ For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is amended to read as follows:

**PART 60—[AMENDED]**

■ 1. The authority citation for part 60 continues to read as follows:

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

**Subpart Db—[Amended]**

■ 2. Section 60.49b is amended by adding paragraph (x) as follows:

**§ 60.49b Reporting and recordkeeping requirements.**

* * * * *

(x) Facility-specific nitrogen oxides standard for Weyerhaeuser Company's No. 2 Power Boiler located in New Bern, North Carolina:

(1) *Standard for nitrogen oxides.* (i) When fossil fuel alone is combusted, the nitrogen oxides emission limit for fossil fuel in § 60.44b(a) applies.

(ii) When fossil fuel and chemical by-product waste are simultaneously

combusted, the nitrogen oxides emission limit is 215 ng/J (0.5 lb/million Btu).

(2) *Emission monitoring for nitrogen oxides.* (i) The nitrogen oxides emissions shall be determined by the compliance and performance test methods and procedures for nitrogen oxides in § 60.46b.

(ii) The monitoring of the nitrogen oxides emissions shall be performed in accordance with § 60.48b.

(3) *Reporting and recordkeeping requirements.* (i) The owner or operator of the No. 2 Power Boiler shall submit a report on any excursions from the limits required by paragraph (x)(2) of this section to the Administrator with the quarterly report required by § 60.49b(i).

(ii) The owner or operator of the No. 2 Power Boiler shall keep records of the monitoring required by paragraph (x)(3) of this section for a period of 2 years following the date of such record.

(iii) The owner or operator of the No. 2 Power Boiler shall perform all the applicable reporting and recordkeeping requirements of § 60.49b.

[FR Doc. 04–15204 Filed 7–6–04; 8:45 am]
BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP–2004–0172; FRL–7365–7]

### Propoxycarbazone-sodium; Pesticide Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for combined residues of propoxycarbazone-sodium and its metabolite in or on meat, meat byproducts, wheat and milk. Bayer CropScience requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

**DATES:** This regulation is effective July 7, 2004. Objections and requests for hearings must be received on or before September 7, 2004.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket ID number OPP–2004–0172. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 Bell Street, Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

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

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

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

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

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

## II. Background and Statutory Findings

In the **Federal Register** of August 21, 2002 (67 FR 54188) (FRL–7195–2), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F6094) by Bayer Corporation, 8400 Hawthorn Road, Kansas City MO, 64120–0013. That notice included a summary of the petition prepared by Bayer Corporation, the registrant. There were no comments received in response to the notice of filing. The company name and address were subsequently changed to Bayer CropScience, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709.

The petition requested that 40 CFR 180 be amended by establishing tolerances for residues of the herbicide, propoxycarbazone-sodium, methyl 2-[[[(4,5-dihydro-4-methyl-5-oxo-3-propoxy-1H-1,2,4-triazol-1-yl)carbonyl]amino]sulfonyl]benzoate, sodium salt and its metabolite, methyl 2-[[[(4,5-dihydro-4-methyl-5-oxo-3-(2'-hydroxy-propoxy)-1H-1,2,4-triazol-1-yl)carbonyl]amino]sulfonyl]benzoate, in or on the raw agricultural commodities (RACs) wheat forage, wheat hay, wheat straw, wheat grain, meat, and meat byproducts, (cattle, sheep, goats, horses, hogs), and milk at 1.5, 0.15, 0.05, 0.01, 0.05, and 0.002 parts per million (ppm); respectively. Bayer CropScience subsequently amended the petition by requesting that 40 CFR 180 be amended establishing tolerances for residues of the herbicide, propoxycarbazone, methyl 2-[[[(4,5-dihydro-4-methyl-5-oxo-3-propoxy-1H-1,2,4-triazol-1-yl)carbonyl]amino]sulfonyl]benzoate, sodium salt and its metabolite, methyl 2-[[[(4,5-dihydro-3-(2-hydroxypropoxy)-4-methyl-5-oxo-1H-1,2,4-triazol-1-yl)carbonyl]amino]sulfonyl]benzoate, in

or on Wheat, forage at 1.5 ppm, Wheat, hay at 0.15 ppm, Wheat, straw at 0.05 ppm, and Wheat, grain at 0.02 ppm and for residues of the herbicide propoxycarbazone, methyl 2-[[[(4,5-dihydro-4-methyl-5-oxo-3-propoxy-1H-1,2,4-triazol-1-yl)carbonyl]amino]sulfonyl]benzoate in or on the Meat of cattle, sheep, goat and horse at 0.05 ppm, Meat byproducts of cattle, sheep, goat and horse at 0.05 ppm and Milk at 0.004 ppm.

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

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

## III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for tolerances for combined residues of propoxycarbazone-sodium and its metabolite on Wheat, forage at 1.5 ppm, Wheat, hay at 0.15 ppm, Wheat, straw at 0.05 ppm, and Wheat, grain at 0.02 ppm and for residues of propoxycarbazone-sodium in or on the Meat of cattle, sheep, goat and horse at 0.05 ppm, Meat byproducts of cattle, sheep, goat and horse at 0.05 ppm and Milk at 0.004 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

### *A. Toxicological Profile*

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

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

| Guideline No. | Study Type | Results |
|---|---|---|
| 870.3100 | 90-Day oral toxicity—rodents (rat) | NOAEL = 286.4 males (M) and 350.6 females (F) milligrams/kilogram/day (mg/kg/day)<br>LOAEL = 1507.5 (M) and 1769.9 (F) mg/kg/day based on gastric irritation |
| 870.3100 | 90–Day oral toxicity—rodents (mouse) | NOAEL = 205 (M) and 1159 (F) mg/kg/day<br>LOAEL = 860 (M) and 5109 (F) mg/kg/day based on decreased body weight, body weight gain and food efficiency |
| 870.3150 | 64–Day oral toxicity—nonrodents (dog)(range-finding) | NOAEL = 1,407 (M) and 1,181 (F) mg/kg/day Highest Dose Tested (HTD)<br>LOAEL not determined |
| 870.3200 | 21/28–Day dermal toxicity | NOAEL = 1,000 mg/kg/day (HTD)<br>LOAEL not determined |
| 870.3700 | Prenatal developmental—rodents (rat) | Maternal NOAEL equal or greater than (≥) 1,000 mg/kg/day (HTD)<br>Maternal LOAEL not determined<br>Developmental NOAEL ≥ 1,000 mg/kg/day (HTD)<br>Developmental LOAEL not determined |
| 870.3700 | Prenatal developmental—nonrodents (rabbit) | Maternal NOAEL = 100 mg/kg/day<br>Maternal LOAEL = 500 mg/kg/day based on reduced body weight gain and food consumption, GI toxicity and decreased water consumption and urination<br>Developmental NOAEL = 500 mg/kg/day<br>Developmental LOAEL = 1,000 mg/kg/day based on an abortion, decrease in mean fetal weights, and elevated pre- and post-implantation loss. |
| 870.3800 | Reproduction and fertility effects | Parental/Systemic NOAEL = 74.8–79.6 (M) and 373.5–413.5 (F) mg/kg/day<br>Parental/Systemic LOAEL = 297.1–322.9 (M) and 1605.3–1907.5 (F) mg/kg/day based on microscopic lesions of the stomach.<br>Reproductive NOAEL = 1230.7–1313.9 (M) and 373.5–413.5 (F) mg/kg/day<br>Reproductive LOAEL = 1605.3–1907.5 (F) mg/kg/day based on increased in diestrous/metestrous<br>Offspring NOAEL = 297.1–322.9 (M) and 373.5–413.5 (F) mg/kg/day<br>Offspring LOAEL = 1230.7–1313.9 (M) and 1605.3–1907.5 (F) mg/kg/day based on increased postimplantation loss and decreased live litter size in the $F_2$ litters |

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

| Guideline No. | Study Type | Results |
|---|---|---|
| 870.4100 | Chronic toxicity—dogs | NOAEL = 630.7 mg/kg/day<br>LOAEL > 630.7 mg/kg/day |
| 870.4300 | Combined chronic toxicity carcinogenicity - rodents (rats) | NOAEL = 43 (M) and 49 (F) mg/kg/day<br>LOAEL = 459 (M) and 525 (F) mg/kg/day based on decreased body weight and increased urinary pH (preceding histological changes in the kidney of rats in the mid- and high-dose groups such as: Foci of mineralization of pelvis, dilated and cystic renal tubules filled with proteinaceous material, regenerative tubular epithelium, glomerular and interstitial fibrosis, and hyperplasia of the pelvic epithelium).<br>No evidence of carcinogenicity |
| 870.4300 | Carcinogenicity—mice | NOAEL = 369.0 (M) mg/kg/day and 3,106.1 (F) mg/kg/day (HTD)<br>LOAEL = 1,880.9 (M) mg/kg/day based on decreased body weight gain combined with lower food efficiency.<br>No evidence of carcinogenicity |
| 870.5100 | Gene mutation—Ames | Negative |
| 870.5100 | Gene mutation—Ames | Negative |
| 870.5100 | Gene mutation—Ames | Negative |
| 870.5300 | Gene mutation—*In vitro* Chinese hamster V79-HPRT | Negative |
| 870.5375 | Cytogenetics—*In vitro* Chinese hamster | Negative |
| 870.5375 | Cytogenetics—*In vitro* Chinese hamster | Negative |
| 870.5395 | Cytogenetics—Hsd/Win: NMRI mouse bone marrow micronucleus | Negative |
| 870.5550 | Other effects—UDS | Negative |
| 870.6200 | Acute neurotoxicity screening battery | NOAEL = 2,000 (M) and 800 (F) mg/kg (HDT)<br>LOAEL = 2,000 (F) mg/kg/day based on decrease in body weight gains |
| 870.6200 | Subchronic neurotoxicity screening battery | NOAEL ≥ 1,321 (M) and 1,651 (F) mg/kg/day (HDT)<br>LOAEL not established |
| 870.7485 | Metabolism and pharmacokinetics | Based on the amount of radiolabel recovered in the urine, 23–26% of the radiolabeled test material was absorbed by the males, with females absorbing slightly more (–31%). Absorption in male rats that received 200 mg/kg was ~21%. Radiolabel position did not influence absorption. Plasma $T_{max}$ was rapid, being ~0.33 hours regardless of radiolabel position in rats that received 2 mg/kg and ~0.81 hours in rats that received 200 mg/kg. No bioaccumulation or tissue reservoirs were found; this result confirmed by whole body autoradiography. Plasma clearance was biphasic and rapid, with a $T_{\frac{1}{2}}$ for the first phase of ~1.1 hours for the compound labeled in the triazol position and ~0.6 hours for the compound labeled in the phenyl position, regardless of dose. No radiolabel effects were noted in the second phase plasma $T_{\frac{1}{2}}$ which was –11 hours at 2 and 200 mg/kg of test material. Plasma area under the curve (AUC) was 3.6 µg/mL•hour for rats that received 2 mg/kg radiolabeled propoxycarbazone-sodium and ~ 45 times greater (169 µg/mL•hour) in rats that received 200 mg/kg. The radiolabeled test material was primarily eliminated unchanged in the urine and feces (–75–88% of the administered dose), with essentially none eliminated by the lungs. Of the absorbed radiolabeled test material, –90% was excreted into the urine while the remaining was recovered from the bile. However, radiolabel position influenced the metabolic products. Two minor metabolites that contributed <2% of the administered radiolabel were identified in the urine, MKH 7284 and MKH 7283, of rats dosed with propoxycarbazone-sodium labeled in the phenyl position. No metabolites were found in the urine of rats that received propoxycarbazone-sodium labeled in the triazol position. One metabolite, STJ 4934, was recovered in the feces of rats that received propoxycarbazone-sodium labeled in the phenyl position and accounted for 2–9% of the fecal radioactivity. The primary fecal metabolite found from rats treated with the triazol-labeled test material was identified as MKH 7017 and accounted for ~3% of the recovered radioactivity. The metabolite Pr-2-OH, MKH 6561, a product of wheat metabolism, was essentially not found in the urine or feces of treated rats. |

*B. Toxicological Endpoints*

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

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

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

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

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

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

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

| Exposure Scenario | Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF | Special FQPA SF and LOC for Risk Assessment | Study and Toxicological Effects |
|---|---|---|---|
| Acute dietary | An endpoint of concern attributable to a single dose (exposure) was not identified from the available studies. An acute RfD was not established | | |
| Chronic dietary (all populations) | NOAEL= 74.6 mg/kg/day<br>UF = 100X<br>Chronic RfD = 0.748 mg/kg/day | Special FQPA SF = 1X<br>cPAD = chronic RfD + Special FQPA SF = 0.748 mg/kg/day | Two-generation reproduction study in rats<br>LOAEL = 297.1 mg/kg/day based on microscopic lesions of the stomach in parental male rats |
| Cancer (oral, dermal, inhalation) | Not likely to be a carcinogen for humans based on the lack of carcinogenicity in a rat carcinogenicity study, an mouse carcinogenicity study and a battery of mutagenic studies. | | |

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* Tolerances have not been previously established (40 CFR 180) for the residues of propoxycarbazone-sodium in or on raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from propoxycarbazone-sodium in food as follows:

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

An effect of concern attributable to a single exposure (dose) was not identified from the oral toxicity studies including the developmental toxicity studies in rat and rabbits. Abortions seen in the developmental toxicity study in rabbits at 1,000 mg/kg/day during GD 19–28, were not considered to be a single dose effect. Since they occur late in gestation after repeated exposures.

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-

FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: For the chronic analyses, tolerance-level residues were assumed for all food commodities with current or proposed propoxycarbazone-sodium tolerances, and it was assumed that all of the crops included in the analysis were treated. Percent Crop Treated (PCT) and/or anticipated residues were not used in the chronic risk assessment.

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

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

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

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

Based on the FIRST and SCI-GROW models, the EECs of propoxycarbazone-sodium for acute exposures are estimated to be 2.3 parts per billion (ppb) for surface water and 0.4 ppb for ground water. The EECs for chronic exposures are estimated to be 0.9 ppb for surface water and 0.4 ppb for ground water.

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

Propoxycarbazone-sodium is not registered for use on any sites that would result in residential exposure.

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

EPA does not have, at this time, available data to determine whether propoxycarbazone-sodium has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to propoxycarbazone-sodium and any other substances and propoxycarbazone-sodium does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that propoxycarbazone-sodium has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's OPP concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's web site at *http://www.epa.gov/pesticides/cumulative/*.

### *D. Safety Factor for Infants and Children*

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

2. *Conclusion.* The toxicology database is complete for FQPA purposes and there are no residual uncertainties for pre-/post-natal toxicity. Based on the quality of the exposure data, EPA determined that the 10X SF to protect infants and children should be removed. The FQPA factor is removed based on the following:

(i) There is no quantitative or qualitative evidence of increased susceptibility of rat and rabbit fetuses to in utero exposure to propoxycarbazone-sodium in developmental toxicity studies. There is no quantitative or qualitative evidence of increased susceptibility to propoxycarbazone-sodium following pre-/post-natal exposure to a 2–generation reproduction study.

(ii) There is no concern for developmental neurotoxicity resulting from exposure to propoxycarbazone-sodium. A developmental neurotoxicity study (DNT) study is not required.

(iii) The toxicological database is complete for FQPA assessment.

(iv) The chronic dietary food exposure assessment utilizes HED-recommended tolerance level residues and 100% CT information for all commodities. By using these screening-level assessments, actual exposures/risks will not be underestimated.

(v) The dietary drinking water assessment utilizes water concentration values generated by model and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations which will not likely be exceeded.

*E. Aggregate Risks and Determination of Safety*

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

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

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

1. *Acute risk.* An effect of concern attributable to a single exposure (dose) was not identified from the oral toxicity studies including the developmental toxicity studies in rat and rabbits. No acute risk is expected from exposure to propoxycarbazone-sodium.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to propoxycarbazone-sodium from food will utilize < 1% of the cPAD for the U.S. population, < 1% of the cPAD for all infant subpopulations, and < 1% of the cPAD for all children subpopulations. There are no residential uses for propoxycarbazone-sodium that result in chronic residential exposure to propoxycarbazone-sodium. In addition, there is potential for chronic dietary exposure to propoxycarbazone-sodium in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 3 of this unit:

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

| Population Subgroup | cPAD mg/kg/day | % cPAD (Food) | Surface Water EEC (ppb) | Ground Water EEC (ppb) | Chronic DWLOC (ppb) |
|---|---|---|---|---|---|
| U.S. population | 0.748 | < 1% | 0.9 | 0.4 | 26,200 |
| All infants (< 1 year old) | 0.748 | < 1% | 0.9 | 0.4 | 7,480 |
| Children (1–2) years old | 0.748 | < 1% | 0.9 | 0.4 | 7,480 |
| Females (13–49 years old) | 0.748 | < 1% | 0.9 | 0.4 | 22,400 |

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

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

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

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

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

## IV. Other Considerations

*A. Analytical Enforcement Methodology*

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

*B. International Residue Limits*

There are no Codex, Canadian or Mexican maximum residue limits established for propoxycarbazone-sodium on wheat, meat, meat byproducts or milk.

## V. Conclusion

Therefore, the tolerance is established for combined residues of propoxycarbazone, methyl 2-[[[(4,5-dihydro-4-methyl-5-oxo-3-propoxy-1H-

1,2,4-triazol-1-yl)carbonyl]amino]sulfonyl]benzoate, sodium salt and its metabolite, methyl 2-[[[(4,5-dihydro-3-(2-hydroxypropoxy)-4-methyl-5-oxo-1H-1,2,4-triazol-1-yl)carbonyl]amino]sulfonyl]benzoate, in or on wheat, forage at 1.5 ppm, wheat, hay at 0.15 ppm, wheat, straw at 0.05 ppm, and wheat, grain at 0.02 ppm and for residues of the herbicide propoxycarbazone, methyl 2-[[[(4,5-dihydro-4-methyl-5-oxo-3-propoxy-1H-1,2,4-triazol-1-yl)carbonyl]amino]sulfonyl]benzoate in or on the meat of cattle, sheep, goat and horse at 0.05 ppm, meat byproducts of cattle, sheep, goat and horse at 0.05 ppm and milk at 0.004 ppm.

## VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0172 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 7, 2004.

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

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

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

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

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

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0172, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

## VII. Statutory and Executive Order Reviews

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

special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

### VIII. Congressional Review Act

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

### List of Subjects in 40 CFR Part 180

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

Dated: June 24, 2004.

**James Jones,**

*Director, Office of Pesticide Programs.*

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

## PART 180—[AMENDED]

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

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

■ 2. Section 180.600 is added to read as follows:

### § 180.600 Propoxycarbazone; tolerances for residues

(a) *General.* (1) Tolerances are established for combined residues of the herbicide propoxycarbazone methyl 2-[[[(4,5-dihydro-4-methyl-5-oxo-3-propoxy-1H-1,2,4-triazol-1-yl)carbonyl]amino]sulfonyl]benzoate and its metabolite methyl 2-[[[(4,5-dihydro-3-(2-hydroxypropoxy)-4-methyl-5-oxo-1H-1,2,4-triazol-1-yl)carbonyl]amino]sulfonyl]benzoate in/on the following raw agricultural commodities:

| Commodity | Parts per million |
|---|---|
| Wheat, forage | 1.5 |
| Wheat, grain | 0.02 |
| Wheat, hay | 0.15 |
| Wheat, straw | 0.05 |

(2) Tolerances are established for residues of the herbicide propoxycarbazone methyl 2-[[[(4,5-dihydro-4-methyl-5-oxo-3-propoxy-1H-1,2,4-triazol-1-yl)carbonyl]amino]sulfonyl]benzoate in/on the following raw agricultural commodities:

| Commodity | Parts per million |
|---|---|
| Cattle, meat | 0.05 |
| Cattle, meat byproducts | 0.05 |
| Goat, meat | 0.05 |
| Goat, meat byproducts | 0.05 |
| Horse, meat | 0.05 |
| Horse, meat byproducts | 0.05 |
| Milk | 0.004 |
| Sheep, meat | 0.05 |
| Sheep, meat byproducts | 0.05 |

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

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

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 04–15210 Filed 7–6–04; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[OPP–2004–0190; FRL–7364–4]**

### Sulfuric Acid; Exemption from the Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of sulfuric acid (CAS Reg. No. 7664–93–9) when used as an inert ingredient. Magna Bon Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996, requesting an exemption from the requirement of a tolerance. This

regulation eliminates the need to establish a maximum permissible level for residues of sulfuric acid.

**DATES:** This regulation is effective July 7, 2004. Objections and requests for hearings must be received on or before September 7, 2004.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket ID number OPP–2004–0190. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Bipin Gandhi, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8380; e-mail address: *gandhi.bipin@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

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

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

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

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

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

## II. Background and Statutory Findings

In the **Federal Register** of August 21, 2002 (67 FR 54203) (FRL–7194–7), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170), announcing the filing of a pesticide tolerance petition (PP 2E6476) by Magna Bon Corporation, 1531 NW 25th Drive, Okeechobee, FL 34972. This notice included a summary of the petition prepared by the petitioner Magna Bon Corporation.

The petitioner requested to amend 40 CFR 180.1001(c) newly redesignated as 180.910 by amending an existing exemption from the requirement of a tolerance for sulfuric acid (see 40 CFR 180.910). As currently established, sulfuric acid as an inert ingredient in formulated pesticide products can be applied to crops pre-harvest and post-harvest with a limitation of 0.1% in the pesticide formulation when used as a pH control agent. The petitioner requested to increase the limitation to 10% and to include a new use as a chelating agent. The petitioner requested the establishment of an exemption from the requirement of a tolerance in plants and plants products, meat, milk, poultry, eggs, fish, shellfish, and irrigated crops when it results from the use of sulfuric acid as an inert ingredient in a pesticide product used in irrigation conveyance systems and lakes, ponds, reservoirs, or bodies of water in which fish or shellfish are cultivated. Two comments were received in response to the notice of filing. See Unit IX.

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

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

## III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by sulfuric acid are discussed in this unit.

In formulating a pesticide product, an acidic chemical such as sulfuric acid serves a specific purpose, that of a neutralizing agent or a pH adjuster. During the manufacture of a pesticide product (or, in fact, many industrial chemicals), it may be necessary to adjust the pH of the product. An acid functions as a neutralizing agent when the hydrogen ion ($H^{+1}$) combines with the hydroxy ($OH^{-}$) in a basic solution to form a molecule of water. Small amounts of the hydrogen ion would be added to the solution to lower the pH until a neutral pH is reached. After the pH adjustment is performed and the neutralization reaction occurs, sulfuric acid is no longer present. The reaction

products that are then present are the sulfate (II) negatively charged ion and water.

Alternatively, it might be necessary to have a pesticide product maintain an acidic pH; thus, the sulfuric acid would be added during the manufacturing process to deliberately lower the pH, which would mean an excess of the hydrogen ion. Such products are not likely to be sold to the residential market.

As a chemical class, acids are significantly different from many of the chemicals regulated as inert ingredients in pesticide products. First, acids are highly corrosive. Due to this property, toxicity testing can only be performed on very diluted solutions. Therefore, toxicity studies performed with undiluted (concentrated) sulfuric acid are not available. Second, acids are highly reactive, and therefore are not expected to be persistent in the food supply, the environment, or in water resources. Sulfuric acid would be expected to dissociate and immediately react with both plant and animal materials.

Chemically, an acid, is a substance that when dissolved in water yields hydrogen ($H^{+1}$) ion. The increase of the concentration of the $H^{+1}$ ion reduces the pH. It is the hydrogen ion that is highly reactive, thus displaying the corrosive characteristic. The consequences of acute exposure to acids are well understood; they are corrosive to the eyes, the skin, and the respiratory tract. The hazard of any acidic chemical derives directly from and is due to these irritation and acidic effects.

Sulfuric acid is a strong acid. It is also a commonly used chemical. It has been used for years, and therefore, there is a significant body of existing publicly-available information.

- Solutions of sulfuric acid greater than 10% are severely corrosive by all routes of exposure.
- Solutions of sulfuric acid of less than 10% are strong irritants.
- There is sufficient evidence that occupational exposure to strong-inorganic-acid mists containing sulfuric acid is carcinogenic (International Agency for Research on Cancer).
- There were no significant developmental or reproductive effects in mice or rabbits exposed to 20 $mg/m^3$ sulfuric acid aerosols 7 hours per day on gestation days 6 to 15 (Agency for Toxic Substances and Disease (ATSDR)).

Previously, the Agency reviewed several acute toxicity studies conducted with sulfuric acid. The following information on the acute toxicity of sulfuric acid was extracted from the 1993 Mineral Acid RED (Reregistration Eligibility Decision Document):

- The oral lethal dose $(LD)_{50}$ is 350 mg/kg, Toxicity Category II.
- The dermal $LD_{50}$ is > 2,000 mg/kg, Toxicity Category III.
- Sulfuric acid is Toxicity Category I for eye and dermal irritation.

No other toxicological data were required based on the use patterns at the time of the issuance of the RED, and considering the corrosiveness shown in the acute studies for dermal and eye irritation. More recently, the Office of Pesticide Programs at the Environmental Protection Agency, as part of the tolerance reassessment process, completed its tolerance reassessment review of sulfuric acid with particular emphasis on the role of sulfuric acid in pesticide products.

The National Institute of Occupational Safety and Health (NIOSH) Immediately Dangerous to Life or Health (IDLH) Documentation and the International Chemical Safety Card for sulfuric acid indicate that it is a colorless, oily, odorless liquid. The IDLH is 15 $mg/m^3$. The Threshold Limit Value (TLV) is 1 $mg/m^3$ (TWA). Sulfuric acid reacts violently with water. It is corrosive to the skin and the respiratory tract, and on ingestion.

Sulfuric acid is considered to be a strong acid. The following acids have been approved by the Food and Drug Administration (FDA) for direct use in the food supply. In fact, FDA has determined that the following substances are Generally Recognized as Safe (GRAS) when used as direct food additives.

| Chemical | FDA GRAS Citation | GRAS Use Pattern |
|---|---|---|
| Sulfuric acid | 21 CFR 184.1095 | pH control agent, processing aid |
| Hydrochloric acid | 21 CFR 182.1057 | neutralizing agent (no limitations specified) |
| Phosphoric acid | 21 CFR 182.1073 | (no limitations specified) |

Sulfuric acid is also cleared under 21 CFR 178.1010 for use in food-contact surface sanitizing solutions.

In 1975 FDA published an assessment entitled "Evaluation of the Health Aspects of Sulfuric Acid and Sulfates as Food Ingredients." "Sulfates are natural constituents of foods and normal products of sulfur metabolism in animals. It is evident that the toxic manifestations following oral administration of the sulfates considered in this report appear only at levels that are many times greater than those to which man is exposed in his daily diet." It was concluded that: "There is no evidence in the available information on sulfuric acid that demonstrates or suggests that reasonable grounds to suspect, a hazard to public when they are used at levels that are now current or that might reasonably be expected in future."

## IV. Conclusions of the Human Health Assessment

Sulfuric acid in its concentrated form is highly corrosive. Due to this property, toxicity testing can only be performed on dilute concentrations or on neutralized forms of the acid such as a salt. The consequences of acute exposure to sulfuric acid are well-understood. According to NIOSH and ATSDR, "Concentrated sulfuric acid has an extremely irritant, corrosive, and destructive action on all living matter including human tissues, not by virtue of its acidity (in concentrated form it is only slightly ionized) but because of its affinity for water. The affinity is so strong that it will remove the elements of water from even anhydrous organic matter such as carbohydrates, resulting in charring or carbonization with the liberation of heat. In sulfuric acid splashing accidents, the heat liberated by dilution of the concentrated acid with water used to flush the affected areas, can add thermal burn to chemical injury of the body." Thus sulfuric acid "can burn and char the skin. It is even more rapidly injurious to the mucous membranes, and exceedingly dangerous to the eyes. Dilute sulfuric acid, while it does not possess this charring property, irritates the skin and mucous membranes by virtue of its acidity and can cause dermatitis."

Exposure to a mist of sulfuric acid can cause irritant effects on the mucous membranes and chemical corrosive effects upon the teeth. Strong inorganic acid mists containing sulfuric acid are listed as known human carcinogens.

However, exposure to sulfuric acid in pesticide products as an inert ingredient would be in the role of a pH adjuster, that is, a liquid form, not a mist. As an inert ingredient small amounts of sulfuric acid are incorporated in a pesticide product to lower the pH. After the pH adjustment is performed, the sulfuric acid would be neutralized, and therefore no longer present. It is recognized that sulfuric acid must be used and applied according to good manufacturing or good agricultural practices.

There are no available information on sulfuric acid indicative of a human health hazard from the ingestion of food directly treated with sulfuric acid. In fact, sulfuric acid would not be present in consumed foods. The small amounts of acids that might be added to a food during processing react rapidly with a food substance. Thus, the exposure is actually to sulfate residues.

The sulfate residues (resulting from the use of sulfuric acid) are of minimal toxicity. In fact, calcium, sodium, magnesium, and potassium sulfates have been classified as List 4A, chemical substances of minimal risk. Various sulfate chemicals have uses as direct food additives. The human body metabolizes sulfate through well-understood pathways. It is a necessary human nutrient. There are no significant adverse effects, to the general public or any population subgroup from consumption of residues of sulfuric acid (actually the neutralized form which is the sulfate ion in solution) resulting from pesticide product uses.

## V. Aggregate Exposures

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

### *A. Dietary Exposure*

1. *Food.* During the manufacture of a pesticide product, it is very possible that sulfuric acid (when used as an inert ingredient) could be used to adjust the pH of the pesticide product. Sulfuric acid is highly reactive. Adjusting the pH creates a chemical reaction known as neutralization, in which the acidic characteristics of the sulfuric acid disappear. At this point the sulfate ion is in solution in the pesticide product. The amount of the sulfate ion in the solution from the neutralization reaction would be equivalent to the amount of sulfuric acid used.

Sulfuric acid can also be used as an active ingredient when used as a herbicide in the production of garlic and onions and as a potato vine desiccant, prior to harvest, to make harvesting less difficult. There is no reasonable expectation that residues of sulfuric acid would be present in the harvested commodity.

FDA has determined that sulfuric acid is generally recognized as safe as a direct food additive. Sulfuric acid can be used as a component of a food-contact surface sanitizing solution. Given the highly reactive nature of sulfuric acid, the actual exposure would be to sulfate residues. Thus, the public is not directly exposed to sulfuric acid in its food supply.

2. *Drinking water.* Sulfuric acid is not expected to be persistent in the environment. Instead it is expected to dissociate, react with organic or inorganic materials, and complex with ionic substrates. Releasing low levels of sulfuric acid would not normally be expected to adversely affect water resources. Sulfates form the basis of many rocks and minerals which are naturally occurring materials.

### *B. Other Non-Occupational Exposure*

As a group mineral acids, including sulfuric acid constitute a group of chemicals with many industrial uses. However, considering the reactivity and corrosivity of these acids, there are few uses of even diluted solutions of strong acids in and around the home. As stated previously the actual exposure is to sulfate. Several sulfate chemicals (sodium, calcium, magnesium, and potassium) have been classified as List 4A chemicals, that is chemicals of minimal risk.

## VI. Cumulative Effects

Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to sulfuric acid and any other substances, and sulfuric acid does not appear to produce toxic metabolites produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that sulfuric acid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative.*

## VII. Children's Safety Factor

Due to its reactive nature, sulfuric acid used in pesticide products will not carryover to the food supply. Residues of sulfuric acid in the form of sulfate pose minimal risk and therefore a safety factor analysis has not been used to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

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

The toxicity of sulfuric acid derives from the irritation and caustic effects. However, the actual exposure in the food supply is to the sulfate ion. The human body metabolizes sulfate through well-understood pathways. Based on the information in this preamble and considering the use patterns of pesticide products, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of sulfuric acid. Accordingly, EPA finds that exempting non-aerosol uses of sulfuric acid from the requirement of a tolerance with a limitation of not exceeding 10% of the formulated product will be safe.

## IX. Other Considerations

### *A. Endocrine Disruptors*

There is no available evidence that sulfuric acid is an endocrine disrupter.

### *B. Analytical Method*

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

### *C. Existing Tolerance Exemptions*

Sulfuric acid is exempt from the requirement of a tolerance under 40 CFR 180.910 (formerly 40 CFR 180.1001(c)) when used as an inert ingredient as a pH adjuster in pesticide formulations applied to growing crops and to raw agricultural commodities after harvest at concentrations not to exceed 0.1%. This exemption is being amended in today's final rule.

Sulfuric acid is also exempt from the requirement of a tolerance under 40 CFR 180.1019 as an active ingredient, a herbicide, in the production of garlic and onions and as a potato vine desiccant in the production of potatoes. This text is not being changed.

*D. International Tolerances*

The Agency is not aware of any country requiring a tolerance exemption for sulfuric acid.

*E. Public Comments*

Two comments were received in response to the Notice of Filing. A private citizen who works for the United States Geological Survey (USGS) contacted the Agency using his USGS e-mail address account. He stated that sulfuric acid can be harmful to teeth and gum at 0.3% concentration. The Merck Index from 1960 was quoted as the source of his information.

The Agency is well-aware of the fact that sulfuric acid is a strong acid. The effects of sulfuric acid are well studied. Sulfuric acid has been assessed by other governmental agencies, including NIOSH and ATSDR.

The Agency believes that the commenter misinterpreted the intent of the tolerance exemption proposed. The 10% limitation is for the pesticide products that would be marketed for application to crops. The Agency has never suggested that 10% of the food supply would be sulfuric acid. As is explained in Unit III., it is not possible for significant amounts of sulfuric acid to be present in the food supply.

A comment was also received asking about the use of sulfuric acid as a chelating agent. The Agency contacted the petitioner to provide additional information regarding sulfuric acid's use as a chelating agent. The petitioner did not provide additional information but informed the Agency on November 6, 2002, that the petitioner wished to withdraw the request for the use of sulfuric acid as a chelating agent.

## X. Conclusion

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm to the general population including infants and children from aggregate exposure to residues of sulfuric acid (CAS Reg. No. 7664–93–9). EPA finds that exempting sulfuric acid from the requirements of a tolerance will be safe.

Therefore, the exemption from the requirement of a tolerance for residues of sulfuric acid not to exceed 10% of the pesticide formulation (non-aerosol formulations only) is established.

## XI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0190 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 7, 2004.

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

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

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

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

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

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0190, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not

include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

**XII. Statutory and Executive Order Reviews**

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

**XIII. Congressional Review Act**

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

**List of Subjects in 40 CFR Part 180**

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

Dated: June 21, 2004.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

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

**PART 180—[AMENDED]**

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

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

■ 2. In § 180.910, in the table, the entry for sulfuric acid is revised to read as follows:

**§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.**

* * * * *

| Inert Ingredient | Limits | Uses |
|---|---|---|
| * * | * | * * |
| Sulfuric acid (CAS Reg. No. 7664–93–9). | Not to exceed 10% of the pesticide formulation; non-aerosol formulations only. | pH Control agent |
| * * | * | * * |

■ 3. Section 180.1019 is revised to read as follows.

**§ 180.1019 Sulfuric acid; exemption from the requirement of a tolerance.**

(a) Residues of sulfuric acid are exempted from the requirement of a tolerance when used in accordance with good agricultural practice when used as a herbicide in the production of garlic and onions, and as a potato vine dessicant in the production of potatoes.

(b) Residues of sulfuric acid are exempted from the requirement of a tolerance in meat, milk, poultry, eggs, fish, shellfish, and irrigated crops when it results from the use of sulfuric acid as an inert ingredient in a pesticide product used in irrigation conveyance systems and lakes, ponds, reservoirs, or bodies of water in which fish or shellfish are cultivated. The sulfuric acid is not to exceed 10% of the pesticide formulation (non-aerosol formulations only).

[FR Doc. 04–15352 Filed 7–6–04; 8:45 am]
BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 710

[OPPT–2003–0075; FRL–7332–3]

RIN 2070–AC61

### TSCA Inventory Update Rule Corrections

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to make several minor corrections to the Inventory Update Rule (IUR) reporting regulations. First, EPA is relocating the non-isolated intermediate definition to properly place it in the section of the regulation associated with both the IUR and the compilation of the TSCA Inventory. Second, the Agency is correcting the low current interest partial exemption chemical list by removing a chemical that is improperly identified and was mistakenly placed on the list. Third, EPA is correcting the percent production volume associated with the chemical substance's physical form(s) reporting requirement by removing the requirement that the sum of the percent production volumes be no more than 100%. Fourth, EPA is correcting overlapping site ranges in the number of sites code table. Fifth, EPA is correcting a misprint in a paragraph reference. Sixth, EPA is updating the procedure to obtain the reporting documents.

**DATES:** This direct final rule is effective on September 7, 2004, without further notice, unless EPA receives adverse comment by August 6, 2004. If, however, EPA receives adverse comment, EPA will publish a **Federal Register** document to withdraw the specific correction(s) for which the adverse comment was made before the effective date of the direct final rule. The remaining corrections will become effective on September 7, 2004.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number OPPT–2003–0075, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *Agency Website*: *http://www.epa.gov/edocket/*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *E-mail*: *oppt.ncic@epa.gov*.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number OPPT–2003–0075. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions*: Direct your comments to docket ID number OPPT–2003–0075. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.epa.gov/edocket/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL–7181–7).

*Docket*: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the OPPT Docket, EPA Docket Center, EPA West, Rm. 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 EPA Docket Center Reading Room telephone number is (202) 566–1744, and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), 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*: Susan Sharkey, Project Manager, Economics, Exposure and Technology Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania

Ave., NW., Washington, DC 20460; telephone number: (202) 564–8789; e-mail address: *sharkey.susan@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be affected by this action if you manufacture (defined by statute at 15 U.S.C. 2602(7) to include import) chemical substances, including inorganic chemical substances, subject to reporting under the Inventory Update Rule (IUR) at 40 CFR part 710. Any use of the term "manufacture" in this document will encompass import, unless otherwise stated. In the past, persons that only are processors of chemical substances have not been required to comply with the requirements of 40 CFR part 710. These amendments do not change the status of processors under the regulations at 40 CFR part 710. Potentially affected entities may include, but are not limited to:

Chemical manufacturers and importers subject to IUR reporting, including chemical manufacturers and importers of inorganic chemical substances (NAICS codes 325, 32411).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions at 40 CFR 710.48. If you have any questions regarding the applicability of this action to a particular entity, consult the technical contact person listed under **FOR FURTHER INFORMATION CONTACT.**

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

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 710 is available at E-CFR Beta Site Two at *http://www.gpoaccess5.gov/ecfr/*.

### *C. What Should I Consider as I Prepare My Comments for EPA?*

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

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

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

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

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

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

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

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

## II. Background

### *A. What is the Agency's Authority for Taking this Action?*

EPA is required under TSCA section 8(b), 15 U.S.C. 2607(b), to compile and keep current an inventory of chemical substances manufactured or processed in the United States. This inventory is known as the TSCA Chemical Substances Inventory (the TSCA Inventory). In 1977, EPA promulgated a rule (42 FR 64572, December 23, 1977) under TSCA section 8(a), 15 U.S.C. 2607(a), to compile an inventory of chemical substances in commerce at that time. In 1986, EPA promulgated the initial Inventory Update Rule (IUR) reporting regulation under TSCA section 8(a) at 40 CFR part 710 (51 FR 21447, June 12, 1986) to facilitate the periodic updating of the TSCA Inventory and to support activities associated with the implementation of TSCA. In 2003, EPA promulgated amendments to the IUR (68 FR 848, January 7, 2003) (FRL–6767–4) (the 2003 Amendments) to collect manufacturing, processing, and use exposure-related information, and to make certain other changes.

TSCA section 8(a)(1) authorizes the EPA Administrator to promulgate rules under which manufacturers and processors of chemical substances and mixtures (referred to hereinafter as "chemical substances") must maintain such records and submit such information as the Administrator may reasonably require. TSCA section 8(a) generally excludes small manufacturers and processors of chemical substances from the reporting requirements established in TSCA section 8(a), although there are some exceptions under TSCA section 8(a)(3) to this general exclusion. Processors are not currently subject to the regulations at 40 CFR part 710.

### *B. What is the Inventory Update Rule (IUR)?*

The data reported under the IUR are used to update the information maintained on the TSCA Inventory. EPA uses the TSCA Inventory and data reported under the IUR to support many TSCA-related activities and to provide overall support for a number of EPA and other Federal health, safety, and environmental protection activities.

The IUR, prior to its amendment in January 2003, required U.S. manufacturers of organic chemicals to report to EPA every 4 years the identity of chemical substances manufactured during the reporting year in quantities of 10,000 pounds or more at any plant site they own or control. Prior to its amendment, the IUR generally excluded several categories of substances from its reporting requirements, i.e., polymers, inorganic substances, microorganisms, and naturally occurring chemical substances. Plant sites were required to report information such as company name, plant site location, plant site Dun and Bradstreet number(s), identity of the reportable chemical substance, and production volume of each reportable chemical substance. Data were reported to EPA under the IUR in 1986, 1990, 1994, 1998, and 2002.

Due to extensive 2003 Amendments (68 FR 848), U.S. manufacturers of chemicals (no longer limited to just organic chemicals) are now required to report to EPA every 4 years the identity of chemical substances manufactured during the reporting year in quantities of 25,000 pounds or more at any plant site they own or control. The amended IUR continues to exclude several categories of substances from its reporting requirements, i.e., polymers, microorganisms, and naturally occurring chemical substances. Inorganic chemicals are no longer exempt and certain natural gas substances are now fully exempt. In addition to the information reported prior to the amendments, submitters now also are required to report additional manufacturing exposure-related data, including the physical form and maximum concentration of the chemical substance and the number of potentially exposed workers.

The 2003 Amendments also established a second reporting threshold for larger volume chemicals of 300,000 pounds or more manufactured during the reporting year at any plant site for reporting of certain processing and use information (40 CFR 710.52(c)(4)). This information includes process or use category, NAICS code, industrial function category, percent production volume, number of use sites, number of potentially exposed workers, and consumer/commercial information such as use category, use in or on products intended for use by children, and maximum concentration. For the submission period occurring in 2006, inorganic chemicals, regardless of production volume, are partially exempt (i.e., submitters do not report processing and use information for inorganic chemicals). After the 2006 cycle, the partial exemption for inorganic chemicals is no longer applicable and submitters are required to fully report information on inorganic chemical substances. In addition, specifically listed petroleum process streams and other specifically listed chemical substances are partially exempt, and manufacturers of such substances are not required to report processing and use information.

*C. What Action is the Agency Taking?*

Through this action, EPA is making the following minor corrections to the IUR.

1. *Definition--non-isolated intermediate.* EPA is moving the definition for "non-isolated intermediate" from 40 CFR 710.43 to 40 CFR 710.3. Prior to the 2003 Amendments, definitions for both the IUR and the compilation of the TSCA Inventory were included in one definition section within 40 CFR part 710. The 2003 Amendments, however, created two separate definition sections within 40 CFR part 710; one for terms that apply solely to the IUR regulations (see 40 CFR 710.43), and the other for terms that may be used in both the regulations associated with the compilation of the TSCA Inventory, and in the IUR regulations (see 40 CFR 710.3). In the 2003 Amendments, EPA included the definition for "non-isolated intermediate" in 40 CFR 710.43. This was erroneous because the term is used in the regulations associated with the compilation of the TSCA Inventory (see 40 CFR 710.4(d)(8)). As a result, EPA is moving this definition to 40 CFR 710.3. This relocation is purely administrative, and does not have any substantive effect on the meaning or use of the term "non-isolated intermediate" within the regulations at 40 CFR part 710.

2. *Partial exemption requirements.* Section 710.46(b)(2) contains the requirements for the partial exemption of certain listed chemicals from IUR reporting requirements (i.e., exemption from the requirements listed in § 710.52(c)(4)), as well as the list of chemicals covered by this partial exemption. EPA is correcting the list of partially exempt chemicals in § 710.46(b)(2)(iv), as one of the chemicals on the list was included in error. The initial list of partially exempt substances was derived from three basic sources, as described in the technical support document "Methodology Used for the Initial Selection of Chemicals for the Inventory Update Rule Amendments (IURA) 'Low Current Interest' Partial Reporting Exemption" (OPPT, USEPA, July 2, 2002, docket ID number OPPT–2002–0054). One of the sources was the OECD HPV SIDS program, from which a group of linear alkyl benzenes (LABs) was identified to be included in the partial exemption. The SIDS program list of LAB chemicals included CAS number 68648–86–2 (benzene, C14-16-alkyl derivs.). EPA has since determined that this chemical submitted to the SIDS program by the manufacturing company is not actually a LAB, but is rather a branched alkylbenzene with a different carbon chain length range (alkyl range) than the name implied. The substance, which is named "benzene, C4-16-alkyl derivs.," rather than "benzene, C14-16-alkyl derivs.," is not one of the chemicals for which EPA had received detailed exposure information nor was this chemical part of the LAB group screened in the OECD HPV SIDS program (Ref. 1). EPA is correcting § 710.46(b)(2)(iv) by removing the chemical identified as CAS number 68648–86–2.

3. *Percent production volume associated with physical form requirements.* Section 710.52(c)(3)(ix) contains the requirement to report the percentage, rounded off to the closest 10%, of total production volume of the reportable chemical substance that is associated with each physical form reported. The requirement originally stated that "The sum of the percentages reported must not add up to more than 100%." There are instances, however, where due to rounding the percentage may add up to more than 100%. For example, if a chemical substance is produced in three physical forms with the percentages of 48%, 26%, and 26%, rounding would result in the reporting of 50%, 30%, and 30%. Adding the rounded percentages results in a sum of 110%. EPA is correcting this section by removing the requirement for the percentages to not add up to more than 100%.

4. *Site ranges correction.* Section 710.52(c)(4)(i)(E) describes the requirements for reporting the number of sites for each combination of industrial processing or use operation, NAICS code, and industrial function category. The number of sites is reported in ranges, and codes are used to report the range. The ranges were originally as follows: less than 10 sites, from 10 to 25, from 25 to 100, from 100 to 250, from 250 to 1,000, from 1,000 to 10,000, and more than 10,000. EPA is adjusting the ranges in order to avoid confusion as to which range must be reported by submitters reporting 25, 100, 250, or 1,000 sites. Thus, the ranges will now be as follows: Less than 10 sites, at least 10 but less than 25, at least 25 but less than 100, at least 100 but less than 250, at least 250 but less than 1,000, at least 1,000 but less than 10,000, and 10,000 or more.

5. *Cross-reference correction.* Section 710.58(d) provides notice that "[i]f no claim of confidentiality is indicated on the reporting form . . . , or if confidentiality claim substantiation required under paragraphs (c) and (d) of this section is not submitted with the reporting form, EPA may make the information available to the public without further notice to the submitter." The reference to paragraph (d), however, is incorrect, as that paragraph does not contain a confidentiality claim substantiation requirement. Instead, the appropriate cross reference is to paragraphs (b) and (c), which both contain the claim substantiation requirement. As a result, EPA is

correcting § 710.58(d) by changing the cross-reference to the substantiation requirements from "paragraphs (c) and (d)" to "paragraphs (b) and (c)." This change is purely administrative, makes the relevant regulatory provision internally consistent and correct, and does not have any substantive effect on any other part of the regulations at 40 CFR part 710.

6. *Availability of reporting documents correction.* Section 710.59(c) provides information describing how to obtain IUR reporting documents, including the reporting form and instructions. EPA is correcting information in this section to reflect EPA's current practice in making this information available. In keeping with current technology and industry practices, EPA now makes the reporting documents available through the internet, at *www.epa.gov/oppt/iur*, and no longer automatically mails the documents to submitters from the previous reporting cycle. Nonetheless, paper copies still will be mailed upon request.

## III. Direct Final Rule Procedures

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment as this action simply makes certain minor corrections to 40 CFR part 710. This final rule will be effective on September 7, 2004, without further notice unless the Agency receives adverse comment by August 6, 2004. If EPA receives adverse comment on one or more distinct amendments, paragraphs, or sections of this rulemaking, the Agency will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment. Any distinct amendment, paragraph, or section of today's rulemaking for which the Agency does not receive adverse comment will become effective on September 7, 2004, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule. For any distinct amendment, paragraph, or section of today's rule that is withdrawn due to adverse comment, EPA will publish a notice of proposed rulemaking in a future edition of the **Federal Register**. The Agency will address the comments on any such distinct amendment, paragraph, or section as part of that proposed rulemaking.

## IV. Materials in the Rulemaking Record

The public version of the official record for this rulemaking has been established as described in the **ADDRESSES** unit under docket ID number OPPT–2003–0075. This record includes the documents located in the docket as well as the documents that are referenced in those documents. The following document is specifically referenced in this final rule. The document is also included in the public version of the official record.

1. E-mail from John Heinze, Council for LAB/LAS Environmental Research, to Leslie Scott, EPA, May 19, 2003.

## V. Statutory and Executive Order Reviews

This direct final rule implements corrections to 40 CFR part 710. Since this direct final rule does not impose any new requirements, it is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this direct final rule is exempt from review under Executive Order 12866 due to its lack of significance, this direct final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution*, or Use (66 FR 28355, May 22, 2001). This direct final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since this action merely makes minor corrections to 40 CFR part 710, EPA certifies this action will not have significant economic impact on a substantial number of small entities. There will be no adverse impact on small entities resulting from this action. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This action does not alter the relationships or distribution of power and responsibilities established by Congress. The Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This direct final rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

## VI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and 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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 710**

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements.

Dated: June 23, 2004.

**Susan B. Hazen,**

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

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

## PART 710—[AMENDED]

■ 1. The authority citation for part 710 continues to read as follows:

**Authority:** 15 U.S.C. 2607(a).

■ 2. Section 710.3 is amended by alphabetically adding the following definition to paragraph (d) to read as follows:

* * * * *

**§ 710.3 Definitions.**

(d) * * *

*Non-isolated intermediate* means any intermediate that is not intentionally removed from the equipment in which it is manufactured, including the reaction vessel in which it is manufactured, equipment which is ancillary to the reaction vessel, and any equipment through which the substance passes during a continuous flow process, but not including tanks or other vessels in which the substance is stored after its manufacture.

* * * * *

**§ 710.43 [Amended]**

■ 3. Section 710.43 is amended by removing the definition for "non-isolated intermediate."

**§ 710.46 [Amended]**

■ 4. Section 710.46 is amended by removing the entire CAS No. entry for "68648–86–2" from the table in paragraph (b)(2)(iv).

■ 5. Section 710.52 is amended by removing the last sentence in paragraph (c)(3)(ix); italicizing the heading "Specific information for chemical substances manufactured in amounts of 300,000 lbs. or more" in paragraph (c)(4); italicizing the heading "Industrial processing and use information" in paragraph (c)(4)(i); and revising the table in paragraph (c)(4)(i)(E) to read as follows:

**§ 710.52 Reporting information to EPA.**

* * * * *

(c) * * *

(4) * * *

(i) * * *

(E) * * *

CODES FOR REPORTING NUMBERS OF SITES

| Codes | Range |
|---|---|
| S1 | less than 10 sites |
| S2 | at least 10 but less than 25 sites |
| S3 | at least 25 but less than 100 sites |
| S4 | at least 100 but less than 250 sites |
| S5 | at least 250 but less than 1,000 sites |
| S6 | at least 1,000 but less than 10,000 sites |
| S7 | 10,000 or more sites |

* * * * *

**§ 710.58 [Amended]**

■ 6. Section 710.58 is amended by italizing the headings for paragraphs (b) and (c) and changing the phrase "paragraphs (c) and (d)" to "paragraphs (b) and (c)" in paragraph (d).

■ 7. Section 710.59 is amended by revising the introductory text of paragraph (c) to read as follows:

**§ 710.59 Availability of reporting form and instructions.**

* * * * *

(c) *Obtain the reporting documents.* EPA will send a letter with instructions describing how to obtain the reporting documents, including the reporting form and reporting instructions, to those submitters that reported in the IUR submission period that occurred immediately prior to the current submission period. EPA now makes the reporting documents available through the Internet, at *http://www.epa.gov/oppt/iur.* Failure to receive such a letter does not obviate or otherwise affect the requirement to submit a timely report. If you did not receive such a letter, but are required to report, you may obtain a copy of the form and other reporting documents from EPA by submitting a request for this information as follows:

* * * * *

[FR Doc. 04–15353 Filed 7–6–04; 8:45 am]

BILLING CODE 6560–50–S

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[ET Docket No. 00–11; FCC 04–76]**

### Establishment of an Improved Model for Predicting the Broadcast Television Field Strength Received at Individual Locations

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; denial of reconsideration.

**SUMMARY:** This document addresses two petitions for reconsideration of the *First Report and Order*, filed by EchoStar Satellite Corporation and the National Association of Broadcasters and Association for Maximum Service Television, Inc. The petitions for reconsideration challenge the process the Commission used to establish values for signal loss quantities in the predictive model, the particular signal loss values adopted, and our antenna height assumptions. The petitions also raise issues concerning the independence of persons who may be designated to conduct on-site reception tests, procedures to follow in determining when to test, and requirements for notification of parties as to the time and place of planned tests. The Commission denies the petitions for reconsideration.

**FOR FURTHER INFORMATION CONTACT:** Ron Chase, Office of Engineering and Technology, (202) 418–1378, or Harry Wong, Office of Engineering and Technology, (202) 418–2437.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Memorandum Opinion and Order* adopted March 31, 2004, and released May 25, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

**Summary of the Memorandum Opinion and Order**

1. The *Memorandum Opinion and Order* denies the petitions. The issues raised in the petitions for

reconsideration of the *First Report and Order*, 65 FR 36639, June 9, 2000, fall into two categories. First are questions regarding the predictive model we established. EchoStar Satellite Corporation (EchoStar) questions on legal grounds the process that we used to establish values for the signal loss quantities added to the "Individual Location Longley Rice" (ILLR) model, contending that we relied unjustifiably on a study incompletely represented in the record of the proceeding. Both EchoStar and the National Association of Broadcasts and Association for Maximum Service Television, Inc. (NAB/MSTV) request that the Commission change some of the values assigned to these signal loss quantities. NAB/MSTV also asks that we revise the standard values of receiving antenna heights used in the ILLR model. Second are questions regarding implementation of the on-site testing procedures contained in the statute. Both EchoStar and NAB/MSTV raise questions regarding how to assure the reliability of on-site tests and the independence of persons conducting them. EchoStar also asks that we determine whether an expedited procedure for completing on-site testing comports with the statute. EchoStar's proposal is opposed by NAB/MSTV.

*A. ILLR Predictive Model*

2. *Process Used to Establish Values for Signal Loss Quantities.* EchoStar asserts that we failed to comply with the Administrative Procedure Act in our implementation of the ILLR model by basing our decision on materials not contained in the record of the proceeding. Specifically, EchoStar states that we established values for signal loss quantities in the ILLR model based on the results of a study submitted in the joint comments of NAB/MSTV that was unaccompanied by underlying measurement data. It contends that the underlying measurement data had not been made part of the public record prior to the *First Report and Order*. It argues that we should not have accepted the results of the NAB/MSTV study without independent verification of the path loss calculations, and suggests that our decisions with regard to signal loss quantities may be in error since there is nothing in the record to indicate that we independently verified the statistical analysis of the NAB/MSTV study. EchoStar states that there is a possibility that the ILLR calculations made by NAB/MSTV contain an inherent bias. To test this possibility, it engaged the engineering firm of Hammett and Edison (H&E) to repeat the calculations for a few of the approximately 1000 individual locations analyzed by the NAB/MSTV study, and it asserts that variations in the results obtained by H&E demonstrate the unreliability of the NAB/MSTV data.

3. Contrary to EchoStar's assertions, our determinations of signal loss quantities for the ILLR were reasonably derived and complied fully with the provisions of the APA. The signal loss values we established for use in the ILLR model were derived by our own further analysis of both the NAB/MSTV study and another study by Rubinstein that similarly involved a large number of actual measurements of radio field intensity. The NAB/MSTV study was described and its results analyzed in the joint comments and reply comments of NAB/MSTV, submitted in response to the initial *Notice of Proposed Rulemaking*, 65 FR 4923, February 2, 2000. Our decision in the *First Report and Order* found that the technical assumptions and analytical methods described in both study reports were accurate representations of how the underlying data had been examined. The methodologies used in the NAB/MSTV and the Rubinstein studies are similar, and in both cases were clearly described so that we were able to determine their applicability and the validity of their results. We were thus able to assess the significance of the tabulated results without repeating the calculations. We did in fact verify that no apparent bias was introduced from the individual measurement locations selected in the NAB/MSTV study. We also determined that the measurement data and signal strength predictions were organized into clearly defined and non-overlapping categories, and that this organization of data was significant with respect to the type of conclusions sought. These are ordinary steps in the review of engineering and scientific studies, and we did not deem it necessary to relate routine activities of this nature in the text of the *First Report and Order*.

4. Moreover, the underlying raw data for the NAB/MSTV study, consisting of about 1000 measurements of signal intensity at individual locations, have been publicly available since well before the initial *Notice of Proposed Rulemaking*. About half of these measurements were placed in evidence in the matter of *CBS et al.* v. *PrimeTime24*, U.S. District Court, Southern District of Florida, Case No. 96–3650–CIV–Nesbitt. The remainder are contained in a report of field tests comparing digital and analog television transmission submitted to an FCC advisory committee. In sum, the data has now been filed in the record in this proceeding, and EchoStar has, in fact, reviewed and utilized the raw data in its arguments, as further discussed in the following paragraph. Thus, the provisions of the APA have been satisfied.

5. Finally, the Commission observes that the H&E analysis of the data fails to support EchoStar's assertion that there was an underlying bias in the NAB/MSTV submission. The differences between the H&E calculations and those of the NAB/MSTV study are due to the fact that they are made by different implementations of the ILLR model. The NAB/MSTV study's calculations were made by the ILLR computer program currently in general use for purposes of the SHVIA under arrangements that satellite carriers, including EchoStar, have made with Decisionmark Corporation, an independent agent. Moreover, the differences that do occur do not indicate a bias, since the H&E study found some values of path loss higher and some lower than those calculated by NAB/MSTV. Of the five calculations made by H&E, three predicted a higher signal level than those calculated by Decisionmark, and two lower.

6. *Values Assigned to Signal Loss Quantities.* In the SHVIA, Congress requires us to prescribe an improved model for reliably predicting the ability of individual locations to receive signals of grade B intensity. The SHVIA further requires that we "ensure that such model takes into account terrain, building structures, and other land cover variations." EchoStar argues that, since Congress directs us to take buildings and other land cover variations into account, we failed to comply with the statutory mandate by setting some of the signal loss quantities to zero. It urges that the ILLR model incorporate, without reduction in magnitude, all the values derived from the Rubinstein study, as proposed in the initial *Notice of Proposed Rulemaking*.

7. Our analysis, based on the results of both studies, led us to give the value zero to the signal loss quantities associated with all VHF channels and to reduce the proposed values of those associated with UHF channels. The specific values we assigned as signal loss quantities provide ILLR predictions accurately reflecting the results of actual field testing. We did not ignore these losses, but rather made a considered determination that the most accurate ILLR predictions for VHF stations under certain groundcover conditions, including buildings, are made by setting the corresponding loss values to zero. Thus, we have taken the factors directed by Congress into consideration, and we

have followed its direction in the SHVIA by assigning values based on thorough analysis that make the ILLR model as accurate as possible, and reject EchoStar's contention in this regard.

8. NAB/MSTV asks that we revise our assignment of signal loss quantities in the land use category "open land." It argues that the values assigned to certain subcategories of open land should be zero, due to the reception conditions implied by their names. The specific subcategories identified by NAB/MSTV for loss values of zero are "Dry Salt Flats," "Beaches," and "Bare Ground" as named by the United States Geological Survey (USGS). While it is true that these names individually imply the absence of buildings and vegetation, they represent only 3 of the 10 subcategories in the group "open land." This combination of USGS subcategories into the single category of "open land" was at the core of the technical approach proposed in the initial *Notice of Proposed Rulemaking* and subsequently adopted in the *First Report and Order*. Following this technical approach, the NAB/MSTV study analyzed field measurements grouped in this larger category, rather than in the particular subcategories of "Dry Salt Flats", "Beaches", and "Bare Ground". There is consequently no public record of an analysis to substantiate a zero loss value for the particular subcategories singled out in the NAB/MSTV petition for reconsideration. In the absence of specific reliable data, we will not change the values assigned to individual land use categories from those established in the *Report and Order*.

9. *Antenna Height Assumptions.* NAB/MSTV also asks that we set the standard values of receiving antenna heights at 6.1 and 9.1 meters in place of the rounded values of 6 meters and 9 meters for two- and three-or-more-story buildings respectively. The receiving antenna height is a parameter of the ILLR model. We endorsed the Longley-Rice prediction procedure for the first time in the SHVA context in CS Docket No. 98–201, and recommended receiving antenna heights of 20 or 30 feet in the *Report and Order*, 64 FR 7113, February 12, 1999, in that docket. Subsequently, in a technical appendix to the *First Report and Order* in the present proceeding, we converted to metric units using the whole numbers 6 and 9 meters. This practice matches the antenna height assumption of 9 meters used for analysis of DTV and analog TV service as described in "Longley-Rice Methodology for Evaluating TV Coverage and Interference," OET Bulletin 69, Federal Communications Commission (July 2, 1997). We have found that ILLR predictions are generally not precise enough to distinguish between 6.1 or 9.1 m and the rounded values.

10. Therefore, with regard to NAB/MSTV's request that the receiving antenna heights assumed for ILLR predictions be set at 6.1 and 9.1 m in place of the rounded values of 6 and 9 m, we find that the greater heights would not produce significantly different or more accurate field strength predictions. Accordingly, to maintain consistency with the 9 m value specified for receiving antenna height by OET Bulletin 69, we will continue to specify the rounded values for use in the ILLR.

*B. On-Site Testing Procedures*

11. The SHVIA establishes a procedure that may extend to on-site testing when a subscriber is denied satellite retransmission of a distant network station as a result of a predictive determination. Specifically, the SHVIA prescribes two steps before a test is performed. The first is the waiver request. A subscriber who is denied satellite retransmission of the signal of a specific distant network station or stations based on a predictive determination may request a waiver from the local network affiliate. This request is to be made through the satellite service provider. In the event the local affiliate denies the waiver request, the second step is a request for an on-site test. Having been denied a waiver, the subscriber may submit, through the satellite provider, a request for an on-site test to determine whether the subscriber receives or does not receive a signal meeting the signal intensity standard. The satellite carrier and the network station must then select a qualified and independent person to conduct the test, following the procedures set out in the Commission's rules, and the test must be conducted within 30 days of the subscriber's request for a test. If the test verifies the subscriber's inability to receive the locally broadcast signal at the required minimum intensity, the subscriber thereby becomes eligible for satellite retransmission of the distant network station's signal.

12. *Independence of Persons Conducting Reception Tests.* In its petition for reconsideration, the NAB/MSTV requests that we provide guidance about what is required for a signal intensity tester to be considered "independent," and asks the Commission to rule that a tester can be considered independent only if he or she is not employed by and does not have a business relationship with any satellite carrier. It argues that satellite dish installers would be inclined to find customer premises unserved in the interest of the satellite carriers who recommend them and also in the interest of the customers paying for dish installation who wish to receive the distant network signals via satellite.

13. The Commission declines to adopt NAB/MSTV's suggestion. In the *First Report and Order*, we appointed the American Radio Relay League (ARRL) as the independent and neutral entity that will designate the person or organization to conduct measurements if the satellite carrier and the network station are unable to agree on the selection of a tester. The Commission has selected an impartial, independent entity to designate qualified testers and we expect that the tester's professionalism and any track record regarding their impartiality will be taken into consideration. We appointed the ARRL specifically because we expect it to designate persons who can make judgments with appropriate expertise and objectivity, and no one has raised a question as to ARRL's capability to do so. We further note that a dish installer may also be the local installer of television antennas and hence have broader business interests than solely as a dish installer. Moreover, if we were to require that testers not have business relationships with any satellite carrier, and similarly with any broadcasters, application of the statute would be problematic, since many experienced technicians will have gained their technical qualifications partly through work performed for satellite companies or broadcasters. Thus, qualified persons may be unavailable in many localities if business relationships by themselves were a barrier.

14. Rather than establishing a restrictive definition or finite list of testers that may be considered "independent," we offer as guidance, for the satellite and broadcast industries as well as for the ARRL, examples of candidate testers who may be considered independent in the SHVIA context. We recommend that testers with a one-sided affiliation, either with satellite providers or broadcast stations, be avoided unless both parties affirmatively find the tester acceptable or no other qualified tester is available. For example, an employee of either the broadcaster or the satellite carrier involved in the dispute that gives rise to the need for a test would be the least independent candidate. A contractor or consultant whose business includes measuring signal reception for cellular

or land mobile radio services would be more suitable for conducting television signal intensity tests. A contractor who provides service in support of or who works for only broadcasters or satellite providers would be less independent than a contractor who provides services to neither or to both. In no event, however, should a tester receive compensation that is dependent upon the outcome of the particular test in question. We note in relation to these matters that the satellite provider and the local broadcast station may propose specific candidates to the ARRL for its consideration of their qualifications as well as independence. We recognize, however, that there can be circumstances, particularly in the smaller markets, in which the choice of qualified testers may be limited, and the parties, as well as ARRL, should show reasonable flexibility in applying the criteria. Finally, we expect that a tester that is initially agreed upon or determined by the ARRL to be qualified will conduct the test for which he or she has been designated without later objection by either party. That same tester could then be designated to conduct additional tests without further requalification unless a party raises a specific objection to his or her qualifications or practices.

15. *Event Sequence for On-Site Tests.* In the *First Report and Order*, we described the statutory provisions for waivers and testing with respect to the eligibility of satellite service subscribers to receive distant signals. Essentially, if the ILLR predicts that a subscriber is "served," the subscriber may submit a request for a waiver through the satellite carrier to the network station. If the network station grants the waiver, the subscriber is eligible to receive the distant station via satellite. The statute further provides that if the waiver is denied, the subscriber may submit a request for a test to the satellite carrier. The SHVIA's scheme contemplates that a waiver would be sought from a broadcaster, and a test requested if the waiver is denied, with the broadcaster paying for the test if the test demonstrates that the subscriber does not receive an adequate over-the-air signal. This provides the broadcaster the opportunity to weigh the likelihood of an adequate signal against whether it wishes to incur the testing fee in the absence of an acceptable signal.

16. EchoStar requests that in the interest of efficiency we find it permissible for satellite providers to cause field intensity measurements to be made prior to the formalities of waiver request and possible denial anticipated in SHVIA. Specifically, EchoStar would have a field strength test occur during the same appointment with a potential subscriber as the antenna installation. Opponents argue, however, that EchoStar's proposal does not follow the three-event sequence for the procedure established in the SHVIA involving a waiver request, waiver denial, and then a request for an on-site test. NAB/MSTV further objects that EchoStar is proposing a "secret" test conducted by persons with "a direct financial stake in the outcome." In reply, EchoStar explains that it is not proposing a secret test and that it proposes to use only an independent qualified tester, indeed, one that is examined and designated by the ARRL. Reiterating its concern for efficiency, EchoStar requests that we not preclude satellite service providers from conducting the test at an earlier stage in the process, "before or as soon as the consumer is predicted to be ineligible."

17. While the procedure advocated by EchoStar may be more expeditious than the one established in the *First Report and Order*, and may provide the protections intended by the statute, it is not the procedure contemplated by the statute. The statute delineates a specific sequence of events preceding testing: waiver request, waiver denial, the subscriber's request for an on-site test, selection of a qualified tester by the satellite carrier and the network station, and then the on-site test, which the broadcaster must pay for if it establishes that the subscriber does not receive an adequate over-the-air signal. As EchoStar's proposed procedure does not follow this temporal sequence specified in the statute, the Commission denies its request.

18. We believe that EchoStar has raised a valid public interest concern with the efficiency of the process used to determine SHVIA eligibility. In this regard, we note that the Commission's call center has received numerous complaints from subscribers stating that their requests for on-site signal tests have been ignored or delayed continuously by both satellite carriers and broadcast stations. The statute demonstrates a concern for prompt resolution of reception controversies, as indicated in the thirty-day time limit for on-site testing. We note that the distant signal copyright protection provisions expire on December 31, 2004, and Congress is currently considering the extension of this provision of the SHVIA. Congress thus has the opportunity to adopt EchoStar's or any other modifications to these procedures when it enacts legislation to extend those provisions. In the interim, we are continuing to monitor the situation closely and expect that the satellite providers and local network affiliates will coordinate their efforts to implement the SHVIA provisions as Congress intended.

19. Finally, NAB/MSTV has requested that the broadcaster be given 10 days after a test notification to reconsider the waiver denial that led to the test request and to provide an opportunity for interested parties to observe the test. No party has advanced a persuasive reason why a broadcaster cannot make an adequately considered judgment when first presented with a waiver request. The independently determined qualifications of the tester should obviate the need to observe every test. Moreover, such a delayed second-chance procedure would seem, in fact, to provide a broadcaster with incentive to deny all waiver requests when first presented. Accordingly, this request by NAB is denied.

### Ordering Clauses

Pursuant to sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 154(j); Section 1008 of Pub. L. 106–113, 113 Stat. 1501, 1501A–526 to 1501A–545; and Section 119(d)(10)(a) of the Copyright Act, 17 U.S.C. 119(d)(10)(a), the petitions for reconsideration submitted by EchoStar Satellite Corporation and by the National Association of Broadcasters and Association for Maximum Service Television, Inc. are denied.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04–15005 Filed 7–6–04; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 49 CFR Part 37

**[Docket No. OST–1998–3648]**

**RIN 2105–AC98**

## Transportation for Individuals With Disabilities—Accessibility of Over-the-Road Buses (OTRBs)

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule makes minor changes to the interim final rule published in the **Federal Register** on February 6, 2001 (66 FR 9048). The final rule sets out the ways in which an operator must transmit a copy of the request for accessible service. In addition, the final rule responds to

comments received in response to the interim final rule's request for comment on: (1) Should the Department reconsider its decision to allow extensive use of on-call bus service; (2) should the Department propose requiring acquisition of accessible buses in some situations where on-call service is not permitted; and (3) are there other ways of restoring the balance between the Department's objectives of ensuring accessible buses and service for passengers with disabilities and mitigating the economic impacts on small businesses.

**DATES:** This final rule becomes effective on July 7, 2004.

**FOR FURTHER INFORMATION CONTACT:** Linda C. Lasley, Office of the Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC 20590, (202) 366–4723.

**SUPPLEMENTARY INFORMATION:** The Department's interim final rule made changes to the final rule it published in September 1998 (63 FR 51670). Specifically, the interim final rule removed the provision requiring compensation to passengers who do not receive required service, clarified the information collection requirements, postponed the date for bus companies to submit information on ridership on accessible fixed route service and the acquisition of buses, and designated a different address for regulated parties to submit the required information. The interim final rule also asked for comment on: (1) Should the Department reconsider its decision to allow extensive use of on-call bus service; (2) should the Department propose requiring acquisition of accessible buses in some situations where on-call service is not permitted; and (3) are there other ways of restoring the balance between the Department's objectives of ensuring accessible buses and service for passengers with disabilities and mitigating the economic impacts on small businesses.

## Discussion of Comments

The Department received five comments on its interim final rule. It received comments from the American Bus Association, the Paralyzed Veterans of America, Coach USA, Inc., the Disability Rights Education and Defense Fund and the Hawaii Disability and Communication Access Board. Generally, all of the comments supported a confirmation number for passengers requesting service. Only the Hawaii Disability and Communication Access Board seemed to disagree with the confirmation number approach because it advocates restricting the use of 48-hour on-call service. In any event, the DOT agrees with the majority of commenters that a confirmation number would be appropriate in certain situations. Thus, Over-the-Road Bus Companies (OTRB) may respond to a request for service in one of three ways. First, a copy of the Service Request Form can be mailed to the passenger the next business day after the request is received. Second, if the person making the request has email access, the OTRB can provide a confirmation number, which verifies that the Service Request Form has been filled-out electronically and the passenger will receive a paper copy of that request when she or he arrives for the service. Third, for passengers with facsimile machines, the OTRB can fax a copy of the Service Request Form twenty-four hours after receiving the request. If service is denied when the passenger arrives, then a completed form indicating the denial of service must be given to the passenger at that time. If service is denied before the passenger shows up for the requested service, then a completed form indicating the denial of service may be transmitted in one of the three ways outlined above.

The Paralyzed Veterans of America and the Disability Rights Education and Defense Fund noted that the interim final rule did not make the clarification that only one request has to be made for the entire trip (legs and return included). A clarification, however, was made in the interim final rule with the addition of the following language: "the passenger shall be required to make only one request, which covers all legs of the requested trip * * *" The DOT believes this is a sufficient clarification, and, therefore, that rule language will not be changed in this final rule.

The American Bus Association and Coach USA, Inc. commented that there is no legal justification for reconsidering the 48-hour rule simply because the compensation provision of the rule was judicially invalidated. Without commenting on the legal justification for reconsidering the 48-hour rule, it behooves the agency to allow the 48-hour rule to stand as written, with the exception of the minor changes made today, until compliance, or lack thereof, provides a greater need to reopen the rule. In other words, the Department believes that it will be better able to assess the effectiveness of these rules once it has sufficient data to analyze.

## Regulatory Notices

*Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

This rulemaking is not "significant" under Executive Order 12866 or the Department of Transportation's Regulatory Policies and Procedures because there are no costs and this final rule makes only minor changes.

*Executive Order 13132 (Federalism)*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does not adopt any regulation that: (1) Has substantial direct effects on the States, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

*Executive Order 13084*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

*Unfunded Mandates Reform Act*

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. In the Department's final rule published on September 28, 1998 (63 FR 51670), the Department analyzed the costs of this rule and the impact on small entities. This final rule makes minor changes regarding the way an OTRB provides notice to a passenger that a request for accessible service has been received. Since the costs of this rulemaking were previously analyzed, and this final rule makes minor changes

that could reduce the paperwork burden on the OTRB industry, I hereby certify that this rule will not have significant economic impact on a substantial number of small entities.

*Paperwork Reduction Act*

As required by the Paperwork Reduction Act of 1995, the Department submitted an Information Collect Request to the Office of Management and Budget (OMB). We requested comments on our estimates in a Notice and Request for Comments published on February 5, 2002 (67 FR 5353). The Department received approval on the Information Collection Request from OMB and received an information collection number (OMB No. 2100–0019).

**List of Subjects in 49 CFR Part 37**

Buildings and facilities, Buses, Civil Rights, Individuals with Disabilities, Mass Transportation, Railroads, Transportation.

■ For the reasons set forth in the preamble, 49 CFR Part 37 is amended as follows:

## PART 37—TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES (ADA)

■ 1. The authority for Subpart H, Part 37 continues to read as follows:

**Authority:** 42 U.S.C. 12101–12213; 49 U.S.C. 322.

■ 2. Revise § 37.213 (a)(2) and (b)(2) as follows:

**§ 37.213 Information collection requirements.**

(a) * * *

(1) * * *

(2) The passenger shall be required to make only one request, which covers all legs of the requested trip (*e.g.*, in the case of a round trip, both the outgoing and return legs of the trip; in the case of a multi-leg trip, all connecting legs). The operator shall transmit a copy of the form to the passenger in one of the following ways:

(i) By first-class United States mail. The operator shall transmit the form no later than the end of the next business day following the request;

(ii) By telephone or email. If the passenger can receive the confirmation by this method, then the operator shall provide a unique confirmation number to the passenger when the request is made and provide a paper copy of the form when the passenger arrives for the requested trip; or

(iii) By facsimile transmission. If the passenger can receive the confirmation by this method, then the operator shall transmit the form within twenty-four hours of the request for transportation.

* * * * *

(b) * * *

(1) * * *

(2) The passenger shall be required to make only one request, which covers all legs of the requested trip (*e.g.*, in the case of a round trip, both the outgoing and return legs of the trip; in the case of a multi-leg trip, all connecting legs). The operator shall transmit a copy of the form to the passenger, and whenever the equivalent service is not provided, in one of the following ways:

(i) By first-class United States mail. The operator shall transmit the form no later than the end of the next business day following the request for equivalent service;

(ii) By telephone or email. If the passenger can receive the confirmation by this method, then the operator shall provide a unique confirmation number to the passenger when the request for equivalent service is made and provide a paper copy of the form when the passenger arrives for the requested trip; or

(iii) By facsimile transmission. If the passenger can receive the confirmation by this method, then the operator shall transmit the form within twenty-four hours of the request for equivalent service.

* * * * *

Issued in Washington, DC, this 22nd day of June, 2004.

**Norman Y. Mineta,**

*Secretary of Transportation.*

[FR Doc. 04–15414 Filed 7–6–04; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**RIN 1018–AJ23**

## Endangered and Threatened Wildlife and Plants; Removal of Federal Protection Status From Two Manatee Protection Areas in Florida

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), take action to withdraw two areas in Florida from those designated as federally established manatee protection areas. We are taking this action under the Endangered Species Act (ESA) of 1973 and the Marine Mammal Protection Act (MMPA) of 1972. The areas we are withdrawing from designation are manatee refuges, in which watercraft operators are required to operate at slow speeds throughout the year. Specifically, the sites are the Pansy Bayou Manatee Refuge in Sarasota County and the Cocoa Beach Manatee Refuge in Brevard County. Manatee protection will not be diminished under this action because the sites will remain protected under State law.

**DATES:** This rule is effective August 6, 2004.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Dr, South, Suite 310, Jacksonville, Florida 32216.

**FOR FURTHER INFORMATION CONTACT:** David Hankla, Peter Benjamin, Jim Valade, or Jeremy Simons (see **ADDRESSES** section), telephone 904/232–2580; or visit our Web site at *http://northflorida.fws.gov*.

**SUPPLEMENTARY INFORMATION:**

### Background

The West Indian manatee (*Trichechus manatus*) is federally listed as an endangered species under the ESA (16 U.S.C. 1531–1544) (32 FR 4001), and is further protected as a depleted stock under the MMPA (16 U.S.C. 1361–1407). The Florida manatee (*Trichechus manatus latirostris*), a subspecies of the West Indian manatee (Domning and Hayek 1986), lives in freshwater, brackish, and marine habitats in coastal and inland waterways of the southeastern United States. The majority of the population can be found in Florida waters throughout the year, and nearly all manatees use the waters of peninsular Florida during the winter months. During the winter months, most manatees rely on warm water from industrial discharges and natural springs for warmth. In warmer months, they expand their range and are occasionally seen as far north as Rhode Island on the Atlantic Coast and as far west as Texas on the Gulf Coast.

### Watercraft Collisions

Collisions with watercraft are the largest cause of human-related manatee deaths. Data collected during manatee carcass salvage operations conducted in Florida from 1978 to 2002 indicate that a total of 1,145 manatees (from a total carcass count of 4,545) are confirmed victims of collisions with watercraft. This number may underestimate the actual number of watercraft-related mortalities since many of the mortalities

listed as "undetermined causes" show evidence of collisions with vessels. Collisions with watercraft comprise approximately 25 percent of all manatee mortalities since 1978. Approximately 75 percent of all watercraft-related manatee mortality has taken place in 11 Florida counties: Brevard, Lee, Collier, Duval, Volusia, Broward, Palm Beach, Charlotte, Hillsborough, Citrus, and Sarasota (Florida Fish and Wildlife Conservation Commission (FWCC) 2003). Recent years have been record years for the number of watercraft-related mortalities. From 1998 to 2002 (2003 data from the FWCC Florida Marine Research Institute are still preliminary), 409 watercraft-related manatee deaths were recorded (36 percent of all watercraft-related deaths documented during the 1978 to 2002 period) (FWCC 2003).

**Manatee Protection Areas**

To help prevent injuries and deaths associated with watercraft, we and the State of Florida (State) have designated manatee protection areas at sites throughout coastal Florida where conflicts between boats and manatees have been well documented and where manatees are known to frequently occur. Signs are posted in these areas to inform the boating public about restrictions and prohibitions.

Federal authority to establish protection areas for the Florida manatee is provided by the ESA and the MMPA, and is implemented in 50 CFR 17.100 *et seq.* We have discretion, by regulation, to establish manatee protection areas whenever substantial evidence shows that the establishment of such an area is necessary to prevent the taking of one or more manatees. Take, as defined by the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm, in the definition of take, means an act which kills or injures wildlife (50 CFR § 17.3). Such an act may include significant habitat modification or degradation that kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass, in the definition of take, includes intentional or negligent acts or omissions that create the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

Take, as defined by the MMPA, means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment, as defined by the MMPA, means any act of pursuit, torment, or annoyance which, (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B] (16 U.S.C 1362).

We may establish two types of manatee protection areas: Manatee refuges and manatee sanctuaries. A manatee refuge is defined as an area in which we have determined certain waterborne activities would result in the taking of one or more manatees, or that certain waterborne activities must be restricted to prevent the taking of one or more manatees, including but not limited to, a taking by harassment (50 CFR 17.102). A manatee sanctuary is an area in which we have determined that any waterborne activity would result in the taking of one or more manatees, including but not limited to, a taking by harassment (50 CFR 17.102). A waterborne activity is defined as including, but not limited to, swimming, diving (including skin and scuba diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredging and filling operations (50 CFR 17.102).

An extensive network of manatee speed zones and sanctuaries has been established throughout peninsular Florida by Federal, State, and local governments (Service 2001). This existing network supports our goal of providing adequate protected areas throughout peninsular Florida to satisfy the biological requirements of the species.

The timing and implementation of State and Federal manatee protection area designations have been influenced by decisions and settlements in State and Federal court cases and by the respective agencies and their ability to effectively post regulatory signage and enforce measures in a timely fashion. Pansy Bayou Manatee Refuge was identified by both the State and Federal governments as an area in need of protection. Neither agency was able to coordinate or communicate its intent to designate because such plans were part of confidential legal negotiations then in progress. As a result, we designated this site in November 2002, and the State subsequently designated this site in December 2002. Cocoa Beach Manatee Refuge was designated by the State in June 2002 and was subsequently designated by the Service in November 2002. The Service pursued its designation because the State had not yet posted regulatory signage at the site. Because the State has now designated and posted both sites as manatee protection areas, and is enforcing the protective regulations, and because the Service believes that State protection for both sites is now comparable to Federal protection, the Service is withdrawing its designations at these two sites. We are not withdrawing protections from other remaining Federal manatee refuges.

**Relationship to Manatee Lawsuit**

In *Save the Manatee Club* v. *Ballard,* Civil No. 00–00076 EGS (D.D.C., filed January 13, 2000), several organizations and individuals filed suit against the Service and the U.S. Army Corps of Engineers (Corps) alleging violations of the ESA, MMPA, National Environmental Policy Act, and the Administrative Procedure Act. Four groups representing development and boating interests intervened. Following extensive negotiations, a settlement agreement was approved by the court on January 5, 2001. In this settlement agreement, we agreed to submit a proposed rule for new refuges and sanctuaries to the **Federal Register** by April 2, 2001, and to submit a final rule by September 28, 2001.

Subsequent to the Federal settlement, the FWCC voted to settle *Save the Manatee* v. *Egbert,* Case No. 90–00–400CIV17-WS (N.D. Fla., filed January 13, 2000) (the State case). That settlement, which was entered into by the Court on November 7, 2001, calls for very similar protective measures in many of the locations included in our proposed rule. As a result of these simultaneous processes, the parties in the Federal lawsuit agreed to extend the April 2 deadline in an attempt to negotiate a means to avoid duplication of effort and better serve the public. Subsequent negotiations resulted in additional extensions, which resulted in the proposed rule being submitted to the **Federal Register** on August 3, 2001. (An advance notice of proposed rulemaking had been published in the **Federal Register** on September 1, 2000 [65 FR 53222], and six public workshops were held in December 2000, prior to approval of the Settlement Agreement.) The proposed rule was published in the **Federal Register** on August 10, 2001 (66 FR 42318). On January 7, 2002, we published a final rule designating two sites in Brevard County, the Barge Canal and Sykes Creek, as Federal manatee refuges (67 FR 680).

On July 9, 2002, the United States District Court for the District of Columbia ruled that the Federal Government violated the Settlement

Agreement by failing to designate a sufficient number of refuges and sanctuaries throughout peninsular Florida. On August 1, 2002, the Court issued a remedial order requiring the Service to publish, by November 1, 2002, a final rule for new manatee refuges and sanctuaries throughout peninsular Florida. On September 20, 2002, we published an emergency rule designating seven sites as manatee refuges and sanctuaries on Florida's west coast for a period of 120 days (67 FR 59408). We submitted a final rule to the **Federal Register** on November 1, 2002, designating 13 manatee protection areas in Florida, including the sites previously designated under the emergency rule. The final rule was published on November 8, 2002 (67 FR 68450). We entered into a Stipulated Order wherein the Service agreed to submit to the **Federal Register** for publication a proposed rule for the designation of additional manatee protection areas. The proposed rule published April 4, 2003 (68 FR 16602), and on August 6, 2003, we published a final rule that designated three additional manatee protection areas (68 FR 46870). The requirements of the Stipulated Order have been met.

**Coordination With State Actions**

The sites that were designated in our final rule on November 8, 2002 (67 FR 68450), were selected prior to the disclosure of the terms of the proposed settlement in the State case. After the terms of the State settlement were disclosed, it became apparent that there would be overlap between potential State and Federal actions. However, prior to a final determination on potential State designations, the Service was required by Court Order to move forward with its final rule for the designation of additional manatee protection areas throughout peninsular Florida. We designated protection areas at these sites in accordance with the site selection process and criteria identified in our final rule (67 FR 68456) because State protections had not been implemented at these sites. Because the State has subsequently designated and/or implemented comparable measures for the Pansy Bayou Manatee Refuge and the Cocoa Beach Manatee Refuge, the Service believes it prudent to withdraw its Federal designation in these areas.

**Manatee Refuges De-Designation Final Action**

On November 8, 2002, we designated 13 manatee protection areas in Florida, including the Pansy Bayou Manatee Refuge in Sarasota County and the Cocoa Beach Manatee Refuge in Brevard County (67 FR 68450). The State has now designated both sites as manatee protection areas, has posted them, and enforces the protective regulations (68C–22.026, F.A.C., and 22.006, F.A.C., respectively). As such, both sites are currently protected under both Federal and State authorities. Federal and State restrictions are comparable in terms of areal extent (the roughly bounded area of the area being protected), duration, and type (year-round, slow speed), and each should prevent the taking of one or more manatees. In our November 8, 2002, rule (67 FR 68450), we stated that "if the State or counties implement measures at these sites that, in our view, provide comparable protection for manatees, we will consider withdrawing or modifying established designations through the rulemaking process."

Because the State has now implemented measures that provide comparable protection and we believe that Federal designation is not necessary to prevent the taking of manatees, we proposed to withdraw our designations for the Pansy Bayou Manatee Refuge and the Cocoa Beach Manatee Refuge and defer to the State's regulations governing waterborne activities currently in effect in these areas (68C–22.026, F.A.C., and 22.006, F.A.C., respectively) on October 22, 2003 (68 FR 60316). In our proposed rule, we solicited public comments until November 21, 2003. The Service received a total of 11 comments on the proposed regulation: 9 comments in general support of this initiative and 2 opposed. Comments were received from the following: 3 peer reviewers; 2 State agencies; 3 conservation organizations; a marine industry association; a private business; and one private citizen.

Because the manatee remains listed under the ESA, and protected by the MMPA, we have the authority and responsibility to reinstate Federal protective measures should it become necessary. We recognize that the existing system of speed zones and sanctuaries has been established primarily by State and local governments. We also recognize the important role of our State and local partners, and we continue to support and encourage State and local measures to improve manatee protection.

**Pansy Bayou Manatee Refuge**

The federally designated Pansy Bayou Manatee Refuge includes approximately 47 hectares (ha) (116.1 acres) in the northern Pansy Bayou area between City Island and the John Ringling Parkway Bridge on Sarasota Bay in Sarasota County and regulates vessel traffic to slow speed year-round (67 FR 68450) (see Pansy Bayou Manatee Refuge map). This refuge is located within a State manatee protection area in which all vessels are required by State law to operate at slow speed year-round (68C–22.026(2)(a)(4), F.A.C.).

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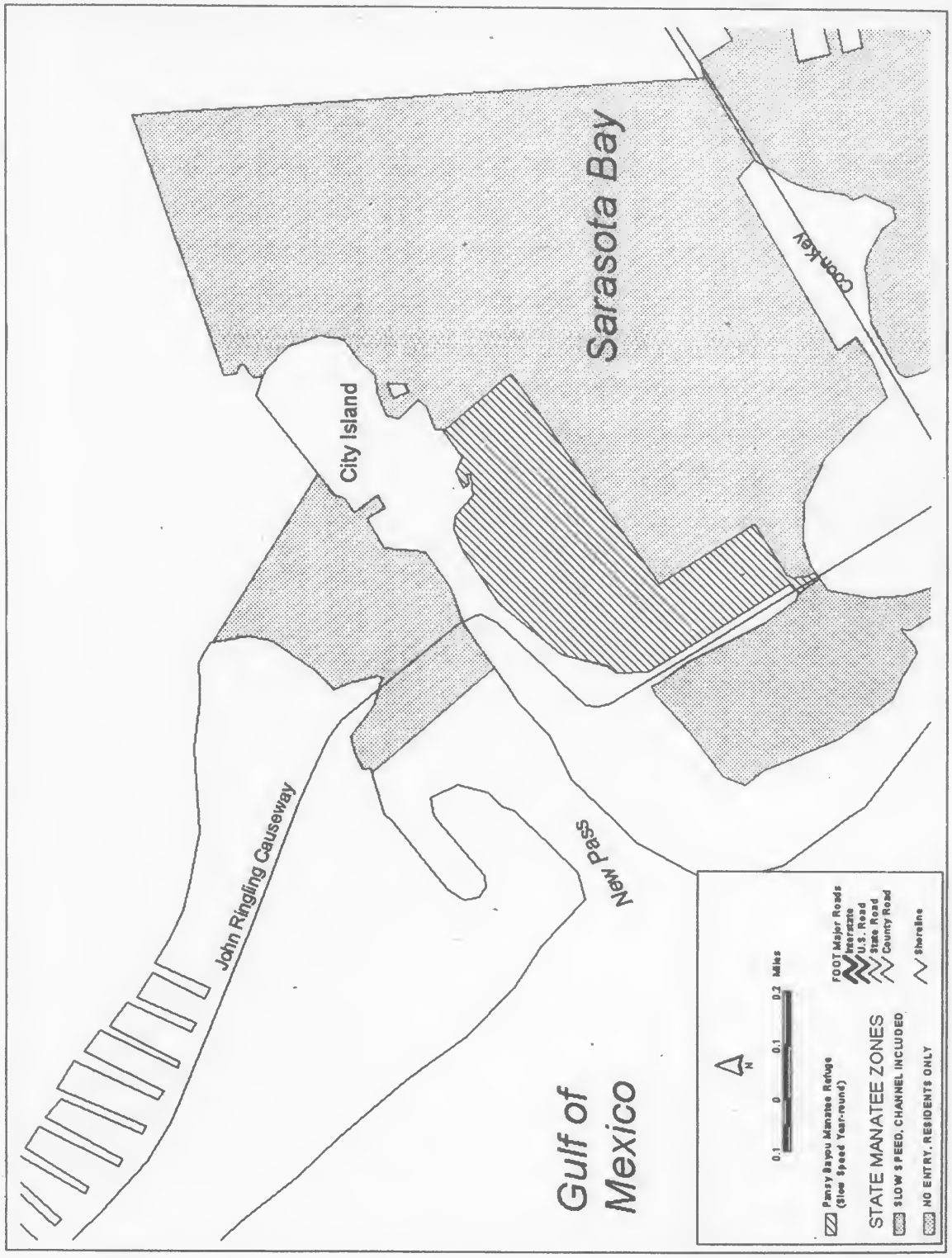
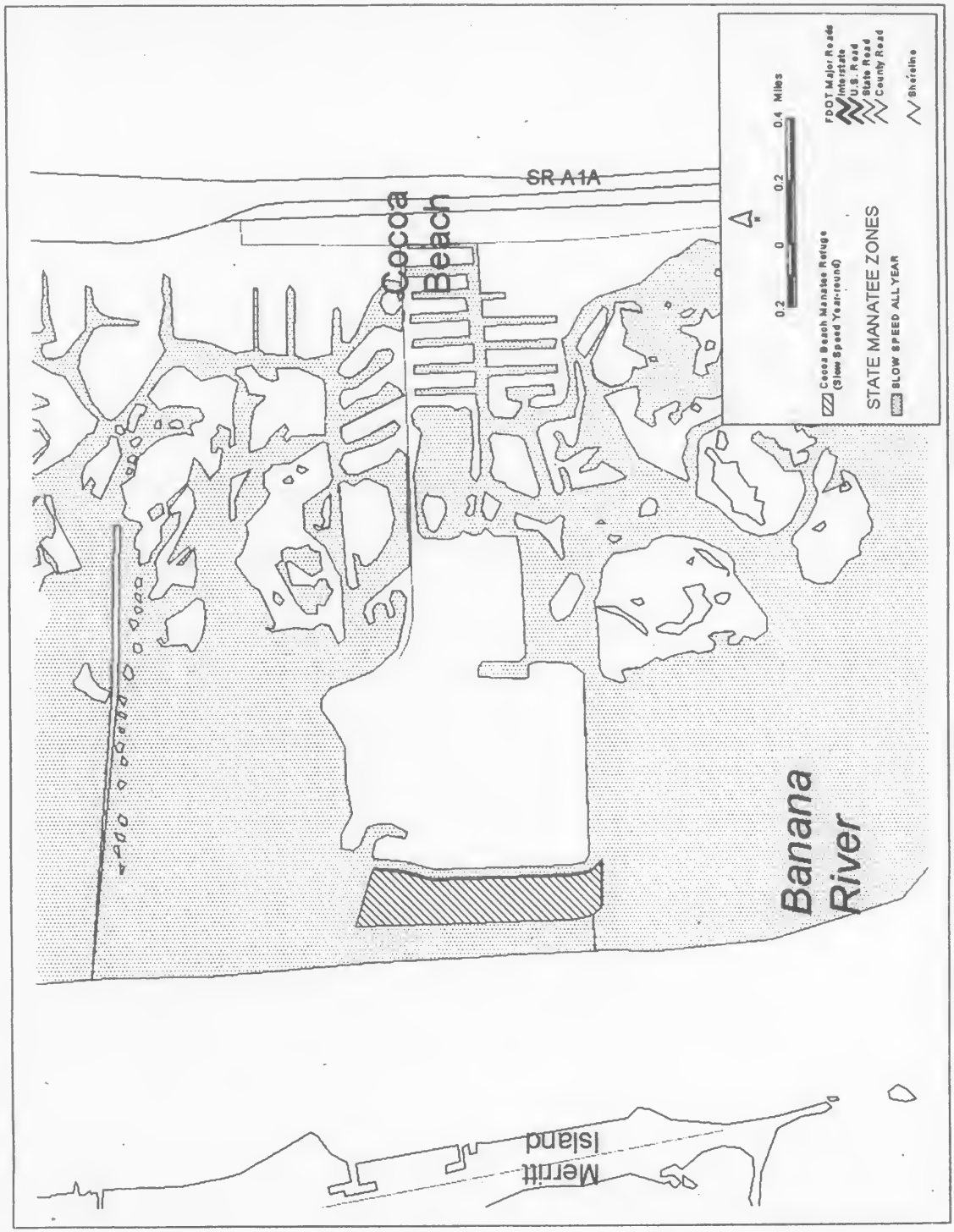
**Pansy Bayou Manatee Refuge Map**



**Cocoa Beach Manatee Refuge**

The federally designated Cocoa Beach Manatee Refuge includes approximately 23.9 ha (59.1 acres) in an area adjacent to Municipal Park, just west of Cocoa Beach in the Banana River, in Brevard County and regulates vessel traffic to slow speed year-round (67 FR 68450) (see Cocoa Beach Manatee Refuge map). This refuge is located within a State manatee protection area in which all vessels are required by State law to operate at slow speed year-round (68C–22.006(2)(d)(16), F.A.C.).

**Cocoa Beach Manatee Refuge Map**

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Summary of Comments Received on Our October 22, 2003, Proposed Rule (68 FR 60316):

*Comment 1:* Several commentors asked for clarification on what constitutes "comparable" protection.

*Response:* At 67 FR 6845 (November 8, 2002), we set out a number of factors that we would consider in determining when to withdraw or revise our designations. Specifically, we stated that we may withdraw or revise our designations if, in our view, State or local government(s) provide a comparable level of protection. We stated that we would rely upon the best professional judgment of our biologists to determine whether alternative State and local measures are comparable to ours. We acknowledged, and continue to acknowledge, that there may be more than one way to provide adequate manatee protection at any given location. In making our determination, we stated that we would consider factors such as areal extent of the measures, duration of the measures, and types of restrictions (*e.g.*, no entry, motorboat prohibited, idle speed, slow speed, *etc.*). We stated that determination would be based on our judgment of whether a State and local management plan provides comparable protection by presenting take to the same or greater extent as our actions. After evaluating these factors, we have determined that the State's management plan at the Pansy Bayou and Cocoa Beach manatee refuges provide a comparable level of protection.

*Comment 2:* Several peer reviewers and commentors commented on whether State protections were "identical."

*Response:* We do not believe that State or local regulatory mechanisms must be identical to be comparable in effect. Federal and State restrictions are comparable in terms of areal extent, duration, and type (year-round slow speed). It is true that State regulations allow exemptions, by permit, that the Federal regulations do not. However, the State will not authorize take of manatees, and permittees will continue to be subject to applicable Federal, State, and local laws and regulations, including the ESA and the MMPA. Furthermore, State regulations require immediate reconsideration of the permit if the permittee is in violation of permit terms. The factors that we set out for determining when a Federal designation may be withdrawn or revised require a determination that replacement measures provide a comparable level of protection which will prevent the taking of one or more manatees.

*Comment 3:* One peer reviewer and several commentors asked whether the State's variances and exemptions would compromise manatee safety or decrease protection of manatees at Pansy Bayou Manatee Refuge and Cocoa Beach Manatee Refuge.

*Response:* We believe that the variance and exemption regulations will not compromise manatee safety nor decrease manatee protection at these two specific sites. The State will not authorize take of manatees, and permittees will continue to be subject to applicable Federal, State and local laws and regulations, including the ESA and the MMPA. State regulations require immediate reconsideration of the permit if the permittee is in violation of permit terms.

*Comment 4:* One peer reviewer and several commentors asked for better clarification and explanation of what specific circumstances make it appropriate to withdraw protection in these refuges, but not elsewhere.

*Response:* In our response to comment 1, we set out the factors that we would consider in determining when it may be appropriate to withdraw or revise our designations. After considering these factors, we have determined that comparable protective measures now exist at the Pansy Bayou and Cocoa Beach manatee refuges, and Federal designation is unnecessary to prevent the taking of manatees. At this time, we are not of the opinion that comparable protective measures exist at other Federally designated manatee protection areas.

*Comment 5:* One peer reviewer noted that variances and exemptions cover more than just commercial fishermen, crabbers, and fishing guides.

*Response:* We concur. At 68C–22.003, F.A.C., the State allows variances and exemptions for commercial fishing and professional guiding, testing of motors or vessels by manufacturers, resident access, boat access, boat races, and general activities. We believe the State has implemented measures that are comparable to ours, and Federal protection is not necessary to prevent the taking of manatees. The State will not authorize take of manatees; State regulations require immediate reconsideration if take of a single manatee occurs, and require revocation of the permit if the permittee is in violation of permit terms.

*Comment 6:* One commentor encouraged the Service to assert its right to reinstate these Federal protected areas if State regulations prove insufficient to insure manatee survival and recovery.

*Response:* Within the "Coordination with State Actions" section of this rule and the proposed rule (68 FR 60316), we have stated that we have the authority and responsibility to reinstate Federal protective measures if necessary. This authority is derived from the ESA, the MMPA, and 50 CFR 17.

*Comment 7:* One commentor stated that the determination that protections are comparable is complex and requires continued involvement of the Service.

*Response:* We have concluded that State protection is comparable, and we concur that manatee protection requires the continued involvement of the Service.

*Comment 8:* One commentor stated that removing Federal protections in these two areas should not open the door to further rollbacks of Federal manatee protections in Florida.

*Response:* We will continue to take an active role in the management of the Florida manatee by assessing the adequacy of manatee protection measures. We may find it necessary to designate, re-designate, or de-designate sites in the State as necessary. We will conduct our analysis in a way that furthers the recovery of the Florida manatee while providing the most efficient use of limited resources.

*Comment 9:* One commentor stated that it is evident that the Federal Government is better suited to provide protection and has the greater authority and resources to do so. This is especially true, the commentor stated, as the Federal Government, unlike the State, has no economic interest in accommodating human users of the resource.

*Response:* We believe that the protection of the Florida manatee requires the active participation of Federal, State, and local government agencies. We are committed to continuing the protection of the manatee through a cooperative effort with our management partners at the Federal, State, and local levels, as well as efforts involving private entities and members of the public. Additionally, we will continue to take an active role in manatee protection and will exercise our authority, if necessary, to designate, re-designate, or de-designate sites in the State.

*Comment 10:* One commentor asserted that the Florida manatee is almost exclusively found within the internal waters of Florida and therefore is a natural resource of Florida and is entitled to protection from the State.

*Response:* We concur that the State should take an active role in the protection of its natural resources. We acknowledge that a State and Federal

cooperative partnership is an important component for the protection of the Florida manatee. Insofar as this comment may have been intended to imply that Federal protection should not infringe upon State efforts, we believe that the most effective means of protecting the Florida manatee is to have a partnership with our State and local partners. As State law requires State protective measures, Federal law under the MMPA and ESA requires us to actively participate in the protection of the Florida manatee.

**Required Determinations**

*Regulatory Planning and Review*

In accordance with the criteria in Executive Order 12866, this final rule is not a significant regulatory action. The Office of Management and Budget makes the final determination under Executive Order 12866.

a. This final rule will not have an annual economic impact of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit analysis is not required. We do not expect that any significant economic impacts would result from the removal of Federal designation of these two manatee refuges in Sarasota and Brevard Counties in the State of Florida. We do not expect any significant effects because comparable State protection would remain in place following the removal of Federal protection.

Activities affected by the designation of manatee protection areas include waterborne activities conducted by recreational boaters, commercial charter boats, and commercial fishermen (including transiting, cruising, water skiing, and fishing activities). Federal measures in place at the Pansy Bayou Manatee Refuge and the Cocoa Beach Manatee Refuge require boat operators to operate at slow speeds throughout the year. State measures also require boat operators, depending on whether or not the operator has a variance or exemption and the terms of the variance or exemption, to operate at slow speed. In removing Federal protection, boat operator behavior in these areas will likely remain unchanged. Therefore, these activities will not be affected by this rule, and no substantive economic impacts should ensue.

b. This final rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This final rule is consistent with the approach used by State and local governments to protect manatees in Florida. We recognize the important role of State and local partners, and we continue to support and encourage State and local measures to improve manatee protection. In previous rule-makings, we stated that "[i]f comparable or similar protections are put in place in the future, we will consider removing those areas from Federal protection." The removal of Federal protection follows the implementation of comparable State protection.

c. This final rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. This final rule will not raise novel legal or policy issues.

*Regulatory Flexibility Act*

We certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) for the reasons cited below. A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

The characteristics of the two areas (Pansy Bayou and Cocoa Beach) affected by this rule are described below. The economic effects considered include the direct effects, primarily on homeowners, and the indirect effects on businesses in the removal of speed zones.

Direct Economic Effects

*Pansy Bayou Manatee Refuge.* The Pansy Bayou Manatee Refuge is located on the northwestern shore of Roberts Bay in Sarasota County, Florida. Adjoining land uses are primarily residential. Approximately 50 to 75 homes are in the vicinity of the Refuge, and most of these residences have private docks. The city/county owns a parcel in the vicinity of the Refuge that is leased to a marine lab, sailing club, and ski club. Principal use of Refuge waters is for transit to open waters (*i.e.*, traveling to and from docks out to the adjoining Intracoastal Waterway) and for waterskiing. A small number of commercial fishermen may also use the site for crabbing, and some fishing guides may transit the site when traveling to and from fishing destinations.

The removal of the Federal "slow speed" designation will not affect residential activities. Users will continue to be restricted in their operations by the State "slow speed" restrictions currently in place, and State exemptions for fishermen will remain in place. Residents in private homes are able to maintain their current actitivies and should experience no change in use of this site.

*Cocoa Beach Manatee Refuge.* The Cocoa Beach Manatee Refuge is located along the eastern shore of the Banana River in Brevard County, Florida. The refuge is surrounded by water on all sides, and the nearest adjoining land is occupied by a municipal golf course with no marine facilities. Immediately to the north and south of the Cocoa Beach site lie residential areas composed of approximately 500 single-family houses. Approximately one-half of the houses have boat docks. Residents must pass through Refuge waters in order to reach more open waters. Refuge waters are also used by commercial fishing guides to reach more open waters and by a small number of commercial fishermen for crabbing, which for the purposes of this analysis are considered to be small businesses.

The removal of the Federal "slow speed" designation will not affect direct use activities because the State is implementing an identical speed limit in its place. Resident boaters will be able to continue passing through Refuge waters at the currently posted speed. The conditions placed upon the issuance of a permit and the terms under which it may be revoked will not likely increase the take of manatees.

Indirect Economic Effects

Since this rule deals solely with speed restrictions on water, it is reasonable to look at the effect of speed restrictions on the demand for boats in the affected areas. In a study by Bendle and Bell (1995), four economic models were estimated to determine the effect of speed zones in a county on the demand for boats. In each of the models the coefficient on the speed zones was not statistically different from zero. This indicates that the presence or absence of speed zones does not affect the demand for boats in Florida counties. In a study by Parker (1989), "The bulk of boaters (91%) supported protecting the manatee even if it meant reducing the speed allowed on some waterways." These studies indicate that it is valid to say that a large majority of Florida residents support manatee protection and the presence or absence of speed zones does not influence the demand for boats. As a result, it then seems to follow that most Florida residents will not change their spending patterns because of the presence or absence of speed zones, and any indirect economic effects on small businesses will not be significant.

*Small Business Regulatory Enforcement Fairness Act*

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. This rule to remove Federal designation from two manatee protection areas is expected to have an insignificant economic benefit for some small businesses in the two affected counties. However, the substitution of State speed zones for Federal speed zones may very well negate any economic changes resulting from this rule. Without changes in recreational use patterns, the economic effects will be insignificant.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It is unlikely that there are unforeseen changes in costs or prices for consumers stemming from this rule. However, the substitution of State speed zones for Federal ones will not affect the vast majority of boaters who use the two former Federal manatee protection areas.

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. Any economic effects associated with this rule are believed to be minor and will not appreciably change competition, employment, investment, or productivity in the affected counties. The commercial enterprises who qualify for a State exemption may receive some benefit from the reduced amount of travel time to business sites; however, the Service does not believe this will be economically significant.

*Unfunded Mandates Reform Act*

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

a. This final rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Removal of Federal Protection Status from manatee refuges imposes no new obligations on State or local governments.

b. This final rule will not produce a Federal mandate of $100 million or greater in any year. As such, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

*Takings*

In accordance with Executive Order 12630, this final rule does not have significant takings implications. A takings implication assessment is not required.

*Federalism*

In accordance with Executive Order 13132, this final rule does not have significant Federalism effects. A Federalism assessment is not required. This final rule will not have substantial direct effects on the State, in the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government. We coordinated with the State of Florida to the extent possible on the development of this rule.

*Civil Justice Reform*

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

*Paperwork Reduction Act*

This regulation does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C.3501 *et seq.* The regulation will not impose new recordkeeping or reporting requirements on State or local governments, individuals, and businesses, or organizations.

*National Environmental Policy Act*

We have analyzed this final rule in accordance with the criteria of the National Environmental Policy Act (NEPA) of 1969, Pub. L. 91–190, 83 Stat. 852 (codified in current form at 42 U.S.C. §§ 4321 *et seq.*) and have determined that this action is categorically excluded from review under NEPA (516 DM 2, Appendix 1.10). An environmental assessment was prepared for the establishment of all 13 manatee refuges designated in November 2002, including these refuges. Since the first action was not implemented, Federal signage has not yet been installed for these two refuges, and removal of Federal refuge designation will leave comparable State requirements in place, little or no change in the environment has occurred that will be reversed as a result of the removal of Federal refuge designation. Thus, no environmental assessment or environmental impact statement for the removal of Federal refuge designation is required.

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. We have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects.

*Energy Supply, Distribution or Use (Executive Order 13211)*

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because comparable State requirements will remain in effect, this rule is not anticipated to result in any change in activities and, therefore, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

**References Cited**

A complete list of all references cited in this proposed rule is available upon request from the Jacksonville Field Office (see **ADDRESSES** section).

**Author**

The primary author of this document is Peter Benjamin (see **ADDRESSES** section).

**Authority**

The authority to establish manatee protection areas is provided by the Endangered Species Act (ESA) of 1973, Pub. L. 93–205, 87 Stat. 884 (codified as amended at 16 U.S.C. 1531–37, 1537a, 1538–44) and the Marine Mammal Protection Act (MMPA) of 1972, Pub. L. 92–522, 87 Stat. 1027 (codified as amended at 16 U.S.C. 1361–1407).

**List of Subjects in 50 CFR Part 17**

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

**Regulation Promulgation**

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

**PART 17—[AMENDED]**

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

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

**§ 17.108 [Amended]**

■ 2. Amend § 17.108 as follows:

■ a. Remove paragraphs (c)(5), including the map "Pansy Bayou Manatee Refuge," and (c)(11), including the map "Cocoa Beach Manatee Refuge."

■ b. Redesignate paragraphs (c)(6) through (c)(10) as paragraphs (c)(5) through (c)(9), respectively.

■ c. Redesignate paragraphs (c)(12) through (c)(15) as paragraphs (c)(10) through (c)(13), respectively.

■ d. Amend new paragraphs (c)(10)(i)–(ix) by removing the words "paragraph (12)(x)" each time they appear and adding the words "paragraph (10)(x)" in their place.

■ e. Amend new paragraphs (c)(11)(i)–(iv) by removing the words "paragraph (13)(v)" each time they appear and adding the words "paragraph (11)(v)" in their place.

■ f. Amend new paragraphs (c)(12)(i)–(xi) by removing the words "paragraph (14)(xii)" each time they appear and adding the words "paragraph (12)(xii)" in their place.

Dated: June 16, 2004.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 04–15273 Filed 7–6–04; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 660

**[Docket No. 031216314–3314–01; I.D. 0070104B]**

## Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Inseason Adjustments

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

**ACTION:** Inseason adjustments to management measures and a request for comments.

**SUMMARY:** NMFS announces inseason adjustments to the Pacific Coast limited entry trawl and fixed gear groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), will allow fisheries access to more abundant groundfish stocks while protecting overfished and depleted stocks.

**DATES:** Changes to management measures are effective 0001 hours (local time) on July 1, 2004, until the 2005–2006 specifications and management measures are effective, unless modified, superseded, or rescinded through a publication in the **Federal Register**. Comments on this rule will be accepted through August 2, 2004.

**ADDRESSES:** You may submit comments, identified by (i.d #), by any of the following methods:

- E-mail: *GroundfishInseason#5.nwr@noaa.gov*. Include the I.D. number in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115–0070, Attn. Carrie Nordeen.
- Fax: 206–526–6736.

**FOR FURTHER INFORMATION CONTACT:** Carrie Nordeen (Northwest Region, NMFS), phone: 206–526–6144; fax: 206–526–6736; and e-mail: *carrie.nordeen@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

This **Federal Register** document is available on the Government Printing Office's Web site at: *www.gpoaccess.gov/fr/index.html*.

Background information and documents are available at the NMFS Northwest Region Web site at: *www.nwr.noaa.gov/1sustfsh/gdfsh01.htm* and at the Pacific Fishery Management Council's Web site at: *www.pcouncil.org*.

### Background

The Pacific Coast Groundfish FMP and its implementing regulations at 50 CFR part 660, subpart G, regulate fishing for over 80 species of groundfish off the coast of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Pacific Council) and are implemented by NMFS. The specifications and management measures for the 2004 fishing year (January 1—December 31, 2004) were initially published in the **Federal Register** as an emergency rule for January 1–February 29, 2004 (69 FR 1322, January 8, 2004) and as a proposed rule for March 1–December 31, 2004 (69 FR 1380, January 8, 2004). The emergency rule was amended at 69 FR 4084, January 28, 2004. The final rule for March 1–December 31, 2004 was published in the **Federal Register** on March 9, 2004 (69 FR 11064) and amended at 69 FR 23440, April 29, 2004, at 69 FR 25013, May 5, 2004, at 69 FR 28086, May 18, 2004, and at 69 FR 38857, June 29, 2004.

The following changes to current groundfish management measures were recommended by the Pacific Council, in consultation with Pacific Coast Treaty Tribes and the States of Washington, Oregon, and California, at its June 13–18, 2004, meeting in Foster City, CA. Inseason adjustments to limited entry trawl and fixed gear management measures are in response to groundfish landings through the end of April and projected catch through the end of the year. Adjusted management measures are intended to: (1) Allow groundfish optimum yields (OYs) to be achieved but not exceeded, (2) reduce the discard of overfished species by providing for incidental catch allowances in target fisheries for abundant groundfish species, (3) clarify limited entry trawl differential trip limits, (4) adjust limited entry trawl gear requirements, and (5) revise both the 75 fm (137 m) and 150 fm (274 m) rockfish conservation area boundaries so that they more closely follow their respective depth contours. Pacific Coast groundfish landings will be monitored throughout the year, and further adjustments to trip limits or management measures will be made as necessary to allow the achievement of or to avoid exceeding the 2004 OYs.

### Limited Entry Trawl Differential Footrope Limits Coastwide

Differential limited entry trawl trip limits have been used as a fisheries management tool in the Pacific Coast groundfish fishery since 2000. Initially, higher trip limits were available if fishers used small footrope or midwater gear, as opposed to large footrope gear, during harvesting. Generally, neither small footrope or midwater gear are useful for trawling the ocean floor in areas of high relief, rocky habitat. Encouraging the use of these gear types was intended to decrease the catch of certain rockfish species associated with the ocean floor and to protect rocky habitat. When rockfish conservation areas (RCAs) were established in 2003, NMFS slightly modified the intent and application of differential trawl trip limits. As of 2003, the use of small footrope and/or midwater gear has been permitted both shoreward and seaward of the RCA coastwide, while the use of large footrope gear has only been permitted seaward of the RCA

coastwide. Certain overfished species, specifically canary rockfish, require low harvest levels for rebuilding and are more likely to be encountered shoreward of the trawl RCA than seaward of the trawl RCA. In 2003, management measures were designed in part to discourage trawling on the ocean floor shoreward of the RCA and encourage fishing seaward of the RCA and/or the use of midwater trawl gear. For 2003, higher trip limits were available seaward of the RCA if fishers used large footrope or midwater trawl gear rather than small footrope trawl gear. In the area between the U.S./Canada border and 40°10′ N. lat., higher trip limits were available if fishers used large footrope or midwater trawl gear during 2004, with large footrope gear permitted only seaward of the RCA. Because canary rockfish are less frequently encountered by trawl fisheries in the area between 40°10′ N. lat. and the U.S./Mexico border, differential trip limits vary on a species by species basis and encourage fishing both shoreward and seaward of the RCA.

At the June Pacific Council meeting, the Pacific Council's Groundfish Management Team (GMT) discussed the intent and application of differential trip limits. They clarified that in the area between the U.S./Canada border and 40°10′ N. lat. midwater trawl gear should only be used in the Pacific whiting fishery and that midwater trawl trip limits were only intended as incidental catch allowances in the whiting fishery. In order to discourage the use of midwater trawl gear shoreward of the RCA in the area between the U.S./Canada border and 40°10′ N. lat. and restore the intent of midwater trawl trip limits, the GMT recommended removing midwater trawl trip limits for groundfish species not associated with the whiting fishery. Widow rockfish, an overfished species, and yellowtail rockfish are encountered in the whiting fishery. Incidental catch allowances for these two species minimizes the harvest of widow rockfish by discouraging directed fishing for these species while reducing groundfish discard by allowing the landing of widow and yellowtail rockfish encountered in the whiting fishery. The Pacific Council concurred with the GMT's recommendation, therefore, midwater trip limits will be removed from Table 3 (North) for all groundfish species except whiting, widow rockfish, and yellowtail rockfish. The GMT also identified for 2004 that offering low trip limits for small footrope and/or midwater trawl gear, in the area between 40°10′ N. lat. and the U.S./Mexico border, does not provide for a midwater chilipepper fishery seaward of the RCA (for more information see the discussion below under Limited Entry Trawl Chilipepper Trip Limit heading). Therefore, the GMT recommended that higher trip limits be contingent upon the use of large footrope and/or midwater trawl gear seaward of the RCA for the remainder of the year. To ensure consistency with the chilipepper fishery and enhance the enforceability of differential trip limits south of 40°10′ N. lat., higher trip limits offered for bocaccio, lingcod, and minor shelf and widow rockfish will be contingent upon the use of large footrope and/or midwater trawl gear seaward of the RCA (for more information see discussion below under Incidental Catch Allowances in the Limited Entry Trawl Fishery heading).

In order to further encourage trawling seaward rather than shoreward of the RCA, thereby limiting the harvest of canary rockfish, NMFS also implemented another requirement associated with differential trawl trip limits coastwide in 2003. If fishers used small footrope trawl gear at any time or in any area coastwide during a two-month cumulative limit period, they would be restricted to the more restrictive, smaller trip limits available with small footrope gear for the two-month cumulative limit period. The GMT reviewed the intent and application of this differential trip limit requirement at the June Pacific Council meeting and found this requirement to be unnecessarily restrictive. This requirement was primarily developed to limit the harvest of canary rockfish. While canary rockfish are distributed coastwide, the stock is more concentrated in the area between the U.S./Canada border and 40°10′ N. lat. Therefore, the GMT recommended, and the Pacific Council concurred with, the requirement that if fishers use small footrope trawl gear north of 40°10′ N. lat. any time during a two-month cumulative limit period, they would be restricted to the more restrictive, smaller trip limits available with small footrope gear for the two-month cumulative limit period. However, the Pacific Council also recommended that if vessels do not use small footrope trawl gear north of 40°10′ N. lat., vessels are not restricted to the more restrictive, smaller trip limits available with small footrope gear for the two-month cumulative limit period. Additionally, for the area north of 40°10′ N. lat., the Pacific Council recommended that on non-whiting trips, vessels with both large footrope and midwater trawl gear on board during a trip may land the large footrope limits while fishing with large footrope gear seaward of the RCA should be added. In the area south of 40°10′ N. lat., vessels may have more than one type of limited entry bottom trawl gear on board, but the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear. For clarification, the Pacific Council recommended that language be added stating that for vessels using more than one type of trawl gear during a cumulative limit period, limits are additive up to the largest limit for the type of gear used during that period. For example, if a vessel harvests 800 lb (363 kg) of chilipepper rockfish with small footrope gear, it may harvest up to 11,200 lb (5,080 kg) of chilipepper rockfish with large footrope gear during July and August. These differential trip limit changes are reflected in the limited entry trawl trip limit tables (Table 3(North) and Table 3(South)).

*Limited Entry Trawl Sablefish, Dover Sole, and Shortspine Thornyhead and Petrale Sole Trip Limits*

At the beginning of 2004, NMFS took precautionary measures and set relatively low limited entry trawl trip limits pending new trawl bycatch model catch predictions. NMFS updated trawl bycatch model catch predictions by incorporating additional West Coast Observer Program data (2002–2003) and by adjusting for the limited entry trawl permit and vessel buyback. Based on these updated trawl catch predictions, NMFS increased the limited entry trawl trip limits for the remainder of 2004 (69 FR 28086, May 18, 2004).

Following the increased limited entry trawl trip limits effective in May, landings reported in the Pacific Coast Fisheries Information Network (PacFIN) were higher than predicted for Dover sole, shortspine thornyhead, sablefish, and petrale sole. In order to slow the fishery and allow for year-around trawling opportunities, the Council recommended that trip limits be lowered for these species.

When the 2004 trawl trip limits for flatfish were developed, NMFS's intent was to include the petrale sole trip limit as a sublimit of the "other flatfish" trip limit. However, in both the emergency rule (69 FR 1322, January 8, 2004) implementing groundfish specifications and management measures for January–February and the final rule (69 FR 11064, March 9, 2004) implementing management measures for March–December, both petrale sole and "other flatfish" had independent trip limits. As

mentioned above, the catch of petrale sole is tracking higher than predicted in PacFIN through the end of April. Therefore, the Pacific Council recommended that the petrale sole trip limit be incorporated as a sublimit of the "other flatfish" limit with this inseason action as was NMFS's intent at the beginning of the year, as well as reducing the trip limit.

Given the above recommendations, in the area between the U.S./Canada border and 40°10′ N. lat., the adjusted trip limits for sablefish, shortspine thornyhead, Dover sole, petrale sole, and "other flatfish" are as follows. The limited entry trawl large footrope trip limit for sablefish will be decreased from 16,000 lb (7,257 kg) per two months to 15,000 lb (6,804 kg) per two months for July–October. The previously scheduled November–December large footrope sablefish trip limit of 11,000 lb (4,990 kg) per two months remains unchanged. The limited entry trawl large footrope trip limit for shortspine thornyhead will be decreased from 4,500 lb (2,041 kg) per two months to 4,100 lb (1,860 kg) per two months for July–December. The limited entry trawl large footrope trip limit for Dover sole will be decreased from 32,000 lb (14,515 kg) per two months to 31,000 lb (13,801 kg) per two months for July–October. The previously scheduled November–December large footrope Dover sole trip limit of 50,000 lb (22,680 kg) per two months remains unchanged. The limited entry trawl large footrope trip limit for petrale sole will be decreased from 100,000 lb (45,359 kg) per two months to a combined "other flatfish" large footrope limit of 100,000 lb (45,359 kg) per two months, no more than 30,000 lb (13,608 kg) of which may be petrale sole, for July–October. As was previously scheduled for November–December, the harvest of petrale sole with large footrope gear will not be limited. The limited entry trawl small footrope trip limit for "other flatfish" will be decreased from 80,000 lb (36,287 kg) per two months, no more than 30,000 lb (13,608 kg) of which may be petrale sole, to 80,000 lb (36,287 kg) per two months, no more than 26,000 lb (11,793 kg) of which may be petrale sole, for July–October. The previously scheduled November–December small footrope "other flatfish" trip limit of 70,000 lb (31,752 kg) per two months, no more than 20,000 lb (9,072 kg) of which may be petrale sole, remains unchanged.

In the area between 40°10′ N. lat. and the U.S./Mexico border, the adjusted trip limits for sablefish, shortspine thornyhead, and Dover sole are as follows. The limited entry trawl trip limit for sablefish will be decreased from 14,500 lb (6,577 kg) per two months to 13,000 lb (5,897 kg) per two months for July–December. The limited entry trawl trip limit for shortspine thornyhead will be decreased from 4,500 lb (2,041 kg) per two months to 4,100 lb (1,860 kg) per two months for July–December. The limited entry trawl trip limit for Dover sole will be decreased from 49,000 lb (22,226 kg) per two months to 48,000 lb (21,772 kg) per two months for July–October. The previously scheduled November–December Dover sole trip limit of 49,000 lb (22,226 kg) per two months remains unchanged.

*Limited Entry Midwater and Small Footrope Trawl Chilipepper Trip Limit South of 40°10′ N. Lat.*

Because chilipepper rockfish (an abundant groundfish species) and bocaccio (an overfished groundfish species) are co-occurring species, limited entry trawl limits for chilipepper rockfish were incorporated as part of minor shelf rockfish limits in 2003 to eliminate all targeting opportunities for chilipepper where bocaccio may have been incidentally taken. The 2004 bocaccio OY (250 mt) was set higher than the 2003 bocaccio OY (≤ 20 mt) following a new stock assessment. With a higher bocaccio OY in 2004, conservative targeting opportunities for chilipepper were restored.

At the June Pacific Council meeting, the GMT received a request from the Pacific Council's Groundfish Advisory Panel (GAP) that trip limits in Table 3 (South) allow for a midwater chilipepper fishery seaward of the RCA. The previously scheduled midwater trawl and/or small footrope chilipepper limit was low (300 lb (136 kg) per two months) to allow for incidental catch while discouraging fishing shoreward of the RCA. By specifying that midwater trawl gear may not be used shoreward of the RCA south of 40°10′ N. lat., midwater trip limits are available only seaward of the RCA and may be increased to be equivalent to the limits available using large footrope trawl gear. Therefore, the GMT recommended and the Pacific Council concurred that the limited entry trawl midwater limit for chilipepper be increased from 300 lb (136 kg) per month to the previously scheduled large footrope limit of 12,000 lb (5,443 kg) per two months during July–August and 8,000 lb (3,629 kg) per two months for September–December. Additionally, the California Department of Fish and Game (CDFG) recommended and the Pacific Council concurred that the limited entry trawl small footrope limit for minor shelf, widow, and chilipepper rockfish be increased from 300 lb (136 kg) per month to 1,000 lb (454 kg) per month, no more than 200 lb (90 kg) per month of which may be minor shelf and widow rockfish. These trip limit adjustments will provide much needed revenue for the limited entry trawl fleet without resulting in excessive catch of bocaccio.

*Limited Entry Trawl Widow Rockfish and Yellowtail Rockfish Midwater Trip Limits*

When developing the 2004 groundfish management measures and specifications in the fall of 2003, it was NMFS's intention to prohibit the directed widow rockfish and yellowtail rockfish midwater trawl fishery during November–December. This action is necessary to prohibit the directed widow rockfish midwater fishery during November–December because the 2004 widow rockfish OY is intended to allow for the incidental catch of widow rockfish, but it cannot accommodate a directed fishery. Because widow and canary rockfish are known to co-occur with yellowtail rockfish, it is necessary to also prohibit the directed yellowtail rockfish midwater fishery during November and December to keep the harvest of widow and canary rockfish within their 2004 OYs. Therefore, the Pacific Council recommended that the limited entry trawl trip limit Table 3 (North) be adjusted to prohibit the directed midwater fishery for widow rockfish and yellowtail rockfish during November–December.

*Incidental Catch Allowances in the Limited Entry Trawl Fishery*

Harvest levels for overfished groundfish species are developed using each species' rebuilding plan specifications. Trip limits for overfished species are generally low and designed to allow overfished stocks to rebuild while allowing for the incidental catch of overfished species during the harvesting of co-occurring abundant groundfish species. These trip limits are not intended to provide for directed fishing on overfished stocks.

At the June Pacific Council meeting, the GMT received feedback from the GAP that some limited entry trawl limits for overfished species are not adequate to provide incidental catch allowances in the limited entry trawl fishery and are resulting in discard. In May 2004, NMFS implemented limited entry trawl increases for DTS (Dover sole, thornyheads, sablefish) species and chilipepper rockfish (69 FR 28086, May 18, 2004). Based on those trip limit increases, the GMT determined that trip

limits for lingcod and widow rockfish, could be increased to accommodate incidental catch in the DTS fishery. Similarly, trip limits for bocaccio could be increased to allow for the incidental catch in the chilipepper fishery. Incorporating the previously discussed inseason adjustments to differential trip limits, the Pacific Council recommended the following trip limit increases.

In the area between the U.S./Canada border and 40°10′ N. lat., the limited entry trawl large footrope trip limit for lingcod will be 500 lb (227 kg) per two months for July–December. In the area between 40°10′ N. lat. and the U.S./Mexico border, the limited entry trawl large footrope and midwater trip limit for lingcod will be 500 lb (227 kg) per two months for July–December. Previously, the retention of lingcod with large footrope or midwater trawl gear was prohibited coastwide. In the area between the U.S./Canada border and 40°10′ N. lat., the limited entry trawl large footrope trip limit for minor shelf and widow rockfish will be 300 lb (136 kg) per two months for July–December. Similar to the previously scheduled lingcod limit, the retention of minor shelf and widow rockfish was prohibited. In the area between 40°10′ N. lat. and the U.S./Mexico border, the limited entry trawl large footrope and midwater trip limit for bocaccio will be increased from 100 lb (45 kg) per two months to 300 lb (136 kg) per two months for July–December. These limited entry trawl trip limit increases will reduce discard in the Pacific Coast groundfish fisheries and enable the OYs for DTS species and chilipepper rockfish to be achieved but not exceeded while continuing to allow for the rebuilding of overfished stocks.

*Limited Entry Fixed Gear Bocaccio Limits Between 40°10′ N. Lat. and 34°27′ N. Lat.*

In keeping with bocaccio trip limit increases in the limited entry trawl fishery, to accommodate incidental catch in the chilipepper fishery, the Pacific Council also recommended increasing the fixed gear bocaccio trip limit for the remainder of the year. Therefore, in the area between 40°10′ N. lat. and 34°27′ N. lat., the limited entry fixed gear limit for bocaccio will be increased from 100 lb (45 kg) per two months during July–August and 200 lb (90 kg) per two months during September–December to 300 lb (136 kg) per two months for the remainder of the year. Neither this inseason adjustment nor any other inseason adjustments are predicted to cause the total mortality of bocaccio to exceed its 2004 OY.

*Adjustments to Rockfish Conservation Area Boundaries*

During the June Pacific Council meeting, Washington Department of Fish and Wildlife (WDFW) and CDFG requested adjustments to RCA boundaries. CDFG requested adjustments to specific latitude and longitude coordinates in the 75 fm (137 m) RCA boundary to allow the RCA to more closely follow the 75 fm (137 m) depth contour and allow access to sandy areas for sanddab fishing in California's Half Moon Bay area. This request was included in the GMT's statement on inseason actions and recommended by the Pacific Council. Additionally, WDFW requested adjustments to the 150 fm (274 m) RCA boundary off Washington so that it would more closely follow the 150 fm (274 m) depth contour and would be similar to Washington's Winter Petrale RCA boundary (which also follows the 150 fm (137 m) depth contour). WDFW's request was made to NMFS directly and was not included in the GMT statement or Pacific Council recommendation. NMFS will implement both adjustments to the RCA boundaries with this inseason action.

*NMFS Actions*

For the reasons stated herein, NMFS concurs with the Pacific Council's recommendations and hereby announces the following changes to the 2004 specifications and management measures (69 FR 11064, March 9, 2004, as amended at 69 FR 23440, April 29, 2004, at 69 FR 25013, May 5, 2004, at 69 FR 28086, May 18, 2004, and at 69 FR 38857, June 29, 2004) to read as follows:

1. On page 11087, in section IV. NMFS Actions, under A. General Definitions and Provisions, revise paragraphs (14)(b)(ii) and (iii) to read as follows:

**IV. NMFS Actions**

* * * * *

*A. General Definitions and Provisions*

(14) * * *

(b) * * *

(ii) *Small footrope or midwater trawl gear.* Cumulative trip limits for canary rockfish, widow rockfish (South of 40°10′ N. lat.,) yellowtail rockfish (North of 40°10′ N. lat.,) minor shelf rockfish (North of 40°10′ N. lat.,) minor nearshore rockfish, as indicated in Table 3 to section IV., are allowed only if small footrope gear or midwater trawl gear is used, and if that gear meets the specifications in paragraph IV.A.(14) and at 50 CFR 660.322. For Dover sole, longspine thornyhead, shortspine thornyhead, flatfish complex species including petrale sole, rex sole, or arrowtooth flounder there are or may be cumulative trip limits that are more restrictive for vessels using small footrope gear than for large footrope gear or midwater gear. These more restrictive limits recognize that small footrope gear may be used inshore of the RCAs and are intended to limit trawl effort in the nearshore area. North of 40°10′ N. lat., limits are generally more restrictive for small footrope trawl gear. When limits are more restrictive for small footrope gear, those limits apply to and constrain any vessel using small footrope gear north of 40°10′ N. lat. at any time during the cumulative limit period to which the landings limits apply.

(iii) *Midwater trawl gear.* Yellowtail and widow rockfish are only available to trawl vessels using midwater trawl gear when those vessels are fishing for Pacific whiting during the primary whiting season. Each landing that contains yellowtail or widow rockfish is attributed to the gear on board with the most restrictive trip limit for those species. Landings attributed to small footrope trawl must not exceed the small footrope limit, and landings attributed to midwater trawl must not exceed the midwater trawl limit. If a vessel has landings attributed to small footrope and midwater trawl during a cumulative trip limit period, all landings are counted toward the most restrictive gear-specific cumulative limit. On non-whiting trips, vessels with both large footrope and midwater trawl gear on board during a trip may land the large footrope limits while fishing with large footrope gear seaward of the RCA.

2. On pages 11094–11095, in section IV. NMFS Actions, under A. General Definitions and Provisions, paragraph (17)(vi) is revised to read as follows:

* * * * *

(131) 37°24.16′ N. lat., 122°51.96′ W. long.;
(132) 37°23.32′ N. lat., 122°52.38′ W. long.;
(133) 37°04.12′ N. lat., 122°38.94′ W. long.;
(134) 36°00.64′ N. lat., 122°33.26′ W. long.;
(135) 36°59.15′ N. lat., 122°27.84′ W. long.;
(136) 37°01.41′ N. lat., 122°24.41′ W. long.;
(137) 36°58.75′ N. lat., 122°23.81′ W. long.;
(138) 36°59.17′ N. lat., 122°21.44′ W. long.;
(139) 36°57.51′ N. lat., 122°20.69′ W. long.;
(140) 36°51.46′ N. lat., 122°10.01′ W. long.;
(141) 36°48.43′ N. lat., 122°06.47′ W. long.;
(142) 36°48.66′ N. lat., 122°04.99′ W. long.;
(143) 36°47.75′ N. lat., 122°03.33′ W. long.;
(144) 36°51.23′ N. lat., 121°57.79′ W. long.;
(145) 36°49.72′ N. lat., 121°57.87′ W. long.;
(146) 36°48.84′ N. lat., 121°58.68′ W. long.;
(147) 36°47.89′ N. lat., 121°58.53′ W. long.;
(148) 36°48.66′ N. lat., 121°50.49′ W. long.;
(149) 36°45.56′ N. lat., 121°54.11′ W. long.;
(150) 36°45.30′ N. lat., 121°57.62′ W. long.;
(151) 36°38.54′ N. lat., 122°01.13′ W. long.;
(152) 36°35.76′ N. lat., 122°00.87′ W. long.;

(153) 36°32.58′ N. lat., 121°59.12′ W. long.;
(154) 36°32.95′ N. lat., 121°57.62′ W. long.;
(155) 36°31.96′ N. lat., 121°56.27′ W. long.;
(156) 36°31.74′ N. lat., 121°58.24′ W. long.;
(157) 36°30.57′ N. lat., 121°59.66′ W. long.;
(158) 36°27.80′ N. lat., 121°59.30′ W. long.;
(159) 36°26.52′ N. lat., 121°58.09′ W. long.;
(160) 36°23.65′ N. lat., 121°58.94′ W. long.;
(161) 36°20.93′ N. lat., 122°00.28′ W. long.;
(162) 36°18.23′ N. lat., 122°03.10′ W. long.;
(163) 36°14.21′ N. lat., 121°57.73′ W. long.;
(164) 36°14.68′ N. lat., 121°55.43′ W. long.;
(165) 36°10.42′ N. lat., 121°42.90′ W. long.;
(166) 36°02.55′ N. lat., 121°36.35′ W. long.;
(167) 36°01.04′ N. lat., 121°36.47′ W. long.;
(168) 35°58.25′ N. lat., 121°32.88′ W. long.;
(169) 35°39.35′ N. lat., 121°22.63′ W. long.;
(170) 35°24.44′ N. lat., 121°02.23′ W. long.;
(171) 35°10.84′ N. lat., 120°55.90′ W. long.;
(172) 35°04.35′ N. lat., 120°51.62′ W. long.;
(173) 34°55.25′ N. lat., 120°49.36′ W. long.;
(174) 34°47.95′ N. lat., 120°50.76′ W. long.;
(175) 34°39.27′ N. lat., 120°49.16′ W. long.;
(176) 34°31.05′ N. lat., 120°44.71′ W. long.;
(177) 34°27.00′ N. lat., 120°36.54′ W. long.;
(178) 34°22.60′ N. lat., 120°25.41′ W. long.;
(179) 34°25.45′ N. lat., 120°17.41′ W. long.;
(180) 34°22.94′ N. lat., 119°56.40′ W. long.;
(181) 34°18.37′ N. lat., 119°42.01′ W. long.;
(182) 34°11.22′ N. lat., 119°32.47′ W. long.;
(183) 34°09.58′ N. lat., 119°25.94′ W. long.;
(184) 34°03.89′ N. lat., 119°12.47′ W. long.;
(185) 34°03.57′ N. lat., 119°06.72′ W. long.;
(186) 34°04.53′ N. lat., 119°04.90′ W. long.;
(187) 34°02.84′ N. lat., 119°02.37′ W. long.;
(188) 34°01.30′ N. lat., 119°00.26′ W. long.;
(189) 34°00.22′ N. lat., 119°03.20′ W. long.;
(190) 33°59.60′ N. lat., 119°03.16′ W. long.;
(191) 33°59.46′ N. lat., 119°00.88′ W. long.;
(192) 34°00.49′ N. lat., 118°59.08′ W. long.;
(193) 33°59.07′ N. lat., 118°47.34′ W. long.;
(194) 33°58.73′ N. lat., 118°36.45′ W. long.;
(195) 33°55.24′ N. lat., 118°33.42′ W. long.;
(196) 33°53.71′ N. lat., 118°38.01′ W. long.;
(197) 33°51.22′ N. lat., 118°36.17′ W. long.;
(198) 33°49.85′ N. lat., 118°32.31′ W. long.;
(199) 33°49.61′ N. lat., 118°28.07′ W. long.;
(200) 33°49.95′ N. lat., 118°26.38′ W. long.;
(201) 33°50.36′ N. lat., 118°25.84′ W. long.;
(202) 33°49.84′ N. lat., 118°24.78′ W. long.;
(203) 33°47.53′ N. lat., 118°30.12′ W. long.;
(204) 33°44.11′ N. lat., 118°25.25′ W. long.;
(205) 33°41.77′ N. lat., 118°20.32′ W. long.;
(206) 33°38.17′ N. lat., 118°15.70′ W. long.;
(207) 33°37.48′ N. lat., 118°16.73′ W. long.;
(208) 33°36.01′ N. lat., 118°16.55′ W. long.;
(209) 33°33.76′ N. lat., 118°11.37′ W. long.;
(210) 33°33.76′ N. lat., 118°07.94′ W. long.;
(211) 33°35.59′ N. lat., 118°05.05′ W. long.;
(212) 33°33.75′ N. lat., 117°59.82′ W. long.;
(213) 33°35.10′ N. lat., 117°55.68′ W. long.;
(214) 33°34.91′ N. lat., 117°53.76′ W. long.;
(215) 33°30.77′ N. lat., 117°47.56′ W. long.;
(216) 33°27.50′ N. lat., 117°44.87′ W. long.;
(217) 33°16.89′ N. lat., 117°34.37′ W. long.;
(218) 33°06.66′ N. lat., 117°21.59′ W. long.;
(219) 33°03.35′ N. lat., 117°20.92′ W. long.;
(220) 33°00.07′ N. lat., 117°19.02′ W. long.;
(221) 32°55.99′ N. lat., 117°18.60′ W. long.;
(222) 32°54.43′ N. lat., 117°16.93′ W. long.;
(223) 32°52.13′ N. lat., 117°16.55′ W. long.;
(224) 32°52.61′ N. lat., 117°19.50′ W. long.;
(225) 32°46.95′ N. lat., 117°22.81′ W. long.;
(226) 32°45.01′ N. lat., 117°22.07′ W. long.;
(227) 32°43.40′ N. lat., 117°19.80′ W. long.; and
(228) 32°33.74′ N. lat., 117°18.67′ W. long

3. On pages 11099–11100, in section IV. NMFS Actions, under A. General Definitions and Provisions, paragraph (17)(ix) is revised to read as follows:

* * * * *

(13) 47°56.53′ N. lat., 125°30.33′ W. long.;
(14) 47°57.28′ N. lat., 125°27.89′ W. long.;
(15) 47°59.00′ N. lat., 125°25.50′ W. long.;
(16) 48°01.77′ N. lat., 125°24.05′ W. long.;
(17) 48°02.13′ N. lat., 125°22.80′ W. long.;
(18) 48°03.00′ N. lat., 125°22.50′ W. long.;
(19) 48°03.46′ N. lat., 125°22.10′ W. long.;
(20) 48°04.29′ N. lat., 125°20.37′ W. long.;
(21) 48°02.00′ N. lat., 125°18.50′ W. long.;
(22) 48°00.01′ N. lat., 125°19.90′ W. long.;
(23) 47°58.75′ N. lat., 125°17.54′ W. long.;
(24) 47°53.50′ N. lat., 125°13.50′ W. long.;
(25) 47°48.88′ N. lat., 125°05.91′ W. long.;
(26) 47°48.50′ N. lat., 125°05.00′ W. long.;
(27) 47°45.98′ N. lat., 125°04.26′ W. long.;
(28) 47°45.00′ N. lat., 125°05.50′ W. long.;
(29) 47°42.11′ N. lat., 125°04.74′ W. long.;
(30) 47°39.00′ N. lat., 125°06.00′ W. long.;
(31) 47°35.53′ N. lat., 125°04.55′ W. long.;
(32) 47°30.90′ N. lat., 124°57.31′ W. long.;
(33) 47°29.54′ N. lat., 124°56.50′ W. long.;
(34) 47°29.50′ N. lat., 124°54.50′ W. long.;
(35) 47°28.57′ N. lat., 124°51.50′ W. long.;
(36) 47°25.00′ N. lat., 124°48.00′ W. long.;
(37) 47°23.95′ N. lat., 124°47.24′ W. long.;
(38) 47°23.00′ N. lat., 124°47.00′ W. long.;
(39) 47°21.00′ N. lat., 124°46.50′ W. long.;
(40) 47°18.20′ N. lat., 124°45.84′ W. long.;
(41) 47°18.50′ N. lat., 124°49.00′ W. long.;
(42) 47°19.17′ N. lat., 124°50.86′ W. long.;
(43) 47°18.07′ N. lat., 124°53.29′ W. long.;
(44) 47°17.78′ N. lat., 124°51.39′ W. long.;
(45) 47°16.81′ N. lat., 124°50.85′ W. long.;
(46) 47°15.96′ N. lat., 124°53.15′ W. long.;
(47) 47°14.31′ N. lat., 124°52.62′ W. long.;
(48) 47°11.87′ N. lat., 124°56.90′ W. long.;
(49) 47°12.39′ N. lat., 124°58.09′ W. long.;
(50) 47°09.50′ N. lat., 124°57.50′ W. long.;
(51) 47°09.00′ N. lat., 124°59.00′ W. long.;
(52) 47°06.06′ N. lat., 124°58.80′ W. long.;
(53) 47°03.62′ N. lat., 124°55.96′ W. long.;
(54) 47°02.89′ N. lat., 124°56.89′ W. long.;
(55) 47°01.04′ N. lat., 124°59.54′ W. long.;
(56) 46°58.47′ N. lat., 124°59.08′ W. long.;
(57) 46°58.29′ N. lat., 125°00.28′ W. long.;
(58) 46°56.30′ N. lat., 125°00.75′ W. long.;
(59) 46°57.09′ N. lat., 124°58.86′ W. long.;
(60) 46°55.95′ N. lat., 124°54.88′ W. long.;
(61) 46°54.79′ N. lat., 124°54.14′ W. long.;
(62) 46°58.00′ N. lat., 124°50.00′ W. long.;
(63) 46°54.50′ N. lat., 124°49.00′ W. long.;
(64) 46°54.53′ N. lat., 124°52.94′ W. long.;
(65) 46°49.52′ N. lat., 124°53.41′ W. long.;
(66) 46°42.24′ N. lat., 124°47.86′ W. long.;
(67) 46°39.50′ N. lat., 124°42.50′ W. long.;
(68) 46°37.50′ N. lat., 124°41.00′ W. long.;
(69) 46°36.50′ N. lat., 124°38.00′ W. long.;
(70) 46°33.85′ N. lat., 124°36.99′ W. long.;
(71) 46°33.50′ N. lat., 124°29.50′ W. long.;
(72) 46°32.00′ N. lat., 124°31.00′ W. long.;
(73) 46°30.53′ N. lat., 124°30.55′ W. long.;
(74) 46°25.50′ N. lat., 124°33.00′ W. long.;
(75) 46°23.00′ N. lat., 124°35.00′ W. long.;
(76) 46°21.05′ N. lat., 124°37.00′ W. long.;
(77) 46°20.64′ N. lat., 124°36.21′ W. long.;
(78) 46°20.36′ N. lat., 124°37.85′ W. long.;
(79) 46°19.48′ N. lat., 124°38.35′ W. long.;
(80) 46°18.09′ N. lat., 124°38.30′ W. long.;
(81) 46°16.15′ N. lat., 124°25.20′ W. long.;
(82) 46°14.87′ N. lat., 124°26.15′ W. long.;
(83) 46°13.38′ N. lat., 124°31.36′ W. long.;
(84) 46°12.09′ N. lat., 124°38.39′ W. long.;
(85) 46°09.46′ N. lat., 124°40.64′ W. long.;
(86) 46°07.30′ N. lat., 124°40.68′ W. long.;
(87) 46°02.76′ N. lat., 124°44.01′ W. long.;
(88) 46°01.22′ N. lat., 124°43.47′ W. long.;
(89) 45°51.82′ N. lat., 124°42.89′ W. long.;
(90) 45°45.95′ N. lat., 124°40.72′ W. long.;
(91) 45°44.11′ N. lat., 124°43.09′ W. long.;
(92) 45°34.50′ N. lat., 124°30.27′ W. long.;
(93) 45°21.10′ N. lat., 124°23.11′ W. long.;
(94) 45°09.69′ N. lat., 124°20.45′ W. long.;
(95) 44°56.25′ N. lat., 124°27.03′ W. long.;
(96) 44°44.47′ N. lat., 124°37.85′ W. long.;
(97) 44°31.81′ N. lat., 124°39.60′ W. long.;
(98) 44°31.48′ N. lat., 124°43.30′ W. long.;
(99) 44°12.04′ N. lat., 124°58.16′ W. long.;
(100) 44°07.38′ N. lat., 124°57.87′ W. long.;
(101) 43°57.06′ N. lat., 124°57.20′ W. long.;
(102) 43°52.52′ N. lat., 124°49.00′ W. long.;
(103) 43°51.55′ N. lat., 124°37.49′ W. long.;
(104) 43°47.83′ N. lat., 124°36.43′ W. long.;
(105) 43°31.79′ N. lat., 124°36.80′ W. long.;
(106) 43°29.34′ N. lat., 124°36.77′ W. long.;
(107) 43°26.46′ N. lat., 124°40.02′ W. long.;
(108) 43°16.15′ N. lat., 124°44.37′ W. long.;
(109) 43°09.33′ N. lat., 124°45.35′ W. long.;
(110) 43°08.85′ N. lat., 124°48.92′ W. long.;
(111) 43°03.23′ N. lat., 124°52.41′ W. long.;
(112) 43°00.25′ N. lat., 124°51.93′ W. long.;
(113) 42°56.62′ N. lat., 124°53.93′ W. long.;
(114) 42°54.84′ N. lat., 124°54.01′ W. long.;
(115) 42°52.31′ N. lat., 124°50.76′ W. long.;
(116) 42°47.78′ N. lat., 124°47.27′ W. long.;
(117) 42°46.32′ N. lat., 124°43.59′ W. long.;
(118) 42°41.63′ N. lat., 124°44.07′ W. long.;
(119) 42°38.83′ N. lat., 124°42.77′ W. long.;
(120) 42°35.37′ N. lat., 124°43.22′ W. long.;
(121) 42°32.78′ N. lat., 124°44.68′ W. long.;
(122) 42°32.19′ N. lat., 124°42.40′ W. long.;
(123) 42°30.28′ N. lat., 124°44.30′ W. long.;
(124) 42°28.16′ N. lat., 124°48.38′ W. long.;
(125) 42°18.34′ N. lat., 124°38.77′ W. long.;
(126) 42°13.65′ N. lat., 124°36.82′ W. long.;
(127) 42°00.15′ N. lat., 124°35.81′ W. long.;
(128) 42°00.00′ N. lat., 124°35.99′ W. long.;
(129) 41°47.80′ N. lat., 124°29.41′ W. long.;
(130) 41°23.51′ N. lat., 124°29.50′ W. long.;
(131) 41°13.29′ N. lat., 124°23.31′ W. long.;
(132) 41°06.23′ N. lat., 124°22.62′ W. long.;
(133) 40°55.60′ N. lat., 124°26.04′ W. long.;
(134) 40°49.62′ N. lat., 124°26.57′ W. long.;
(135) 40°45.72′ N. lat., 124°30.00′ W. long.;
(136) 40°40.56′ N. lat., 124°32.11′ W. long.;
(137) 40°37.33′ N. lat., 124°29.27′ W. long.;
(138) 40°35.60′ N. lat., 124°30.49′ W. long.;
(139) 40°37.38′ N. lat., 124°37.14′ W. long.;
(140) 40°36.03′ N. lat., 124°39.97′ W. long.;
(141) 40°31.59′ N. lat., 124°40.74′ W. long.;
(142) 40°29.76′ N. lat., 124°38.13′ W. long.;
(143) 40°28.22′ N. lat., 124°37.23′ W. long.;
(144) 40°24.86′ N. lat., 124°35.71′ W. long.;
(145) 40°23.01′ N. lat., 124°31.94′ W. long.;
(146) 40°23.39′ N. lat., 124°28.64′ W. long.;
(147) 40°22.29′ N. lat., 124°25.25′ W. long.;
(148) 40°21.90′ N. lat., 124°25.18′ W. long.;
(149) 40°22.02′ N. lat., 124°28.00′ W. long.;
(150) 40°21.34′ N. lat., 124°29.53′ W. long.;
(151) 40°19.74′ N. lat., 124°28.95′ W. long.;
(152) 40°18.13′ N. lat., 124°27.08′ W. long.;
(153) 40°17.45′ N. lat., 124°25.53′ W. long.;
(154) 40°17.97′ N. lat., 124°24.12′ W. long.;
(155) 40°15.96′ N. lat., 124°26.05′ W. long.;
(156) 40°17.00′ N. lat., 124°35.01′ W. long.;
(157) 40°15.97′ N. lat., 124°35.90′ W. long.;

(158) 40°10.00′ N. lat., 124°22.96′ W. long.;
(159) 40°07.00′ N. lat., 124°19.00′ W. long.;
(160) 40°08.10′ N. lat., 124°16.70′ W. long.;
(161) 40°05.90′ N. lat., 124°17.77′ W. long.;
(162) 40°02.99′ N. lat., 124°15.55′ W. long.;
(163) 40°02.00′ N. lat., 124°12.97′ W. long.;
(164) 40°02.60′ N. lat., 124°10.61′ W. long.;
(165) 40°03.63′ N. lat., 124°09.12′ W. long.;
(166) 40°02.18′ N. lat., 124°09.07′ W. long.;
(167) 39°58.25′ N. lat., 124°12.56′ W. long.;
(168) 39°57.03′ N. lat., 124°11.34′ W. long.;
(169) 39°56.30′ N. lat., 124°08.96′ W. long.;
(170) 39°54.82′ N. lat., 124°07.66′ W. long.;
(171) 39°52.57′ N. lat., 124°08.55′ W. long.;
(172) 39°45.34′ N. lat., 124°03.30′ W. long.;
(173) 39°34.75′ N. lat., 123°58.50′ W. long.;
(174) 39°34.22′ N. lat., 123°56.82′ W. long.;
(175) 39°32.98′ N. lat., 123°56.43′ W. long.;
(176) 39°31.47′ N. lat., 123°58.73′ W. long.;
(177) 39°05.68′ N. lat., 123°57.81′ W. long.;
(178) 39°00.24′ N. lat., 123°56.74′ W. long.;
(179) 38°54.31′ N. lat., 123°56.73′ W. long.;
(180) 38°41.42′ N. lat., 123°46.75′ W. long.;
(181) 38°39.61′ N. lat., 123°46.48′ W. long.;
(182) 38°37.52′ N. lat., 123°43.78′ W. long.;
(183) 38°35.25′ N. lat., 123°42.00′ W. long.;
(184) 38°28.79′ N. lat., 123°37.07′ W. long.;
(185) 38°19.88′ N. lat., 123°32.54′ W. long.;
(186) 38°14.43′ N. lat., 123°25.56′ W. long.;
(187) 38°08.75′ N. lat., 123°24.48′ W. long.;
(188) 38°10.10′ N. lat., 123°27.20′ W. long.;
(189) 38°07.16′ N. lat., 123°28.18′ W. long.;
(190) 38°06.42′ N. lat., 123°30.18′ W. long.;
(191) 38°04.28′ N. lat., 123°31.70′ W. long.;
(192) 38°01.88′ N. lat., 123°30.98′ W. long.;
(193) 38°00.75′ N. lat., 123°29.72′ W. long.;
(194) 38°00.00′ N. lat., 123°28.60′ W. long.;
(195) 37°58.23′ N. lat., 123°26.90′ W. long.;
(196) 37°55.32′ N. lat., 123°27.19′ W. long.;
(197) 37°51.47′ N. lat., 123°24.92′ W. long.;
(198) 37°44.47′ N. lat., 123°11.57′ W. long.;
(199) 37°36.33′ N. lat., 123°01.76′ W. long.;
(200) 37°15.16′ N. lat., 122°51.64′ W. long.;
(201) 37°01.68′ N. lat., 122°37.28′ W. long.;
(202) 36°59.70′ N. lat., 122°33.71′ W. long.;
(203) 36°58.00′ N. lat., 122°27.80′ W. long.;
(204) 37°00.25′ N. lat., 122°24.85′ W. long.;
(205) 36°57.50′ N. lat., 122°24.98′ W. long.;
(206) 36°58.38′ N. lat., 122°21.85′ W. long.;
(207) 36°55.85′ N. lat., 122°21.95′ W. long.;
(208) 36°52.02′ N. lat., 122°12.10′ W. long.;
(209) 36°47.63′ N. lat., 122°07.37′ W. long.;
(210) 36°47.26′ N. lat., 122°03.22′ W. long.;
(211) 36°50.34′ N. lat., 121°58.40′ W. long.;
(212) 36°48.83′ N. lat., 121°59.14′ W. long.;
(213) 36°44.81′ N. lat., 121°58.28′ W. long.;
(214) 36°39.00′ N. lat., 122°01.71′ W. long.;
(215) 36°29.60′ N. lat., 122°00.49′ W. long.;
(216) 36°23.43′ N. lat., 121°59.76′ W. long.;
(217) 36°18.90′ N. lat., 122°05.32′ W. long.;
(218) 36°15.38′ N. lat., 122°01.40′ W. long.;
(219) 36°13.79′ N. lat., 121°58.12′ W. long.;
(220) 36°10.12′ N. lat., 121°43.33′ W. long.;
(221) 36°02.57′ N. lat., 121°37.02′ W. long.;
(222) 36°01.01′ N. lat., 121°36.95′ W. long.;
(223) 35°57.74′ N. lat., 121°33.45′ W. long.;
(224) 35°51.32′ N. lat., 121°30.08′ W. long.;
(225) 35°45.84′ N. lat., 121°28.84′ W. long.;
(226) 35°38.94′ N. lat., 121°23.16′ W. long.;
(227) 35°26.00′ N. lat., 121°08.00′ W. long.;
(228) 35°07.42′ N. lat., 120°57.08′ W. long.;
(229) 34°42.76′ N. lat., 120°55.09′ W. long.;
(230) 34°37.75′ N. lat., 120°51.96′ W. long.;
(231) 34°29.29′ N. lat., 120°44.19′ W. long.;
(232) 34°27.00′ N. lat., 120°40.42′ W. long.;
(233) 34°21.89′ N. lat., 120°31.36′ W. long.;
(234) 34°20.79′ N. lat., 120°21.58′ W. long.;
(235) 34°23.97′ N. lat., 120°15.25′ W. long.;
(236) 34°22.11′ N. lat., 119°56.63′ W. long.;
(237) 34°19.00′ N. lat., 119°48.00′ W. long.;
(238) 34°15.00′ N. lat., 119°48.00′ W. long.;
(239) 34°08.00′ N. lat., 119°37.00′ W. long.;
(240) 34°08.39′ N. lat., 119°54.78′ W. long.;
(241) 34°07.10′ N. lat., 120°10.37′ W. long.;
(242) 34°10.08′ N. lat., 120°22.98′ W. long.;
(243) 34°13.16′ N. lat., 120°29.40′ W. long.;
(244) 34°09.41′ N. lat., 120°37.75′ W. long.;
(245) 34°03.15′ N. lat., 120°34.71′ W. long.;
(246) 33°57.09′ N. lat., 120°27.76′ W. long.;
(247) 33°51.00′ N. lat., 120°09.00′ W. long.;
(248) 33°38.16′ N. lat., 119°59.23′ W. long.;
(249) 33°37.04′ N. lat., 119°50.17′ W. long.;
(250) 33°42.28′ N. lat., 119°48.85′ W. long.;
(251) 33°53.96′ N. lat., 119°53.77′ W. long.;
(252) 33°59.94′ N. lat., 119°19.57′ W. long.;
(253) 34°03.12′ N. lat., 119°15.51′ W. long.;
(254) 34°01.97′ N. lat., 119°07.28′ W. long.;
(255) 34°03.60′ N. lat., 119°04.71′ W. long.;
(256) 33°59.30′ N. lat., 119°03.73′ W. long.;
(257) 33°58.87′ N. lat., 118°59.37′ W. long.;
(258) 33°58.08′ N. lat., 118°41.14′ W. long.;
(259) 33°50.93′ N. lat., 118°37.65′ W. long.;
(260) 33°39.54′ N. lat., 118°18.70′ W. long.;
(261) 33°35.42′ N. lat., 118°17.14′ W. long.;
(262) 33°32.15′ N. lat., 118°10.84′ W. long.;
(263) 33°33.71′ N. lat., 117°53.72′ W. long.;
(264) 33°31.17′ N. lat., 117°49.11′ W. long.;
(265) 33°16.53′ N. lat., 117°36.13′ W. long.;
(266) 33°06.77′ N. lat., 117°22.92′ W. long.;
(267) 32°58.94′ N. lat., 117°20.05′ W. long.;
(268) 32°55.83′ N. lat., 117°20.15′ W. long.;
(269) 32°46.29′ N. lat., 117°23.89′ W. long.;
(270) 32°42.00′ N. lat., 117°22.16′ W. long.;
(271) 32°39.47′ N. lat., 117°27.78′ W. long.; and
(272) 32°34.83′ N. lat., 117°24.69′ W. long.

4. On pages 11108–11114, in section IV. NMFS Actions, under B. Limited Entry Fishery, at the end of paragraph (1), Table 3 (North), Table 3 (South), Table 4 (North), and Table 4 (South) are revised to read as follows:

**IV. NMFS Actions**

*B. Limited Entry Fishery*

(1) * * *

* * * * *

BILLING CODE 3510–55–P

**Table 3 (North). 2004 Trip Limits and Gear Requirements[1/] for Limited Entry Trawl Gear North of 40°10' N. Latitude[2/]**

**Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table** 062004

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| | **Rockfish Conservation Area[10/] (RCA):** | | | | | | |
| | North of 40°10' N. lat. | 75 fm - modified 200 fm[11/] | 60 fm - 200 fm | 60 fm - 150 fm | 75 fm - 150 fm | | |
| | Small footrope or midwater trawl gear is required shoreward of the RCA; all trawl gear (large footrope, midwater trawl, and small footrope gear) is permitted seaward of the RCA. | | | | | | |
| | A vessel may have more than one type of limited entry bottom trawl gear on board, but the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear. A vessel that is trawling within the RCA (or other closed area) with trawl gear authorized for use within the RCA (or other closed area) may not have any other type of trawl gear on board. North of 40°10 N. lat., midwater trawl gear is permissible only for vessels participating in the primary whiting season. On non-whiting trips, vessels with both large footrope and midwater trawl gear on board during a trip may land the large footrope limits while fishing with large footrope gear seaward of the RCA. Crossover provisions apply. **See IV.A.(14)(b)(iv) and IV.B.(3)(c) for details.** | | | | | | |
| 1 | **Minor slope rockfish[3/]** | 4,000 lb/ 2 months | | 8,000 lb/ 2 months | | | |
| 2 | **Pacific ocean perch** | 3,000 lb/ 2 months | | | | | |
| 3 | **DTS complex** | Providing only large footrope gear is used to land any groundfish species during the entire limit period, then large footrope trawl trip limits apply. If small footrope gear[7/] is used at any time north of 40°10' N. lat. (shoreward or seaward of RCA) during the entire limit period, then small footrope trawl limits apply. | | | | | |
| 4 | Sablefish | | | | | | |
| 5 | large footrope gear | 9,300 lb/ 2 months | | 16,000 lb/ 2 months | 15,000 lb/ 2 months | | 11,000 lb/ 2 months |
| 6 | small footrope gear[7/] | 2,000 lb/ 2 months | | 10,000 lb/ 2 months | | | 5,000 lb/ 2 months |
| 7 | Longspine thornyhead | | | | | | |
| 8 | large footrope gear | 15,000 lb/ 2 months | | 18,000 lb/ 2 months | | | |
| 9 | small footrope gear[7/] | 1,000 lb/ 2 months | | | | | |
| 10 | Shortspine thornyhead | | | | | | |
| 11 | large footrope gear | 3,150 lb/ 2 months | | 4,500 lb/ 2 months | 4,100 lb/ 2 months | | |
| 12 | small footrope gear[7/] | 1,000 lb/ 2 months | | 3,000 lb/ 2 months | | | 1,000 lb/ 2 months |
| 13 | Dover sole | | | | | | |
| 14 | large footrope gear | 67,500 lb/ 2 months | | 32,000 lb/ 2 months | 31,000 lb/ 2 months | | 50,000 lb/ 2 months |
| 15 | small footrope gear[7/] | 10,000 lb/ 2 months | | 27,000 lb/ 2 months | | | 18,000 lb/ 2 months |
| 16 | **Flatfish** | Providing only large footrope gear is used to land any groundfish species during the entire limit period, then large footrope trawl trip limits apply. If small footrope gear[7/] is used at any time north of 40°10' N. lat. (shoreward or seaward of RCA) during the entire limit period, then small footrope trawl limits apply. | | | | | |
| 17 | All other flatfish, Petrale sole, & Rex sole | | | | | | |
| 18 | large footrope gear for All other flatfish[4/] & Rex sole | 100,000 lb/ 2 months | | | All other flatfish, rex sole, and petrale sole: 100,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole. | | 100,000 lb/ 2 months |
| 19 | large footrope gear for Petrale sole | Not limited | 100,000 lb/ 2 months | | | | Not limited |
| 20 | small footrope gear[7/] | 30,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole. | | 80,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole. | 80,000 lb/ 2 months, no more than 26,000 lb/ 2 months of which may be petrale sole. | | 70,000 lb/ 2 months, no more than 20,000 lb/ 2 months of which may be petrale sole. |
| 21 | Arrowtooth flounder | | | | | | |
| 22 | large footrope gear | Not limited | 150,000 lb/ 2 months | | | | Not limited |
| 23 | small footrope gear[7/] | 4,000 lb/ 2 months | 11,000 lb/ 2 months | | | | 8,000 lb/ 2 months |

*Table 3 (North). Continued*

| | | | | |
|---|---|---|---|---|
| 24 | **Whiting**[5/] | Before the primary whiting season: 20,000 lb/trip -- During the primary season: mid-water trawl permitted in the RCA. See IV.B.(3)(b) for season and trip limit details. -- After the primary whiting season: 10,000 lb/trip | | |
| 25 | **Minor shelf rockfish**[3/] **& Widow rockfish** | | | |
| 26 | large footrope trawl | CLOSED[6/] | 300 lb/ 2 months | |
| 27 | midwater trawl for Widow rockfish | Before the primary whiting season: CLOSED[6/] -- During primary whiting season: In trips of at least 10,000 lb of whiting, combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month. Mid-water trawl permitted in the RCA. See IV.B.(3)(b) for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED[6/] | | |
| 28 | small footrope trawl[7/] for minor shelf & widow | 300 lb/ month | 1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish | 300 lb/ month |
| 29 | **Canary rockfish** | | | |
| 30 | large footrope trawl | CLOSED[6/] | | |
| 31 | small footrope trawl[7/] | 100 lb/ month | 300 lb/ month | 100 lb/ month |
| 32 | **Yellowtail** | | | |
| 33 | large footrope trawl | CLOSED[6/] | | |
| 34 | midwater trawl | Before the primary whiting season: CLOSED[6/] -- During primary whiting season: In trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month. Mid-water trawl permitted in the RCA. See IV.B.(3)(b) for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED[6/] | | |
| 35 | small footrope trawl[7/] | In landings without flatfish, 1,000 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder. Total yellowtail landings not to exceed 10,000 lb/ 2 months, no more than 1,000 lb/ month of which may be landed without flatfish. | | |
| 36 | **Minor nearshore rockfish** | | | |
| 37 | large footrope trawl | CLOSED[6/] | | |
| 38 | small footrope trawl[7/] | 300 lb/ month | | |
| 39 | **Lingcod**[8/] | | | |
| 40 | large footrope trawl | CLOSED[6/] | 500 lb/ 2 months | |
| 41 | small footrope trawl[7/] | 800 lb/ 2 months | 1,000 lb/ 2 months | 800 lb/ 2 months |
| 42 | **Other Fish**[9/] | Not limited | | |

1/ Gear requirements and prohibitions are explained above. See IV. A.(14).
2/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.
3/ Bocaccio and chilipepper are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.
4/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.
5/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip all year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).
6/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).
7/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.
8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.
10/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at IV. A.(17)(f), that may vary seasonally.
11/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

**Table 3 (South). 2004 Trip Limits and Gear Requirements[1/] for Limited Entry Trawl Gear South of 40°10' N. Latitude[2/]**

**Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table** 062004

| | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|
| **Rockfish Conservation Area[10/] (RCA):** | | | | | | |
| 40°10' - 34°27' N. lat. | 75 fm - 150 fm (additional closure between the shoreline and 10 fm around the Farallon Islands) | | 100 fm - 150 fm (additional closure between the shoreline and 10 fm around the Farallon Islands) | | 75 fm - 150 fm (additional closure between the shoreline and 10 fm around the Farallon Islands) | |
| South of 34°27' N. lat. | 75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands | | 100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands | | 75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands | |
| Small footrope gear is required shoreward of the RCA; all trawl gear (large footrope, midwater trawl, and small footrope gear) is permitted seaward of the RCA. | | | | | | |
| A vessel may have more than one type of limited entry bottom trawl gear on board, but the most restrictive trip limit associated with the gear on board applies for that trip. For vessels using more than one type of trawl gear during a cumulative limit period, limits are additive up to the largest limit for the type of gear used during that period. See [11/] for example. A vessel that is trawling within the RCA (or other closed area) with trawl gear authorized for use within the RCA (or other closed area) may not have any other type of trawl gear on board. Crossover provisions apply. **See IV.A.(14)(b)(iv) and IV.B.(3)(c) for details.** | | | | | | |
| 1 **Minor slope rockfish[3/]** | | | | | | |
| 2 40°10' - 38° N. lat. | 7,000 lb/ 2 months | | 50,000 lb/ 2 months | | | |
| 3 South of 38° N. lat. | 40,000 lb/ 2 months | | | | | |
| 4 **Splitnose** | | | | | | |
| 5 40°10' - 38° N. lat. | 7,000 lb/ 2 months | | 50,000 lb/ 2 months | | | |
| 6 South of 38° N. lat. | 40,000 lb/ 2 months | | | | | |
| 7 **DTS complex** | If fishing north of 40°10' N. lat. at any time with small footrope gear during the cumulative limit period , differential trip limits based on footrope size will apply during the entire limit period. See Table 3 (North) and Section A. (12) for more details | | | | | |
| 8 Sablefish | 11,250 lb/ 2 months | | 14,500 lb/ 2 months | 13,000 lb/ 2 months | | |
| 9 Longspine thornyhead | 15,000 lb / 2 months | | 18,000 lb / 2 months | | | |
| 10 Shortspine thornyhead | 3,000 lb/ 2 months | | 4,500 lb/ 2 months | 4,100 lb/ 2 months | | |
| 11 Dover sole | 39,000 lb/ 2 months | | 49,000 lb/ 2 months | 48,000 lb/ 2 months | 49,000 lb/ 2 months | |
| 12 **Flatfish** | If fishing north of 40°10' N. lat. at any time with small footrope gear during the cumulative limit period, differential trip limits based on footrope size will apply during the entire limit period. See Table 3 (North) and Section A. (12) for more details | | | | | |
| 13 All other flatfish[4/] & Rex sole | 100,000 lb/ 2 months | All other flatfish plus petrale & rex sole: 100,000 lb/ 2 months, no more than 20,000 lb/ 2 months of which may be petrale sole | All other flatfish plus petrale & rex sole: 120,000 lb/ 2 months, no more than 20,000 lb/ 2 months of which may be petrale sole | | | 120,000 lb/ 2 months |
| 14 Petrale sole | No limit | | | | | No limit |
| 15 Arrowtooth flounder | No limit | 10,000 lb/ 2 months | | | | No limit |
| 16 **Whiting[5/]** | Before the primary whiting season: 20,000 lb/trip -- During the primary whiting season: mid-water trawl permitted in the RCA. See IV.B.(3)(b) for season and trip limit details. -- After the primary whiting season: 10,000 lb/trip | | | | | |
| 17 **Minor shelf rockfish, Widow, and Chilipepper rockfish[3/]** | | | | | | |
| 18 large footrope or midwater trawl for Minor shelf rockfish | 300 lb/ month | | | | | |
| 19 large footrope or midwater trawl for Chilipepper rockfish | 2,000 lb/ 2 months | | 12,000 lb/ 2 months | | 8,000 lb/ 2 months | |
| 20 large footrope or midwater trawl for Widow rockfish | CLOSED[6/] | | | | | |
| 21 small footrope trawl[7/] for minor shelf, widow & chilipepper | 300 lb/ month | | | 1,000 lb/ month, no more than 200 lb/month of which may be minor shelf and widow rockfish | | |
| 22 **Bocaccio** | | | | | | |
| 23 large footrope or midwater trawl | 100 lb/ month | | | 300 lb/ 2 months | | |
| 24 small footrope trawl[7/] | CLOSED[6/] | | | | | |

*Table 3 (South). Continued*

| | | | | |
|---|---|---|---|---|
| 25 | **Canary rockfish** | | | |
| 26 | large footrope or midwater trawl | CLOSED[8/] | | |
| 27 | small footrope trawl[7/] | 100 lb/ month | 300 lb/ month | 100 lb/ month |
| 28 | **Cowcod** | CLOSED[8/] | | |
| 29 | **Minor nearshore rockfish** | | | |
| 30 | large footrope or midwater trawl | CLOSED[8/] | | |
| 31 | small footrope trawl[7/] | 300 lb/ month | | |
| 32 | **Lingcod**[8/] | | | |
| 33 | large footrope or midwater trawl | CLOSED6/ | | 500 lb/ 2 months |
| 34 | small footrope trawl[7/] | 800 lb/ 2 months | 1,000 lb/ 2 months | 800 lb/ 2 months |
| 35 | **Other Fish**[9/] | Not limited | | |

1/ Gear requirements and prohibitions are explained above. See IV. A.(14).

2/ "South" means 40°10' N lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

3/ Yellowtail is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

4/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.

5/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip all year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).

6/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

7/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.

8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

10/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat./long. coordinates set out at IV. A.(17)(f), that may vary seasonally.

11/ Example: If a vessel harvests 800 lb of chilipepper rockfish with small footrope gear, it may harvest up to 11,200 lb of chilipepper rockfish with large footrope gear durin July and August.

**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

**Table 4 (North). 2004 Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Latitude[1/]**

**Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table** 062004

| | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|
| **Rockfish Conservation Area[8/] (RCA):** | | | | | | |
| North of 46°16' N. lat. | shoreline - 100 fm | | | | | |
| 46°16' N. lat. - 40°10' N. lat. | 30 fm - 100 fm | | | | | |
| 1 **Minor slope rockfish[4/]** | 4,000 lb/ 2 months | | | | | |
| 2 **Pacific ocean perch** | 1,800 lb/ 2 months | | | | | |
| 3 **Sablefish** | 300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months | | | | | |
| 4 **Longspine thornyhead** | 10,000 lb/ 2 months | | | | | |
| 5 **Shortspine thornyhead** | 2,100 lb/ 2 months | | | | | |
| 6 **Dover sole** | 5,000 lb/ month | | | | | |
| 7 **Arrowtooth flounder** | | | | | | |
| 8 **Petrale sole** | | | | | | |
| 9 **Rex sole** | | | | | | |
| 10 **All other flatfish[2/]** | | | | | | |
| 11 **Whiting[3/]** | 10,000 lb/ trip | | | | | |
| 12 **Minor shelf rockfish, widow, and yellowtail rockfish[4/]** | 200 lb/ month | | | | | |
| 13 **Canary rockfish** | CLOSED[5/] | | | | | |
| 14 **Yelloweye rockfish** | CLOSED[5/] | | | | | |
| 15 **Minor nearshore rockfish** | 5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[6/] | | | | | |
| 16 **Lingcod[7/]** | CLOSED[5/] | | 400 lb/ month | | | CLOSED[5/] |
| 17 **Other fish[9/]** | Not limited | | | | | |

1/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.
2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.
3/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip all year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).
4/ Bocaccio and chilipepper are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.
5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).
6/ For black rockfish north of Cape Alava (48°09'30" N. lat.), and between Destruction Island (47°40'00" N. lat.) and Leadbetter Point (46°38'10" N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
7/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
8/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat./long. coordinates set out at IV. A.(17)(f), that may vary seasonally.
9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.
**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

**Table 4 (South). 2004 Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Latitude[1/]**

**Other Limits and Requirements Apply – Read Sections IV. A. and B. NMFS Actions before using this table** 062004

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| | **Rockfish Conservation Area[7/] (RCA):** | | | | | | |
| | 40°10' - 34°27' N. lat. | 30 fm - 150 fm (also applies around islands, there is an additional closure between the shoreline and 10 fm around the Farallon Islands) | | 20 fm - 150 fm (also applies around islands, there is an additional closure between the shoreline and 10 fm around the Farallon Islands) | | 30 fm - 150 fm (also applies around islands, there is an additional closure between the shoreline and 10 fm around the Farallon Islands) | |
| | South of 34°27' N. lat. | 60 fm - 150 fm (also applies around islands) | | | | | |
| 1 | **Minor slope rockfish[4/]** | | | | | | |
| 2 | 40°10' - 38° N. lat. | 7,000 lb/ 2 months | | 50,000 lb/ 2 months | | | |
| 3 | South of 38° N. lat. | 40,000 lb/ 2 months | | | | | |
| 4 | **Splitnose** | | | | | | |
| 5 | 40°10' - 38° N. lat. | 7,000 lb/ 2 months | | 50,000 lb/ 2 months | | | |
| 6 | South of 38° N. lat. | 40,000 lb/ 2 months | | | | | |
| 7 | **Sablefish** | | | | | | |
| 8 | 40°10' - 36° N. lat. | 300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months | | | | | |
| 9 | South of 36° N. lat. | 350 lb/ day, or 1 landing per week of up to 1,050 lb | | | | | |
| 10 | **Longspine thornyhead** | 10,000 lb/ 2 months | | | | | |
| 11 | **Shortspine thornyhead** | 2,000 lb/ 2 months | | | | | |
| 12 | **Dover sole** | 5,000 lb/ month<br>When fishing for Pacific sanddabs, vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs. | | | | | |
| 13 | **Arrowtooth flounder** | | | | | | |
| 14 | **Petrale sole** | | | | | | |
| 15 | **Rex sole** | | | | | | |
| 16 | **All other flatfish[2/]** | | | | | | |
| 17 | **Whiting[3/]** | 10,000 lb/ trip | | | | | |
| 18 | **Minor shelf rockfish, widow, and yellowtail rockfish[4/]** | | | | | | |
| 19 | 40°10' - 34°27' N. lat. | 300 lb/ 2 months | CLOSED[5/] | 200 lb/ 2 months | | 300 lb/ 2 months | |
| 20 | South of 34°27' N. lat. | CLOSED[5/] | 2,000 lb/ 2 months | | | | |
| 21 | **Chilipepper rockfish** | 2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA | | | | | |
| 22 | **Canary rockfish** | CLOSED[5/] | | | | | |
| 23 | **Yelloweye rockfish** | CLOSED[5/] | | | | | |
| 24 | **Cowcod** | CLOSED[5/] | | | | | |
| 25 | **Bocaccio** | | | | | | |
| 26 | 40°10' - 34°27' N. lat. | 200 lb/ 2 months | CLOSED[5/] | 100 lb/ 2 months | 300 lb/ 2 months | | |
| 27 | South of 34°27' N. lat. | CLOSED[5/] | 300 lb/ 2 months | | | | |
| 28 | **Minor nearshore rockfish** | | | | | | |
| 29 | Shallow nearshore | | | | | | |
| 30 | 40°10' - 34°27' N. lat. | 300 lb/ 2 months | CLOSED[5/] | 500 lb/ 2 months | 600 lb/ 2 months | 500 lb/ 2 months | 300 lb/ 2 months |
| 31 | South of 34°27' N. lat. | CLOSED[5/] | 300 lb/ 2 months | | | | |
| 32 | Deeper nearshore | | | | | | |
| 33 | 40°10' - 34°27' N. lat. | 500 lb/ 2 months | CLOSED[5/] | 500 lb/ 2 months | | 400 lb/month | 500 lb/ 2 months |
| 34 | South of 34°27' N. lat. | CLOSED[5/] | 500 lb/ 2 months | 600 lb/ 2 months | | | 400 lb/ 2 months |
| 35 | California scorpionfish | CLOSED[5/] | 300 lb/ 2 months | | 400 lb/ 2 months | | 300 lb/ 2 months |

*Table 4 (South). Continued*

| | | | | |
|---|---|---|---|---|
| 36 | Lingcod[6/] | CLOSED[5/] | 400 lb/ month, when nearshore open | CLOSED[5/] |
| 37 | Other fish[8/] | Not limited | | |

1/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.
2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.
3/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip all year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).
4/ POP is included in the trip limits for minor slope rockfish.
5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).
6/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
7/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at IV. A.(17)(f) that may vary seasonally.
8/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

BILLING CODE 3510–55–C

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## Classification

These actions are authorized by the Pacific Coast groundfish FMP and their implementing regulations and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

The Assistant Administrator for Fisheries NOAA, NMFS, finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(3)(B), because providing prior notice and opportunity for comment would be impracticable. Providing prior notice and comment on the inseason adjustments would be impracticable because the data upon which these recommendations were based were provided to the Pacific Council and the Pacific Council made its recommendations at its June 13–18, 2004, meeting in Foster City, CA. As described below, there is not sufficient time after that meeting to draft this notice and undergo proposed and final rulemaking before the beginning of the next cumulative limit period, July 1, 2004, when these actions need to be in effect. Many of the previously scheduled management measures for the July–August period are more liberal than the adjustments contained in this inseason action. The delay required by notice and comment would allow sufficient fishing time so that most participants in the fishery could take the previously scheduled higher trip limits before this inseason action would be in effect. Therefore, for the actions to be implemented in this notice, prior notice and opportunity for comment would be impracticable because affording prior notice and opportunity for public comment would take too long, thus impeding the Agency's function of managing fisheries to approach without exceeding the OYs for federally managed species.

Adjustments to management measures in this inseason action include changes to the management measures for the limited entry groundfish fisheries. Changes to limited entry trawl trip limits for DTS species, yellowtail rockfish, and widow rockfish implemented with this inseason action are more conservative than previously scheduled DTS trip limits. These more conservative trip limits must be implemented in a timely manner to keep harvest of DTS species and yellowtail and widow rockfish within their 2004 OYs and/or to allow the fisheries to continue throughout the year. This inseason action contains a clarification of the intent and application of differential trip limits. Changes to differential trip limits, in the area between 40°10′ N. lat. and the U.S./Mexico border, relieve unnecessary restrictions. Incidental catch allowances for overfished species taken in the directed limited entry trawl and fixed gear fisheries for abundant groundfish stocks are also part of this inseason action. Because these incidental catch allowances will reduce discards in the Pacific Coast groundfish fisheries, while keeping the total mortality of overfished species within their 2004 OYs, they should be implemented as quickly as possible.

For these reasons, good cause also exists to waive the 30-day delay in effectiveness requirement under 5 U.S.C. 553 (d)(3).

These actions are taken under the authority of 50 CFR 660.323(b)(1) and are exempt from review under Executive Order 12866.

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

Dated: July 1, 2004.

**Alan D. Risenhoover,**

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

[FR Doc. 04–15379 Filed 7–1–04; 3:19 pm]

BILLING CODE 3510–22–P

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 660

**[Docket No. 040429134–4135–01; I.D. 062904A]**

### Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #4–Adjustment of the Commercial Salmon Fishery from Humbug Mountain, Oregon to the Oregon-California Border

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

**ACTION:** Closure; request for comments.

**SUMMARY:** NMFS announces that the commercial salmon fishery in the area from the Humbug Mountain, OR to the Oregon-California Border was modified to close at midnight on Saturday, June 19, 2004. This action was necessary to conform to the 2004 management goals. The intended effect of this action is to allow the fishery to operate within the seasons and quotas as specified in the 2004 annual management measures.

**DATES:** Closure in the area from the Humbug Mountain, OR, to the Oregon-California Border effective 2359 hours local time (l.t.), June 19, 2004, after which the fishery will remain closed until opened through an additional inseason action for the west coast salmon fisheries, which will be published in the **Federal Register**, or until the effective date of the next scheduled open period announced in the 2004 annual management measures. Comments will be accepted through July 22, 2004].

**ADDRESSES:** Comments on this action must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments can also be submitted via e-mail at the *2004salmonIA4.nwr@noaa.gov* address, or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments and include the docket number in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional

Administrator, Northwest Region, NMFS.

**FOR FURTHER INFORMATION CONTACT:** Christopher Wright, 206–526–6140.

**SUPPLEMENTARY INFORMATION:** The Regional Administrator modified the season for the commercial salmon fishery in the area from the Humbug Mountain, OR to the Oregon-California Border to close at midnight on Saturday, June 19, 2004. On June 18 the Regional Administrator determined that available catch and effort data indicated that the quota of 2,600 chinook salmon would be reached by midnight on Saturday, June 19, 2004. Automatic season closures based on quotas are authorized by regulations at 50 CFR 660.409(a)(1).

In the 2004 annual management measures for ocean salmon fisheries (69 FR 25026, May 5, 2004), NMFS announced the commercial fishery for all salmon except coho in the area from Humbug Mountain, OR, to the Oregon-California Border would open March 15 through May 31; June 1 through the earlier of June 30 or a 2,600–chinook quota; July 1 through the earlier of July 31 or a 1,600–chinook quota; August 1 through the earlier of August 29 or a 2,500–chinook quota; and September 1 through the earlier of September 30 or a 3,000–chinook quota.

On June 18, 2004, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council and Oregon Department of Fish and Wildlife by conference call. Information related to catch to date, the chinook catch rate, and effort data indicated that it was likely that the chinook quota would be reached by Saturday, June 19. As a result, the State of Oregon recommended, and the Regional Administrator concurred, that the area from Humbug Mountain, OR to the Oregon-California Border close effective at midnight on Saturday, June 19, 2004. All other restrictions that apply to this fishery remained in effect as announced in the 2004 annual management measures.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the state. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the above described action was given prior to the time this action was effective by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

## Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of this action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (69 FR 25026, May 5, 2004), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agency have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the fishery closure must be implemented to avoid exceeding the quota. Because of the rate of harvest in this fishery, failure to close the fishery upon attainment of the quota would allow the quota to be exceeded, resulting in fewer spawning fish and possibly reduced yield of the stocks in the future. For the same reasons, the AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3).

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

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

Dated: June 29, 2004.

**Alan D. Risenhoover,**

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

[FR Doc. 04–15255 Filed 7–6–04; 8:45 am]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 69, No. 129
Wednesday, July 7, 2004

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 993

**[Docket No. FV04–993–1 PR]**

### Dried Prunes Produced in California; Withdrawal of a Proposed Rule

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** This action withdraws a proposed rule published in the **Federal Register** on March 26, 2004 (69 FR 15736), on the establishment of an undersized prune regulation for the 2004–05 crop year under the Federal marketing order for dried prunes (order). The order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). On June 4, 2004, the California Agriculture Statistics Service (CASS) announced its forecast for the 2004 prune harvest at 70,000 natural condition tons, 60 percent below the average production for the past five years. Based on a 70,000 ton crop, there would be insufficient dried prunes to justify a 2004–05 undersized volume regulation. Therefore, the proposed rule is being withdrawn.

**EFFECTIVE DATE:** July 8, 2004.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938.

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

**SUPPLEMENTARY INFORMATION:** Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulate the handling of dried prunes produced in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This action withdraws a proposed rule published in the **Federal Register** on March 26, 2004 (69 FR 15736), on the establishment of an undersized prune regulation for the 2004–05 crop year for volume control purposes. The proposed rule would have required prunes passing through specified screen openings to be removed from human consumption outlets. For French prunes, the screen opening would have been increased from 23/32 to 24/32 of an inch in diameter; and for non-French prunes, the opening would have been increased from 28/32 to 30/32 of an inch in diameter. The primary intent behind this proposal was to remove the smallest, least desirable of the marketable size dried prunes to help balance the supply of dried prunes with demand. The proposed undersized regulation would have been in effect from August 1, 2004, through July 31, 2005.

Based on the CASS forecast of 70,000 natural condition tons for the 2004 prune harvest, there will be an insufficient supply of California dried prunes to meet the 2004–05 market demand (estimated at 150,000 natural condition tons). Implementation of the proposed undersized regulation would further reduce the supply of prunes entering human consumption outlets during the 2004–05 crop year and would not promote orderly marketing conditions or further marketing order marketing goals. Therefore, the proposed rule is being withdrawn.

The proposed rule regarding the establishment of an undersized regulation for dried prunes for the 2004–05 crop year, published in the **Federal Register** on March 26, 2004 (69 FR 15736), is hereby withdrawn.

**List of Subjects in 7 CFR Part 993**

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

**Authority:** 7 U.S.C. 601–674.

Dated: June 30, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 04–15283 Filed 7–6–04; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2001–NE–27–AD]**

**RIN 2120–AA64**

### Airworthiness Directives; Pratt & Whitney JT9D–59A, –70A, –7Q, and –7Q3 Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede an existing airworthiness directive (AD) for Pratt & Whitney (PW) JT9D–59A, –70A, –7Q, and –7Q3 turbofan engines. That AD currently requires fluorescent penetrant inspection (FPI) of high pressure turbine (HPT) second stage airseals, part numbers (P/Ns) 5002537–01, 788945, 753187, and 807410, knife-edges for cracks, each time the engine's HPT second stage airseal is accessible. This proposed AD would require replacing each existing HPT second stage airseal with an improved design HPT second stage airseal and modifying the 2nd stage HPT vane cluster assembly and 1st stage retaining blade HPT plate assembly at next piece-part exposure, but no later than five years after the effective date of the proposed AD. These actions would be considered terminating action to the repetitive inspections required by AD 2002–10–07. This proposed AD results from the manufacturer introducing an improved design HPT second stage airseal and

modifications to increase cooling. We are proposing this AD to prevent failure of the HPT second stage airseal due to cracks in the knife-edges, which if not detected could result in uncontained engine failure and damage to the airplane.

**DATES:** We must receive any comments on this proposed AD by September 7, 2004.

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

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–27–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*.

You can get the service information identified in this proposed AD from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Kevin Donovan, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01887–5299; telephone (781) 238–7743; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2001-NE-27-AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

### Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

### Discussion

On May 10, 2002, the FAA issued AD 2002–10–07, Amendment 39–12753 (67 FR 36092, May 23, 2002). That AD requires FPI of HPT second stage airseals, (P/Ns) 5002537–01, 788945, 753187, and 807410, knife-edges for cracks, each time the airseal is accessible. That AD was the result of reports of cracks found in the knife-edges of HPT second stage airseals during HPT disassembly. That condition, if not corrected, could result in failure of the HPT second stage airseal due to cracks in the knife-edges, which if not detected could result in uncontained engine failure and damage to the airplane.

### Actions Since We Issued AD 2002–10–07

Since we issued AD 2002–10–07, analysis by PW has revealed that thermal mechanical fatigue causes the cracks in the knife-edges and antirotation slots of HPT second stage airseals. Analysis has also revealed that material creep causes an excessive brace gap of the outer detail of HPT second stage airseals.

### Relevant Service Information

We have reviewed and approved the technical contents of PW Service Bulletin No. JT9D 6454, Revision 1, dated June 2, 2004, that describes procedures for addressing these conditions by:

- Introducing an improved design HPT second stage airseal that has a more efficient, 4 knife-edge design, to minimize leakage past the seal.
- Modifying the 2nd stage HPT vane cluster assembly and 1st stage retaining blade HPT plate assembly, to allow additional 13th and 15th stage turbine cooling air into the 1–2 Cavity.

### FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other engines of this same type design. We are proposing this AD, which would require introducing an improved design HPT second stage airseal, and modifying the 2nd stage HPT vane cluster assembly and 1st stage retaining blade HPT plate assembly, at next piece-part exposure but no later than five years after the effective date of the proposed AD. These actions are considered terminating action to the repetitive inspections required by AD 2002–10–07. The proposed AD would require that you do these actions using the service information described previously.

### Costs of Compliance

There are about 564 PW JT9D–59A, –70A, –7Q, and –7Q3 turbofan engines of the affected design in the worldwide fleet. We estimate that 176 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take approximately 210 work hours per engine to perform the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $117,696 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $23,116,896.

### Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2001–NE–27–AD" in your request.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by removing Amendment 39–12753 (67 FR 36092, May 23, 2002) and by adding a new airworthiness directive to read as follows:

**Pratt & Whitney:** Docket No. 2001–NE–27–AD. Supersedes AD 2002–10–07, Amendment 39–12753.

**Comments Due Date**

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by September 7, 2004.

**Affected ADs**

(b) This AD supersedes AD 2002–10–07, Amendment 39–12753.

*Applicability:* (c) This AD applies to Pratt & Whitney (PW) JT9D–59A, –70A, –7Q, and –7Q3 turbofan engines with high pressure turbine (HPT) second stage airseal, part number (P/N) 5002537–01, 788945, 753187, or 807410, installed. These engines are installed on, but not limited to, Airbus Industrie A300 series, Boeing 747 series, and McDonnell Douglas DC–10 series airplanes.

**Unsafe Condition**

(d) This AD results from the manufacturer introducing an improved design HPT second stage airseal and modifications to increase cooling. We are issuing this AD to prevent failure of the HPT second stage airseal due to cracks in the knife-edges, which if not detected could result in uncontained engine failure and damage to the airplane.

*Compliance:* (e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

**Replacement of HPT Second Stage Airseal**

(f) At the next piece-part exposure, but no later than five years after the effective date of this AD, replace the HPT second stage airseal with a P/N HPT second stage airseal that is not listed in this AD, and modify the 2nd stage HPT vane cluster assembly and 1st stage retaining blade HPT plate assembly. Use the Accomplishment Instructions of PW Service Bulletin No. JT9D 6454, Revision 1, dated June 2, 2004, to do this.

**Alternative Methods of Compliance**

(g) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

**Material Incorporated by Reference**

(h) None.

**Related Information**

(i) None.

Issued in Burlington, Massachusetts, on June 30, 2004.

**Mark C. Fulmer,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 04–15391 Filed 7–6–04; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2004–18557; Directorate Identifier 2003–NM–174–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Lockheed Model 1329 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Lockheed Model 1329 series airplanes. This proposed AD would require repetitive inspections to detect crack damage in the front spar cap assembly of the lower vertical stabilizer; reworking the spar cap doublers if no crack damage is found during any inspection; and repairing if any crack damage is found during any inspection. This proposed AD is prompted by reports of cracks in the front spar cap assembly of the lower vertical stabilizer at box beam station 24 on the aft side of the 25% chord line. We are proposing this AD to find and fix cracks in the front spar cap assembly of the lower vertical stabilizer, which could result in rapid crack propagation and failure of the front spar cap. Failure of the front spar cap could lead to loss of rudder control and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** We must receive comments on this proposed AD by August 23, 2004.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You can get the service information identified in this proposed AD from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605.

You may examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Carl Gray, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6131; fax (770) 703–6097.

**SUPPLEMENTARY INFORMATION:**

**Docket Management System (DMS)**

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form "Docket No. FAA–2004–99999." The Transport Airplane Directorate identifier is in the form "Directorate Identifier 2004–NM–999–AD." Each DMS AD docket also lists the directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

**Comments Invited**

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2004–18557; Directorate Identifier 2004–NM–174–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

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

**Examining the Docket**

You may examine the AD docket in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

**Discussion**

We have received reports of cracks in the front spar cap assembly of the lower vertical stabilizer at box beam station 24 on the aft side of the 25% chord line for certain Lockheed Model 1329 series airplanes. Investigation revealed that the cracks began at the upper aft fillet radius in the aft tang of the spar cap doublers, a location in the original design where several stress concentrations can accumulate to create a poor fatigue feature. Undetected cracks in the front spar cap assembly of the lower vertical stabilizer, if not found and repaired, could result in rapid crack propagation and failure of the front spar cap. Failure of the front spar cap could lead to loss of rudder control and consequent reduced controllability of the airplane.

**Relevant Service Information**

We have reviewed Lockheed Service Bulletin 329–302, dated July 9, 2003 (for Model 1329–23A, –23D, and –23E series airplanes); and Lockheed Service Bulletin 329II–55–4, dated July 9, 2003 (for Model 1329–25 series airplanes). These service bulletins describe procedures for the following actions:

1. Repetitive detailed inspections to detect crack damage in the front spar cap assembly of the lower vertical stabilizer.

2. Reworking the spar cap doublers by smoothing the radius to a finish to remove all burrs, sharp edges, and extraneous tool marks and by touching up the finish to prevent corrosion, if no crack damage is found during any inspection.

3. Repairing if any crack damage is found during any inspection.

The service bulletins also specify to report inspection findings to the manufacturer. We have determined that accomplishment of the actions specified in the service bulletins will adequately address the unsafe condition.

**FAA's Determination and Requirements of the Proposed AD**

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require repetitive inspections to detect crack damage in the front spar cap assembly of the lower vertical stabilizer; reworking the spar cap doublers if no crack damage is found during any inspection; and repairing if any crack damage is found during any inspection. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under "Differences Between the Proposed AD and the Service Bulletins."

**Differences Between the Proposed AD and the Service Bulletins**

Operators should note that, although the Lockheed service bulletins specify to inspect within a certain grace period "or at the next annual inspection, whichever occurs first," this proposed AD would require inspection within a grace period of 150 flight hours or 300 flight hours, depending on whether an airplane has accumulated more or less than 10,000 total flight hours.

Operators should note also that, although the Lockheed service bulletins specify that operators may contact the manufacturer for disposition of certain repair conditions, this proposed AD would require operators to repair those conditions in accordance with a method approved by the FAA.

Operators should also note that, although the Accomplishment Instructions of the referenced Lockheed service bulletins specify that operators may report all inspection findings to the manufacturer, this proposed AD would require operators to report all inspection findings to the FAA. Because the cause of the cracking is not known, these required inspection reports will help determine the extent of the cracking in the affected fleet. Based on the results of these reports, we may determine that further corrective action is warranted.

**Costs of Compliance**

This proposed AD would affect about 85 airplanes of U.S. registry and 98 airplanes worldwide. The proposed actions would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. No parts are required. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $5,525, or $65 per airplane.

**Regulatory Findings**

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**Lockheed:** Docket No. FAA–2004–18557; Directorate Identifier 2004–NM–174–AD.

**Comments Due Date**

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by August 23, 2004.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Lockheed Model 1329–23A, –23D, and –23E series airplanes, serial numbers 5001 through 5162 inclusive, and Lockheed Model 1329–25 series airplanes, serial numbers 5201 through 5240 inclusive; certificated in any category.

**Unsafe Condition**

(d) This AD was prompted by reports of cracks in the front spar cap assembly of the lower vertical stabilizer at box beam station 24 on the aft side of the 25% chord line. We are issuing this AD to find and fix cracks in the front spar cap assembly of the lower vertical stabilizer, which could result in rapid crack propagation and failure of the front spar cap, leading to loss of rudder control and consequent reduced controllability of the airplane.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Service Bulletin References**

(f) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For Model 1329–23A, –23D, and –23E series airplanes: Lockheed Service Bulletin 329–302, dated July 9, 2003; and

(2) For Model 1329–25 series airplanes: Lockheed Service Bulletin 329II–55–4, dated July 9, 2003.

**Initial and Repetitive Inspections**

(g) Do a detailed inspection to detect any crack damage in the left and right radius detail of the spar cap doublers, at the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, in accordance with the service bulletin.

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

(1) For airplanes that have accumulated 10,000 or more total flight hours as of the effective date of this AD: Inspect within 150 flight hours after the effective date of this AD. Repeat the detailed inspection thereafter at intervals not to exceed 150 flight hours.

(2) For airplanes that have accumulated fewer than 10,000 total flight hours as of the effective date of this AD: Inspect within 300 flight hours after the effective date of this AD. Repeat the detailed inspection thereafter at intervals not to exceed 300 flight hours. At the time the airplane has accumulated 10,000 or more flight hours since the most recent inspection, repeat the detailed inspection thereafter at intervals not to exceed 150 flight hours.

**No Damage Detected**

(h) If no crack damage is found during any inspection required by paragraph (g) of this AD, before further flight, rework the spar cap doublers by performing the actions in paragraphs (h)(1) and (h)(2) of this AD, in accordance with the service bulletin.

(1) Remove all burrs, sharp edges, and extraneous tool marks by smoothing the radius to an RMS 125 finish.

(2) Touch up finish to prevent corrosion.

**Damage Detected: Corrective Action**

(i) If any crack damage is found during any inspection required by paragraph (g) of this AD, and the service bulletin specifies to contact Lockheed Martin Technical Support Center for repair instructions: Before further flight, repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Atlanta ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

**Parts Installation**

(j) As of the effective date of this AD, no person shall install a spar cap doubler, part number (P/N) JE15–2 L/R or P/N JE15–15 L/R, on any airplane unless it has been reworked as required by paragraph (h) of this AD.

**Reporting Requirement**

(k) Submit a report of the findings (both positive and negative) of any inspection required by paragraph (g)(1) or (g)(2) of this AD to the Manager, Atlanta ACO, FAA, Small Airplane Directorate, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; fax (770) 703–6097; at the applicable time specified in paragraph (k)(1) or (k)(2) of this AD. (The report must include the inspection results, a description of any discrepancy found (*e.g.*, crack length and location), the airplane serial number, and the number of landings and flight hours on the airplane.) Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which any inspection required by paragraph (g) of this AD is accomplished after the effective date of this AD: Submit the report within 30 days after performing those inspections.

(2) For airplanes on which any inspection required by paragraph (g) of this AD has been accomplished before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

**Previously Accomplished Initial Inspections**

(l) Initial inspections accomplished within 12 months prior to the effective date of this AD in accordance with the service bulletin are considered acceptable for compliance with the applicable actions specified in paragraph (g) of this AD.

**Alternative Methods of Compliance (AMOCs)**

(m) The Manager, Atlanta ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on June 29, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–15381 Filed 7–6–04; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2001–NM–364–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Dassault Model Falcon 2000 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Dassault Model Falcon 2000 series airplanes. That action would have required performing an inspection to determine the serial number on the identification plate on each of the three hydraulic shut-off valve (HSOV) actuators on the left-hand and right-hand hydraulic reservoirs, and replacing an HSOV actuator with a new HSOV actuator, if necessary. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new data indicating that the identified unsafe condition specified in the NPRM does not exist on the affected

airplanes. Accordingly, the proposed rule is withdrawn.

**FOR FURTHER INFORMATION CONTACT:** Tom Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain Dassault Model Falcon 2000 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on August 23, 2002 (67 FR 54596). The proposed rule would have required performing an inspection to determine the serial number on the identification plate on each of the three hydraulic shut-off valve (HSOV) actuators on the left-hand and right-hand hydraulic reservoirs, and replacing an HSOV actuator with a new HSOV actuator, if necessary. The proposed actions were intended to ensure that proper HSOV actuators are installed on the hydraulic fluid reservoirs. In the event of an engine fire, a faulty HSOV, if not corrected, could allow the flow of flammable fluid to the engine nacelle, which could result in an engine nacelle fire that could not be readily extinguished.

### Actions That Occurred Since the NPRM Was Issued

Since the issuance of that NPRM, the manufacturer has provided the FAA with confirmation that the faulty HSOV actuators on all affected Model Falcon 2000 series airplanes have been replaced with new actuators, and that all the faulty actuators have been returned to the airplane manufacturer.

### FAA's Conclusions

Upon further consideration, the FAA has determined that the identified unsafe condition no longer exists on the affected airplanes. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another action in the future, nor does it commit the agency to any course of action in the future.

### Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 2001–NM–364–AD, published in the **Federal Register** on August 23, 2002 (67 FR 54596), is withdrawn.

Issued in Renton, Washington, on June 24, 2004.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–15380 Filed 7–6–04; 8:45 am]

**BILLING CODE 4910–13–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 60

**[ND–001–0011; FRL–7782–8]**

### Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for North Dakota; Revisions to the Air Pollution Control Rules; Delegation of Authority for New Source Performance Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule and delegation of authority.

**SUMMARY:** EPA is proposing to approve revisions to the State Implementation Plan submitted by the Governor of North Dakota with a letter dated April 11, 2003. The revisions affect portions of air pollution control rules regarding general provisions and emissions of particulate matter and sulfur compounds. This action is being taken under section 110 of the Clean Air Act. EPA is not acting on revisions to the shutdown and malfunction provisions, the construction and minor source permitting rules or the prevention of significant deterioration rules at this time. EPA will handle separately direct delegation requests for revisions to emission standards for hazardous air pollutants, emission standards for source categories and the State's Acid Rain Program.

In addition, EPA is providing notice that on November 6, 2003, North Dakota was delegated authority to implement and enforce certain New Source Performance Standards, as of January 31, 2002.

**DATES:** Comments must be received on or before August 6, 2004.

**ADDRESSES:** Submit your comments, identified by Docket ID No. ND–001–0011, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- E-mail: *long.richard@epa.gov* and *platt.amy@epa.gov*.
- Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.
- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. ND–001–0011. 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 Federal regulations.gov website is 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 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. 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. General Information of the **SUPPLEMENTARY INFORMATION** section of this document."

*Docket:* Some information in the docket is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the docket. You may view the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Amy Platt, Environmental Protection Agency, Region 8, (303) 312–6449, *Platt.Amy@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**



**Definitions**

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The word or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us,* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials NDDH mean or refer to the North Dakota Department of Health.

(iv) The initials *SIP* mean or refer to the State Implementation Plan.

(v) The word or initials *State* or *ND* mean the State of North Dakota, unless the context indicates otherwise.

## I. General Information

### *A. What Should I Consider As I Prepare My Comments for EPA?*

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

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

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. Summary of State Implementation Plan Revision

### *A. Procedural Background*

The Act requires States to follow certain procedures in developing implementation plans and plan revisions for submission to us. Sections 110(a)(2) and 110(l) of the Act provide that each implementation plan a State submits must be adopted after reasonable notice and public hearing.

To provide for public comment, the North Dakota Department of Health (NDDH), after providing adequate notice, held a public hearing on April 19, 2002 to address the revisions to the State Implementation Plan (SIP) and Air Pollution Control Rules. Following the public hearing, public comment period, and legal review by the North Dakota Attorney General's Office, the North Dakota State Health Council adopted the rule revisions, which became effective on March 1, 2003. The Governor of North Dakota submitted the SIP revisions to EPA with a letter dated April 11, 2003.

### *B. April 11, 2003 Revisions*

As noted above, we will handle separately the revisions in the April 11, 2003 submittal addressing North Dakota Air Pollution Control Rules Section 33–15–01–13, regarding shutdown and malfunction of an installation, Chapter 33–15–14, regarding construction and minor source permitting, and Chapter 33–15–15, regarding prevention of significant deterioration. In addition, we will handle separately the direct delegation requests for Chapter 33–15–13, regarding emission standards for hazardous air pollutants, Chapter 33–15–21, regarding the State's Acid Rain Program, and Chapter 33–15–22, regarding emission standards for hazardous air pollutants for source categories. The submittal also included a direct delegation request for standards of performance for new stationary sources (see below).

The revisions in the April 11, 2003 submittal to be addressed in this document pertain to portions of the general provisions and the restriction of emissions of particulate matter and sulfur compounds, which involve sections of the following chapters of the North Dakota Administrative Code (N.D.A.C.): 33–15–01 General Provisions; 33–15–05 Emissions of Particulate Matter Restricted; and 33–15–06 Emissions of Sulfur Compounds Restricted. EPA's review of these revisions has resulted in our proposing this approval. We are soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the Addresses section of this document.

1. Chapter 33–15–01, N.D.A.C., General Provisions

Revisions to Section 33–15–01–04, regarding definitions, included the addition of a definition for "pipeline quality natural gas" and an update to the baseline date for incorporating by reference the definition of volatile organic compounds to August 1, 2001. In addition, Sections 33–15–01–17 and 33–15–01–18, regarding enforcement and compliance certifications, were modified to indicate that information from compliance assurance monitoring protocols, which are in accordance with the requirements of the State's permitting chapter, is credible evidence of whether compliance is achieved. Because these revisions are consistent

with Federal requirements, we are proposing that they are approvable.

2. Chapter 33–15–05, N.D.A.C., Emissions of Particulate Matter Restricted

Section 33–15–05–02, regarding emissions from fuel burning equipment used for indirect heating, was revised to exempt fuel burning equipment that burns gaseous fuels from the emissions limitation requirements of the chapter. Burning gaseous fuels results in very low particulate matter emissions. Using AP–42 emission factors for natural gas and propane, the State calculated emission rates of 0.01 lb/$10^6$ Btu and 0.006 lb/$10^6$ Btu, respectively. This is contrasted with the allowable emission rate of Chapter 33–15–05 of 0.6 lb/$10^6$ Btu for a boiler rated at $10 \times 10^6$ Btu/hr. The State believes that, under normal operation, no unit burning gaseous fuels would ever exceed the limits of this chapter. The exempted sources will still be subject to the visible emission standards under Chapter 33–15–03, Restriction of Emission of Visible Air Contaminants, which allow the NDDH to take action should a malfunction occur. Since burning gaseous fuels results in very low particulate matter emissions, well below the emissions limitation requirements of the chapter, we propose that this revision to Section 33–15–05–02 is approvable.

In Subsection 33–15–05–03.3, Other Waste Incinerators, requirements for salvage waste incinerators and crematoriums were revised. Requirements were added for construction, operational, and recordkeeping standards for salvage incinerators. Requirements for installation and operation of a temperature recorder for the secondary chamber, as well as requirements for charging and operation, were added for crematoriums. Although there are no Federal requirements for crematoriums, the State believes that these revisions ensure that units are operating properly to protect human health and the environment. In addition, any new units will still be subject to the Ambient Air Quality Standards under Chapter 33–15–02, a visible emissions standard under Chapter 33–15–03, and prevention of significant deterioration increments under Chapter 33–15–15. Therefore, we propose that these revisions are approvable.

Finally, 33–15–05–04, Methods of Measurement, was revised to allow various alternative test methods for determining percent oxygen or carbon dioxide, and the reference for fuel factors (F factors) was updated. Since these revisions simply incorporated reference information from Federal rules, we are proposing that they are approvable.

3. Chapter 33–15–06, N.D.A.C., Emissions of Sulfur Compounds Restricted

Section 33–15–06–01, Restriction of Emissions of Sulfur Dioxide ($SO_2$) from Use of Fuel, was revised to provide an exemption from the requirements of the chapter for installations that burn pipeline quality natural gas or commercial-grade propane. However, sources that burn any fuel must still comply with the Ambient Air Quality Standards of Chapter 33–15–02 and the prevention of significant deterioration increments of Chapter 33–15–15. Since sources that burn pipeline quality natural gas or commercial grade propane are expected to emit far less $SO_2$ than the emissions limitation requirements of the chapter, we propose that this revision is approvable.

In addition, section 33–15–06–03, Methods of Measurement, was updated to incorporate by reference the Federal F factors. We propose that these revisions are approvable since they are consistent with Federal requirements.

## III. Delegation of Authority

### *A. New Source Performance Standards*

With the April 11, 2003 submittal, North Dakota requested delegation of authority for revisions to the New Source Performance Standards (NSPS), promulgated in Chapter 33–15–12, N.D.A.C. On November 6, 2003 delegation was given with the following letter: Ref: 8P–AR

Honorable John Hoeven,
*Governor of North Dakota, State Capitol,*
Bismarck, North Dakota 58505–0001

Re: Delegation of Clean Air Act New Source Performance Standards

Dear Governor Hoeven: In an April 11, 2003, letter from you and an April 17, 2003, letter from David Glatt, North Dakota Department of Health (NDDH), the State of North Dakota submitted revisions to its Air Pollution Control Rules and requested direct delegation to implement and enforce the Federal New Source Performance Standards (NSPS). Specifically, North Dakota Administrative Code Chapter 33–15–12, Standards of Performance for New Stationary Sources, was revised to update the citation for the incorporated Federal NSPS in 40 CFR Part 60 as those in effect on January 31, 2002, with the exception of subpart Eb, which the State has not adopted.

Subsequent to States adopting NSPS regulations, EPA delegates the authority for the implementation and enforcement of those NSPS, so long as the State's regulations are equivalent to the Federal regulations. EPA reviewed the pertinent statutes and regulations of the State of North Dakota and determined that they provide an adequate and effective procedure for the implementation and enforcement of the NSPS by the State. Therefore, pursuant to Section 111(c) of the Clean Air Act (Act), as amended, and 40 CFR Part 60, EPA hereby delegates its authority for the implementation and enforcement of the NSPS to the State of North Dakota as follows:

(A) Responsibility for all sources located, or to be located, in the State of North Dakota subject to the standards of performance for new stationary sources promulgated in 40 CFR Part 60. The categories of new stationary sources covered by this delegation are all NSPS subparts in 40 CFR Part 60, as in effect on January 31, 2002, with the exception of subpart Eb, which the State has not adopted. *Note this delegation does not include the emission guidelines in subparts Cb, Cc, Cd, Ce, BBBB, and DDDD. These subparts require state plans which are approved under a separate process pursuant to Section 111(d) of the Act.*

(B) Not all authorities of NSPS can be delegated to States under Section 111(c) of the Act, as amended. The EPA Administrator retains authority to implement those sections of the NSPS that require: (1) Approving equivalency determinations and alternative test methods, (2) decision making to ensure national consistency, and (3) EPA rulemaking to implement. Therefore, of the NSPS of 40 CFR Part 60 being delegated in this letter, the enclosure lists examples of sections in 40 CFR Part 60 that cannot be delegated to the State of North Dakota.

(C) The North Dakota Department of Health (NDDH) and EPA will continue a system of communication sufficient to guarantee that each office is always fully informed and current regarding compliance status of the subject sources and interpretation of the regulations.

(D) Enforcement of the NSPS in the State will be the primary responsibility of the NDDH. If the NDDH determines that such enforcement is not feasible and so notifies EPA, or where the NDDH acts in a manner inconsistent with the terms of this delegation, EPA may exercise its concurrent enforcement authority pursuant to section 113 of the Act, as amended, with respect to sources within the State of North Dakota subject to NSPS.

(E) The State of North Dakota will at no time grant a variance or waiver from compliance with NSPS regulations. Should the NDDH grant such a variance or waiver, EPA will consider the source receiving such relief to be in violation of the applicable Federal regulation and initiate enforcement action against the source pursuant to section 113 of the Act. The granting of such relief by the NDDH shall also constitute grounds for revocation of delegation by EPA.

(F) If at anytime there is a conflict between a State regulation and a Federal regulation (40 CFR Part 60), the Federal regulation must be applied if it is more stringent than that of the State. If the State does not have the authority to enforce the more stringent Federal regulation, this portion of the delegation may be revoked.

(G) If the Regional Administrator determines that a State procedure for

enforcing or implementing the NSPS is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the NDDH.

(H) Acceptance of this delegation of presently promulgated NSPS does not commit the State of North Dakota to accept delegation of future standards and requirements. A new request for delegation will be required for any standards not included in the State's requests of April 11, and 17, 2003.

(I) Upon approval of the Regional Administrator of EPA Region 8, the Director of the NDDH may subdelegate his authority to implement and enforce the NSPS to local air pollution control authorities in the State when such authorities have demonstrated that they have equivalent or more stringent programs in force.

(J) The State of North Dakota must require reporting of all excess emissions from any NSPS source in accordance with 40 CFR 60.7(c).

(K) Performance tests shall be scheduled and conducted in accordance with the procedures set forth in 40 CFR Part 60 unless alternate methods or procedures are approved by the EPA Administrator. Although the Administrator retains the exclusive right to approve equivalent and alternate test methods as specified in 40 CFR 60.8(b)(2) and (3), the State may approve minor changes in methodology provided these changes are reported to EPA Region 8. The Administrator also retains the right to change the opacity standard as specified in 40 CFR 60.11(e).

(L) Determinations of applicability such as those specified in 40 CFR 60.5 and 60.6 shall be consistent with those which have already been made by the EPA.

(M) Alternatives to continuous monitoring procedures or reporting requirements, as outlined in 40 CFR 60.13(i), may be approved by the State with the prior concurrence of the Regional Administrator.

(N) If a source proposes to modify its operation or facility which may cause the source to be subject to NSPS requirements, the State shall notify EPA Region 8 and obtain a determination on the applicability of the NSPS regulations.

(O) Information shall be made available to the public in accordance with 40 CFR 60.9. Any records, reports, or information provided to, or otherwise obtained by, the State in accordance with the provisions of these regulations shall be made available to the designated representatives of EPA upon request.

(P) All reports required pursuant to the delegated NSPS should not be submitted to the EPA Region 8 office, but rather to the NDDH.

(Q) As 40 CFR Part 60 is updated, North Dakota should revise its regulations accordingly and in a timely manner and submit to EPA requests for updates to its delegation of authority.

EPA is approving North Dakota's request for NSPS delegation for all areas within the State except for the following: lands within the exterior boundaries of the Fort Berthold, Fort Totten, Standing Rock and Turtle Mountain Indian Reservations; and any other areas which are "Indian Country" within the meaning of 18 U.S.C. 1151.

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objections from you within ten days of the date on which you receive this letter, the State of North Dakota will be deemed to accept all the terms of this delegation. EPA will publish an information notice in the **Federal Register** in the near future to inform the public of this delegation, in which this letter will appear in its entirety.

If you have any questions on this matter, please contact me or have your staff contact Richard Long, Director of our Air and Radiation Program, at (303) 312–6005.

Sincerely yours,

Robert E. Roberts,
*Regional Administrator.*

Enclosures

cc: David Glatt, NDDH,
Terry O'Clair, NDDH

**Enclosure to Letter Delegating NSPS in 40 CFR Part 60, Effective Through January 31, 2002, to the State of North Dakota**

EXAMPLES OF AUTHORITIES IN 40 CFR PART 60 WHICH CANNOT BE DELEGATED

| 40 CFR subparts | Section(s) |
|---|---|
| A | 60.8(b)(2) and (b)(3), and those sections throughout the standards that reference 60.8(b)(2) and (b)(3); 60.11(b) and (e). |
| Da | 60.45a. |
| Db | 60.44b(f), 60.44b(g) and 60.49b(a)(4). |
| Dc | 60.48c(a)(4). |
| Ec | 60.56c(i), 60.8. |
| J | 60.105(a)(13)(iii) and 60.106(i)(12). |
| Ka | 60.114a. |
| Kb | 60.111b(f)(4), 60.114b, 60.116b(e)(3)(iii), 60.116b(e)(3)(iv), and 60.116b(f)(2)(iii). |
| O | 60.153(e). |
| S | 60.195(b). |
| DD | 60.302(d)(3). |
| GG | 60.332(a)(3) and 60.335(a). |
| VV | 60.482–1(c)(2) and 60.484. |
| WW | 60.493(b)(2)(i)(A) and 60.496(a)(1). |
| XX | 60.502(e)(6). |
| AAA | 60.531, 60.533, 60.534, 60.535, 60.536(i)(2), 60.537, 60.538(e) and 60.539. |
| BBB | 60.543(c)(2)(ii)(B). |
| DDD | 60.562–2(c). |
| GGG | 60.592(c). |
| III | 60.613(e). |
| JJJ | 60.623. |
| KKK | 60.634. |
| NNN | 60.663(f). |
| QQQ | 60.694. |
| RRR | 60.703(e). |
| SSS | 60.711(a)(16), 60.713(b)(1)(i) and (ii), 60.713(b)(5)(i), 60.713(d), 60.715(a) and 60.716. |
| TTT | 60.723(b)(1), 60.723(b)(2)(i)(C), 60.723(b)(2)(iv), 60.724(e) and 60.725(b). |
| VVV | 60.743(a)(3)(v)(A) and (B), 60.743(e), 60.745(a) and 60.746. |
| WWW | 60.754(a)(5). |

*B. Error in November 6, 2003, NSPS Delegation of Authority*

Please note that in the November 6, 2003, delegation of authority to the State of North Dakota, we made an error. We inadvertently omitted one of the authorities in 40 CFR Part 60 which cannot be delegated to the State. Specifically, in the enclosure to the delegation letter, the table entitled "Examples of Authorities in 40 CFR Part 60 Which Cannot Be Delegated" should have included the following entry: 40 CFR Subpart CCCC Section 60.2030(c).

The omission relates to implementation and enforcement of Subpart CCCC, Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for Which Construction is Commenced After November 30, 1999 or for Which Modification or Reconstruction is Commenced On or After June 1, 2001. The State has indicated that they are aware of only one source that will be subject to this subpart but no permit to operate has been issued yet. Given that we do not anticipate any issues related to this authority to arise in the near term, we will not amend the enclosure to the delegation letter to the Governor of North Dakota until the next time the State updates its NSPS regulations. Generally, the State conducts these updates on a one to two year cycle. Regardless, the Federal NSPS regulations, including those authorities which can and cannot be delegated, always take precedence.

**IV. Section 110(l)**

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the National Ambient Air Quality Standards (NAAQS) or any other applicable requirements of the Act. The North Dakota SIP revisions that are the subject of this document do not interfere with the attainment or maintenance of the NAAQS or any other applicable requirements of the Act. The SIP revisions to portions of N.D.A.C. Chapter 33–15–01, regarding the State's general provisions, simply added a definition, updated the baseline date for incorporating by reference the definition of volatile organic compounds, and added and/or clarified several administrative and reporting requirements. These changes are consistent with Federal requirements and rules. The SIP revisions to N.D.A.C. Chapter 33–15–05, regarding the control of particulate matter emissions, address sources that emit far lower emissions than the limitations of the chapter (because they burn gaseous fuels), provide requirements where there are no existing Federal requirements, and simply incorporate reference information from Federal rules. Finally, the SIP revisions to N.D.A.C. Chapter 33–15–06, regarding the control of sulfur compound emissions, address installations that are expected to emit far less $SO_2$ than the emissions limitations of the chapter (because they burn pipeline quality natural gas or commercial-grade propane) and simply incorporate reference information from Federal rules. These revisions do not interfere with the attainment or maintenance of the NAAQS or any other applicable requirements of the Act.

**V. Proposed Action**

EPA is proposing to approve specific rule revisions to the North Dakota SIP, as covered in this document and submitted by the Governor with a letter dated April 11, 2003. The revisions in the April 11, 2003 submittal which we are proposing to approve in this document involve portions of the following chapters of the North Dakota Administrative Code: 33–15–01 General Provisions; 33–15–05 Emissions of Particulate Matter Restricted; and 33–15–06 Emissions of Sulfur Compounds Restricted. We are not proposing action at this time on revisions to the shutdown and malfunction provisions, the construction and minor source permitting rules nor the prevention of significant deterioration rules. In addition, the requests for direct delegation of Chapter 33–15–13, Emission Standards for Hazardous Air Pollutants, Chapter 33–15–21, Acid Rain Program and Chapter 33–15–22, Emission Standards for Hazardous Air Pollutants for Source Categories, are being handled separately.

Finally, as requested by the State with its April 11, 2003 submittal, we are providing notice that we granted delegation of authority to North Dakota on November 6, 2003, to implement and enforce the NSPS promulgated in 40 CFR part 60, promulgated as of January 31, 2002 (except subpart Eb, which the State has not adopted). However, the State's NSPS authorities do not include those authorities which cannot be delegated to the states, as defined in 40 CFR part 60.

**VI. 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 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, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

*40 CFR Part 60*

Air pollution control, Aluminum, Ammonium sulfate plants, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Household appliances, Insulation, Intergovernmental relations, Iron, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Tires, Urethane, Vinyl, Waste treatment and disposal, Wool, Zinc.

Dated: June 28, 2004.

**Robert E. Roberts,**

*Regional Administrator, Region 8.*

[FR Doc. 04–15341 Filed 7–6–04; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

[OAR–2004–0068; FRL–7782–1]

RIN 2060–AK35

## Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing a facility-specific $NO_X$ standard for a steam generating unit which simultaneously combusts fossil fuel and chemical by-product waste at the Weyerhaeuser Company facility located in New Bern, North Carolina. New source performance standards (NSPS) limiting emissions of nitrogen oxides ($NO_X$) from industrial-commercial-institutional steam generating units capable of combusting more than 100 million British thermal units (Btu) per hour were proposed on June 19, 1984 and were promulgated on November 25, 1986. The standards limit $NO_X$ emissions from the combustion of fossil fuels, as well as the combustion of fossil fuels with other fuels or wastes. The standards include provisions for facility-specific $NO_X$ standards for steam generating units which simultaneously combust fossil fuel and chemical by-product waste(s) under certain conditions.

In the Rules and Regulations section of this **Federal Register**, we are taking direct final action on the proposed amendments because we view the amendments as noncontroversial and we anticipate no significant adverse comments. We have explained our reasons for the proposed amendments in the preamble to the direct final rule.

If we receive no significant adverse comments, we will take no further action on the proposed amendments. If we receive significant adverse comments, we will withdraw only those provisions on which we received significant adverse comments. We will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn. If part or all of the direct final rule amendments in the Rules and Regulations section of this **Federal Register** are withdrawn, all comments pertaining to those provisions will be addressed in a subsequent final action based on the proposed amendments. We will not institute a second comment period on the subsequent final action. Any parties interested in commenting must do so at this time.

**DATES:** *Comments.* Comments must be received on or before August 6, 2004, unless a hearing is requested by July 19, 2004. If a timely hearing request is submitted, we must receive written comments on or before August 23, 2004.

**ADDRESSES:** Submit your comments, identified by Docket ID No. OAR–2004–0068, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online 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 online instructions for submitting comments.
- *E-mail: air-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* EPA Docket Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a duplicate copy, if possible.
- *Hand Delivery:* Air and Radiation Docket, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B–108, 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.

We request that a separate copy also be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

*Instructions:* Direct your comments to Docket ID No. OAR–2004–0068. 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. For additional information about EPA's public docket visit EDOCKET online or see the **Federal Register** of May 31, 2002 (67 FR 38102).

*Docket:* All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, 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.

*Public Hearing.* If a public hearing is held, it will be held at 10 a.m. at the EPA's Environmental Research Center Auditorium, Research Triangle Park, North Carolina or at an alternate site nearby.

**FOR FURTHER INFORMATION CONTACT:** Mr. James A. Eddinger, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5426; facsimile number (919) 541–5450; electronic mail address *eddinger.jim@epa.gov*.

**SUPPLEMENTARY INFORMATION:** *Regulated Entities.* The only regulated entity that will be affected by the proposed amendments is the Weyerhaeuser Company facility located in New Bern, North Carolina.

**What Should I Consider as I Prepare My Comments for EPA?**

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

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

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

*Public Hearing.* Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Kelly Hayes, Combustion Group, Emission Standards Division (C439–01), Research Triangle Park, NC 27711, telephone number (919) 541–5578, at least 2 days in advance of the potential date of the public hearing. Persons interested in attending the public hearing must also call Ms. Hayes to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of today's proposal will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed 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.

*Direct Final Rule.* A direct final rule identical to the proposal is published in the Rules and Regulations section of this **Federal Register**. If we receive any adverse comment pertaining to the amendment in the proposal, we will publish a timely notice in the **Federal Register** informing the public that the amendments are being withdrawn due to adverse comment. We will address all public comments concerning the withdrawn amendments in a subsequent final rule. If no relevant adverse comments are received, no further action will be taken on the proposal, and the direct final rule will become effective as provided in that action.

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 supplemental information, the detailed rationale for the proposal, and the regulatory revisions, see the information provided in the direct final rule published in a separate part of this **Federal Register**.

**Statutory and Executive Order Reviews**

For a complete discussion of all of the administrative requirements applicable to this action, see the direct final rule in the Rules and Regulations section of this **Federal Register**.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed rule amendments on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 100 or 1,000 employees, or fewer than 4 billion kilowatt-hours (kW-hr) per year of electricity usage, depending on the size definition for the affected North American Industry Classification System (NAICS) code; (2) a small governmental 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 is not dominant in its field. It should be noted that small entities in six NAICS codes may be affected by the proposed rule amendments, and the small business definition applied to each industry by

NAICS code is that listed in the Small Business Administration (SBA) size standards (13 CFR 121).

After considering the economic impacts of today's proposed rule amendments on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. The proposed rule will not impose any requirements on small entities because it does not impose any additional regulatory requirements.

For additional information, see the direct final rule published in the Rules and Regulations section of this **Federal Register** publication.

**List of Subjects in 40 CFR Part 60**

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 23, 2004.

**Jeffrey R. Holmstead,**

*Assistant Administrator.*

[FR Doc. 04–15205 Filed 7–6–04; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[OPP–2004–0140; FRL–7362–2]**

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

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to revoke all tolerances for residues of the insecticides allethrin and bendiocarb, plant growth regulator fenridazon potassium, herbicide molinate, and biological pesticide *Burkholderia cepacia*, because EPA canceled food registrations or deleted food uses from registrations following requests for voluntary cancellation or use deletion by the registrants. EPA expects to determine whether any individuals or groups want to support these tolerances. The regulatory actions proposed in this document contribute toward the Agency's tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA), section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. The regulatory actions proposed in this document pertain to the proposed revocation of 110 tolerances and tolerance exemptions of which 106 would be counted as tolerance reassessments toward the August 2006 review deadline.

**DATES:** Comments must be received on or before September 7, 2004.

**ADDRESSES:** Submit your comments, identified by docket ID number OPP–2004–0140, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *Agency Website*: *http://www.epa.gov/edocket/*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *E-mail*: Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0140.
- *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0140.
- *Hand Delivery/carrier*: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 Bell Street, Arlington, VA, Attention: Docket ID Number OPP–2004–0140. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to docket ID number OPP–2004–0140. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL–7181–7).

*Docket:* All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 Bell St., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; e-mail address: *nevola.joseph@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

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

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

This listing is not intended to be exhaustive, but rather provides a guide

for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit IIA. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

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

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

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

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

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

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

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

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

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

*D. What Can I do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?*

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60–day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f) if needed. The order would specify data needed and the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

## II. Background

*A. What Action is the Agency Taking?*

EPA is proposing to revoke certain tolerances for residues of the insecticides allethrin and bendiocarb, plant growth regulator fenridazon potassium, herbicide molinate, and the biological pesticide *Burkholderia cepacia* because these specific tolerances correspond to uses no longer current or registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in the United States. It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

1. *Allethrin.* Many food use registrations for allethrin were cancelled in 1989 and 1991 due to non-payment of maintenance fees. In the **Federal Register** of March 18, 2002, (67 FR 11965) (FRL–6826–6) EPA had proposed the revocation of 60 tolerances in 40 CFR 180.113 and tolerance exemptions in 40 CFR 180.1002 for residues of the insecticide allethrin in or on certain commodities because it was no longer registered under FIFRA for use on those commodities. Other tolerances were not proposed for revocation at that time, including tolerances for the grains of barley, corn, oats, popcorn, rye, sorghum, and wheat and tolerance exemptions for corn, popcorn, mushroom, and sorghum grain. During the 60–day public comment period provided by that proposal, the registrant, Valent BioSciences Corporation, expressed concern in a letter dated April 15, 2002 that allethrin needed to be defined prior to any revocations because there are several stereoisomers of allethrin (004001). Valent noted that such revocations would not affect domestic uses of the allethrins. However, Valent asked that the Agency identify the compound or compounds associated with the tolerances and tolerance exemptions proposed for revocation so that it could consider whether to support any tolerances for importation purposes concerning allethrin stereoisomers; i.e., bioallethrin, s-bioallethrin, or d-cis-trans-allethrin.

The other allethrin stereoisomers (bioallethrin, 004003; s-bioallethrin, 004004; and d-cis-trans-allethrin, 004005) are later mixtures that are more refined for the "d-trans of d" isomer, which appears to have the primary pesticidal effect. After reviewing labels for these allethrin-stereoisomer active ingredients, EPA has determined that their current active registered uses are not associated with any of the existing tolerances in 40 CFR 180.113 or tolerance exemptions in 40 CFR 180.1002 for allethrin (004001). These allethrin stereoisomers are primarily used as flying insect killers and repellents.

During April 2004, in communications with Valent BioSciences, EPA defined the tolerances

in 40 CFR 180.113 and tolerance exemptions in 40 CFR 180.1002 as associated with residues of allethrin (004001) as the sole active ingredient; i.e., these tolerances and exemptions are not associated with residues of other stereoisomers (004003, 004004, or 004005). Also, the Agency asked Valent to clarify any need to support tolerances for purposes of importation. In a communication dated April 21, 2004, Valent answered that it now has no concerns regarding a need to support import tolerances for allethrin (004001).

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

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

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

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

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

4. *Fenridazon potassium.* On July 25, 2003 (68 FR 44081) (FRL–7315–6), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of a request from the registrant for cancellation of the last active fenridazon potassium product registration. EPA approved the registrants' requests for voluntary cancellation and issued cancellation orders on November 5, 2003 (68 FR 62582) (FRL–7328–7) with an effective date of November 5, 2003. The registrant has not manufactured the canceled product since 1989. No existing stocks are expected to be in the channels of trade. No active registrations exist and therefore the tolerances are no longer needed. Consequently, EPA is proposing to revoke the tolerances in 40 CFR 180.423 for residues of the hybridizing agent potassium salt of fenridazon in or on cattle, fat; cattle, kidney; cattle, liver; cattle, meat; cattle, meat byproducts; egg; goat, fat; goat, kidney; goat, liver; goat, meat; goat, meat byproducts; hog, fat; hog, kidney; hog, liver; hog, meat; hog, meat byproducts; horse, fat; horse, kidney; horse, liver; horse, meat; horse, meat byproducts; milk; poultry, fat; poultry, meat; poultry, meat byproducts; sheep, fat; sheep, kidney; sheep, liver; sheep, meat; sheep, meat byproducts; wheat, grain; and wheat, straw; all to be revoked effective on the date of publication of the final rule in the **Federal Register**.

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

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

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

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

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

A "tolerance" represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 301 et seq., as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods (21 U.S.C. 346(a)). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of the FFDCA. Such food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. et seq.). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

EPA's general practice is to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as "import tolerances," are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

*C. When do These Actions Become Effective?*

For this proposed rule, the proposed revocations will affect tolerances for uses which have been canceled, in some cases, for many years. With the exception of certain tolerances for bendiocarb and molinate, for which EPA is proposing specific expiration/revocation dates, the Agency is proposing that the revocations for allethrin, *Burkholderia cepacia* and fenridazone potassium become effective on the date of publication for the final rule in the **Federal Register**. With the exception of bendiocarb and molinate, the Agency believes that existing stocks of pesticide products labeled for the uses associated with the tolerances proposed for revocation have been completely exhausted and that treated commodities have cleared the channels of trade. EPA is proposing expiration/revocation dates of April 26, 2005 for specific bendiocarb tolerances and September 1, 2009 for specific molinate tolerances. The Agency believes that these revocation dates allow users to exhaust stocks and allow sufficient time for passage of treated commodities through the channels of trade. However, if EPA is presented with information that existing stocks would still be available and that information is verified, the Agency will consider extending the expiration date of the tolerance.

If you have comments regarding existing stocks and whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under **SUPPLEMENTARY INFORMATION.**

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any

residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

*D. What Is the Contribution to Tolerance Reassessment?*

By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. As of June 21, 2004, EPA has reassessed over 6,670 tolerances. This document proposes to revoke a total of 110 tolerances and tolerance exemptions of which 106 would be counted as tolerance reassessments toward the August, 2006 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

## III. Are The Proposed Actions Consistent with International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standards established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/*. On the Home Page select "Laws, Regulations, and Dockets," then select "Regulations and Proposed Rules" and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the "Federal Register" listings at *http://www.epa.gov/fedrgstr/*.

## IV. Statutory and Executive Order Reviews

In this proposed rule EPA is proposing to revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticides named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposed revocations that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable

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

**List of Subjects in 40 CFR Part 180**

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

Dated: June 21, 2004.

**James Jones,**

*Director, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

## PART 180—[AMENDED]

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

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

**§ 180.113 [Removed]**

■ 2. Section 180.113 is removed.

■ 3. In § 180.228, the table in paragraph (a), is revised to read as follows:

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

(a) * * *

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

* * * * *

**§ 180.423 [Removed]**

■ 4. Section 180.423 is removed.

■ 5. In § 180.530 paragraphs (a)(1) and (2) are revised to read as follows:

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

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

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

* * * * *

**§ 180.1002 [Removed]**

■ 6. Section 180.1002 is removed.

**§ 180.1115 [Removed]**

■ 7. Section 180.1115 is removed.

[FR Doc. 04–15211 Filed 7–6–04; 8:45 am]

BILLING CODE 6560–50–S

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Part 67

**[Docket No. FEMA–P–7651]**

### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

**National Environmental Policy Act**

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

**Regulatory Classification**

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 12612, Federalism**

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

**PART 67—[AMENDED]**

1. The authority citation for Part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.4 [Amended]**

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

| Source of flooding and location of referenced elevation | Elevation in feet (NAVD) [1] existing/modified | Communities affected |
|---|---|---|
| *West Nishnabotna River:* | | |
| At U.S. Highway 6 | None—1,077 | City of Council Bluffs. City of Oakland. |
| Approximately 4,850 feet upstream of Honeysuckle Road/County Highway G42 | None—1,088 | Pottawattamie County. |
| *Mosquito Creek:* | | |
| Approximately 5,785 feet downstream of Interstate 29 | None—980 | Pottawattamie County. |
| Approximately 1,760 feet downstream of Interstate 29 | None—983. | |
| *Mosquito Creek:* | | |
| Intersection of E. South Omaha Bridge and 192nd Street | None—#1 | Pottawattamie County. |
| Intersection of Basswood Road and 192nd Street | None—#1. | |
| *Missouri River:* | | |
| Approximately 5,250 feet upstream of Interstate 480 | None—985 | City of Carter Lake. |
| Approximately 8,925 feet upstream of Interstate 480 | None—985. | |

**ADDRESSES:**

*City of Council Bluffs*
Maps are available for inspection at the Community Development Office, 403 Willow Street, Council Bluffs, Iowa.
Send comments to The Honorable Thomas P. Hanafan, Mayor, City of Council Bluffs, 209 Pearl Street, Council Bluffs, Iowa 51503.

*City of Oakland*
Maps are available for inspection at City Hall, 101 North Main Street, Oakland, Iowa.
Send comments to The Honorable Gayle Perkins, Mayor, City of Oakland, 906 Oakland Avenue, Oakland, Iowa 51560.

*Pottawattamie County (Unincorporated Areas)*
Maps are available for inspection at the County Courthouse, 227 South 6th Street, Council Bluffs, Iowa.
Send comments to Chairman Melvyn Houser, 227 South 6th Street, Council Bluffs, Iowa 51501.

*City of Carter Lake*
Maps are available for inspection at City Hall, 950 Locust Street, Carter Lake, Iowa.
Send comments to The Honorable Emil Hausner, Mayor, City of Carter Lake, 950 Locust Street, Carter Lake, Iowa 51510.

[1] North American Vertical Datum.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: June 29, 2004.

**David I. Maurstad**

*Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.*

[FR Doc. 04–15295 Filed 7–6–04; 8:45 am]

BILLING CODE 9110–12–P

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 67

**[Docket No. FEMA–P–7649]**

## Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Doug Bellomo, P.E., Hazard

Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

**National Environmental Policy Act**

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

**Regulatory Classification**

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 12612, Federalism**

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

## PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.4 [Amended]**

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in Feet* (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| AR | Arkadelphia (City) Clark County. | Mill Creek | Approximately 1,820 feet downstream of North Eighth Street. | *192 | *193 |
| | | | Approximately 2,800 feet upstream of 26th Street. | *248 | *245 |
| | | Maddox Branch | Approximately 25 feet downstream of Union Pacific Railroad. | *None | *186 |
| | | | Approximately 425 feet upstream of South 12th Street. | *None | *207 |
| Maps are available for inspection at the Town Hall, 700 Clay Street, 121, Arkadelphia, Arkansas. Send comments to Ms. Barbara Coplen, City Manager, City of Arkadelphia, Town Hall, 700 Clay Street, Arkadelphia, Arkansas 71923. | | | | | |
| LA | Jonesville (Town) Catahoula Parish. | Black River | Approximately 4,100 feet downstream of U.S. Highway 84. | *None | *63 |
| | | | At the confluence of Little River | *None | *63 |
| | | Little River | At the confluence with Black River | *None | *63 |
| | | | Approximately 100 feet upstream of the divergence of Airport Canal. | *None | *63 |
| Maps are available for inspection at the Town Hall, 400 Third Street, Jonesville, Louisiana. Send comments to The Honorable Mike Wilson, Mayor, Town of Jonesville, Town Hall, 400 Third Street, Jonesville, Louisiana 71343. | | | | | |
| NE | Otoe County (Unincorporated Areas). | Little Nemaha River | Approximately 7,450 feet downstream of State Highway 67. | *None | *970 |
| | | | Approximately 7,550 feet upstream of State Highway 67. | *None | *982 |
| Maps are available for inspection at the County Courthouse, 1021 Central Avenue, Nebraska City, Nebraska Send comments to Ms. Joy W. Schroder, Chairperson, Otoe County Board of Commissioners, P.O. Box 493, Nebraska City, Nebraska 68410. | | | | | |

*National Geodetic Vertical Datum of 1929.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: June 29, 2004.

**David I. Maurstad,**

*Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.*

[FR Doc. 04–15297 Filed 7–6–04; 8:45 am]

BILLING CODE 9110–12–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

**[CC Docket No. 96–45; FCC 04–127]**

### Federal-State Joint Board on Universal Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking; solicitation of comments.

**SUMMARY:** In this document, the Commission seeks comment on the *Recommended Decision*, FCC 04J–1, February 27, 2004, of the Federal-State Joint Board on Universal Service (Joint Board) concerning the process for designation of eligible telecommunications carriers (ETCs) and the Commission's rules regarding high-cost universal service support. We seek comment on whether the Joint Board's recommendations should be adopted, in whole or in part, in order to preserve and advance universal service, maintain competitive neutrality, and ensure long-term sustainability of the universal service fund. We also seek comment on several related proposals to streamline our rules governing annual certifications and submission of data by competitive ETCs seeking high-cost support.

**DATES:** Comments are due on or before August 6, 2004. Reply comments are due on or before September 7, 2004.

**ADDRESSES:** All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

**FOR FURTHER INFORMATION CONTACT:** Gina Spade, Assistant Chief, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7105, TTY (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rulemaking* in CC Docket No. 96–45, FCC 04–127, released June 8, 2004. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

#### I. Introduction

1. In this *Notice of Proposed Rulemaking*, (NPRM), FCC 04–127, June 8, 2004, we seek comment on the *Recommended Decision* of the Federal-State Joint Board on Universal Service (Joint Board) concerning the process for designation of eligible telecommunications carriers (ETCs) and the Commission's rules regarding high-cost universal service support. In its *Recommended Decision*, the Joint Board recommended that the Commission adopt permissive Federal guidelines for States to consider in their proceedings to designate ETCs under section 214 of the Communications Act of 1934, as amended (Act). In addition, the Joint Board recommended that the Commission limit the scope of high-cost support to a single connection that provides a subscriber access to the public telephone network. Finally, the Joint Board recommended that the Commission further develop the record on specific issues identified in its *Recommended Decision* relating to the high-cost support mechanism, including identification of mobile wireless customer location, and standards for the submission of accurate, legible, and consistent maps. We seek comment on whether the Joint Board's recommendations should be adopted, in whole or in part, in order to preserve and advance universal service, maintain competitive neutrality, and ensure long-term sustainability of the universal service fund. We also seek comment on several related proposals to streamline our rules governing annual certifications and submission of data by competitive ETCs seeking high-cost support.

#### II. Issues for Comment

2. *ETC Designation Process.* We seek comment on the Joint Board's recommendation regarding the ETC designation process, which we incorporate by reference. In addition to the existing minimum eligibility requirements specified in section 214(e)(1) of the Act, the Joint Board recommended that the Commission adopt permissive Federal guidelines encouraging State commissions to consider certain additional minimum qualifications when evaluating ETC designation requests. The Joint Board also recommended that the Commission further develop the record on ways in which State commissions may determine whether an applicant satisfies the additional minimum qualifications as part of the ETC designation process. The Joint Board recommended that State commissions apply these permissive Federal guidelines in all ETC proceedings, and that State commissions use a higher level of scrutiny for ETC applicants seeking designation in areas served by rural carriers, consistent with section 214(e)(2) of the Act. While the Joint Board did not endorse adoption of a specific cost-benefit test for the purpose of making public interest determinations under section 214(e)(2), it indicated that states may properly consider the level of Federal high-cost per-line support to be received by ETCs in making public interest determinations. The Joint Board noted that the public interest analysis should be consistent with the purposes and goals of the Act itself. Finally, the Joint Board recommended that the Commission encourage States to use the annual certification process for all ETCs to ensure that Federal universal service support is used to provide the supported services and for associated infrastructure costs. We encourage commenters to address with particularity these issues concerning the ETC designation process in their comments.

3. *Scope of Support.* We seek comment on the Joint Board's recommendation to limit the provision of high-cost support to a single connection that provides a subscriber access to the public telephone network. Commenters should describe how the Commission may develop competitively neutral rules and procedures that do not create undue administrative burdens. We specifically request comments from Universal Service Administrative Company (USAC) on the administration of a primary line approach. To minimize the potential impact of restricting the scope of support in areas served by rural carriers, the Joint Board recommended that the Commission seek comment on restating, or "rebasing," the total high-cost support flowing to a rural carrier's study area on "primary" or single connections, and on other possible measures including "lump sum" and "hold harmless" proposals associated with a primary line restriction. In conjunction with certain of these measures, the Joint Board also recommended that high-cost support in areas served by rural carriers be capped on a per-line basis when a competitive carrier is designated as an ETC and be adjusted annually by an index factor. We seek comment on the Joint Board's recommended approach to limit the scope of support, specifically on the

advantages and disadvantages of each of the three alternatives set forth in the *Recommended Decision*. We ask that commenters provide detailed projections on the potential effects of each of the alternatives.

4. The Joint Board also recommended that the Commission further develop the record on how best to implement support for primary connections, including consideration of proposals to allow consumers with more than one connection to designate an ETC's service as "primary" and rate issues associated with supporting primary connections. We also ask commenters to address the treatment of certain types of connections under the Joint Board's recommended approach, particularly the appropriate treatment of businesses with multiple connections. Finally, the Joint Board recommended that the Commission seek comment on the potential impact of its primary connection proposal on investment in rural areas and consider adoption of transitional measures for support in areas served by competitive ETCs. We encourage commenters to address these implementation issues in their comments, and to identify specifically the costs and benefits of any amended reporting and recordkeeping requirements.

5. *Other Issues.* In addition to seeking comment on the specific recommendations provided by the Joint Board, we also seek comment on several related proposals to modify our current rules governing the filing of annual certifications and data submissions by ETCs. Specifically, we seek comment on whether to amend our rules to allow newly designated ETCs to begin receiving high-cost support as of their ETC designation date, provided that the required certifications and line-count data are filed within sixty (60) days of the carrier's ETC designation date. We also seek comment on a procedure for accepting untimely filed certifications for Interstate Access Support (IAS). In the *MAG Order*, 66 FR 57919 Final Rule, 66 FR 59719 Proposed Rule, November 30, 2001, the Commission determined that a carrier that untimely files its annual certification for Interstate Common Line Support would not be eligible for support until the second calendar quarter after the certification is filed. We propose adopting a similar procedure for accepting untimely certifications for IAS. We request that USAC address any operational issues relating to these proposals, particularly with respect to any administrative burdens that may be associated with them.

## III. Procedural Matters

### *A. Ex Parte Presentations*

6. This is a permit but disclose rulemaking proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules.

### *B. Initial Regulatory Flexibility Analysis*

7. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a significant number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the notice provided below in section III.D. The Commission will send a copy of the notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of the Proposed Rules

8. The Act requires the Commission to consult with the Joint Board in implementing the universal service requirements provided in section 254 of the Act, which establishes a number of principles for the preservation and advancement of universal service in a competitive telecommunications environment. Given the increasing number of ETC designations since the Commission's rules were first developed in 1997, the Commission asked the Joint Board to review the Commission's rules relating to high-cost universal service support in study areas in which a competitive ETC is providing services, and to review the Commission's rules regarding support for second lines. The Commission also asked the Joint Board to examine the process for designating ETCs. Consistent with the Commission's request in the *Referral Order*, 68 FR 10429, March 5, 2003, the Joint Board sought comment and held a public forum to address concerns regarding the designation and funding of ETCs in high-cost areas. Based on its review and consideration of the record developed in this proceeding, the Joint Board issued its *Recommended Decision* on February 27, 2004. The Joint Board stated that its overall recommendations were intended to preserve and advance universal service, maintain competitive neutrality, and ensure long-term sustainability of the universal service fund. Specifically, the Joint Board recommended that the Commission adopt permissive Federal guidelines for States to consider in proceedings to designate ETCs, noting that such guidelines would facilitate a more flexible and rigorous ETC designation process among states, and improve the long-term sustainability of the universal service fund, as only fully qualified carriers that are capable of, and committed to, provide universal service would be able to receive support. The Joint Board also recommended that the Commission limit the scope of high-cost support to a single connection that provides access to the public telephone network. It stated that limiting the scope of support to single connections is necessary to preserve the sustainability of the universal service fund, would send more appropriate entry signals in rural and high-cost areas, and would be competitively neutral. We now seek comment on the Joint Board's recommendations, consistent with section 254(a)(2) of the Act.

2. Legal Basis

9. This rulemaking action is supported by sections 4(i), 4(j), 201, 205, 214, 218–220, 254, 403, and 410 of the Communications Act of 1934, as amended.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

10. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).

11. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications

business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent local exchange carriers in this IRFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

12. *Wireline Carriers and Service Providers (Wired Telecommunications Carriers).* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small.

13. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, Payphone Providers, and Resellers.* Neither the Commission nor SBA has developed a definition particular to small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), payphone providers or resellers. The closest applicable definition for these carrier-types under SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to our most recent data, there are 1,337 incumbent LECs, 609 CAPs, 261 IXCs, 23 OSPs, 761 payphone providers and 758 resellers. Of these, an estimated 1,032 incumbent LECs, 458 CAPs, 223 IXCs, 22 OSPs, 757 payphone providers, and 717 resellers reported that they have 1,500 or fewer employees; 305 incumbent LECs, 151 CAPs, 38 IXCs, one OSP, four payphone providers, and 41 resellers reported that, alone or in combination with affiliates, they have more than 1,500 employees. We do not have data specifying the number of these carriers that are not independently owned and operated, and therefore we are unable to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, most incumbent LECs, IXCs, CAPs, OSPs, payphone providers and resellers are small entities that may be affected by the decisions and rules adopted in this Order.

14. *Wireless Service Providers.* The SBA has size standards for wireless small businesses within the two separate Economic Census categories of Paging and of Cellular and Other Wireless Telecommunications. For both of those categories, the SBA considers a business to be small if it has 1,500 or fewer employees. According to the most recent *Trends in Telephone Report data*, 1,387 companies reported that they were engaged in the provision of wireless service. Of these 1,387 companies, an estimated 945 reported that they have 1,500 or fewer employees and 442 reported that, alone or in combination with affiliates, they have more than 1,500 employees. Consequently, we estimate that most wireless service providers are small entities that may be affected by the rules adopted herein.

15. *Broadband Personal Communications Service* (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small businesses." Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F blocks, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. Consequently, we estimate that 260 broadband PCS providers are small entities that may be affected by the rules and policies adopted herein.

16. *Narrowband PCS.* To date, two auctions of narrowband PCS licenses have been conducted. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. For purposes of the two auctions that have already been held, small businesses were defined by the Commission as entities with average gross revenues for the prior three calendar years of $40 million or less. To ensure meaningful participation of small business entities in the auctions, the Commission adopted a two-tiered definition of small businesses in the *Narrowband PCS Second Report and Order*, 65 FR 35875, June 6, 2000. A small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A very small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. These definitions have been approved by the SBA. In the future, the Commission will auction 459 licenses to serve MTAs and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this IRFA, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

17. *Specialized Mobile Radio* (SMR). The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had

revenues of no more than $3 million in each of the three previous calendar years, respectively. In the context of both the 800 MHz and 900 MHz SMR service, the definitions of "small entity" and "very small entity" have been approved by the SBA. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for our purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small and very small entities in the 900 MHz auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small and very small entities won 263 licenses. In the 800 MHz SMR auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, we estimate that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted herein.

18. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). For purposes of this IRFA, we will use the SBA's size standard applicable to wireless service providers, *supra*—an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA's size standard. Consequently, we estimate that there are 1,000 or fewer small entity licensees in the Rural Radiotelphone Service that may be affected by the rules and policies adopted herein.

19. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. For purposes of this IRFA, we will use the SBA's size standard applicable to wireless service providers, *supra*—an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

20. In its *Recommended Decision*, the Joint Board recommends that the Commission adopt permissive federal guidelines for states and the Commission to use in determining whether applicants are qualified to be designated as ETCs under section 214 of the Act. Should the Commission decide to adopt this recommendation, entities designated as ETCs under sections 214(e)(2) and 214(e)(6) of the Act could be subject to the additional compliance requirements described in the *Recommended Decision* as a condition of their ETC designation. The Joint Board also recommended that the Commission limit the scope of support to single connections providing access to the public telephone network. If the Commission ultimately adopts this recommendation, entities could be subject to additional reporting, recordkeeping, and other compliance requirements as deemed necessary to implement this recommendation. Without more certainty about which options we will or will not adopt as rules, we cannot accurately estimate the cost of compliance by small carriers. We therefore seek comment on the types of burdens carriers could face if the proposed recommendations are adopted. Entities, especially small businesses, are encouraged to quantify, if possible, the costs and benefits of potential reporting, recordkeeping and other compliance requirements.

21. On its own motion, the Commission is proposing to modify its current annual certification and line count data requirements to allow competitive ETCs to submit required data more frequently than provided in the current rules, in order to avoid lags between certification filings and the receipt of support. Commenters, especially small businesses, are encouraged to quantify, if possible, the costs and benefits of the potential modifications.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

22. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. This IRFA seeks comment on how the Joint Board's recommendations could be implemented in a manner that reduces the potential burden and cost of compliance for small entities. We also seek comment on the potential impact of the proposed recommendations related to the Commission's proposal to limit support to a single connection on interested parties, including small entities. Specifically, the Commission has detailed three proposals that might avoid or mitigate reductions in the amount of high-cost support flowing to rural carriers, some of which might be small entities, as a result of implementing a primary-line restriction. We seek comment on these three proposals (restatement, lump sum payment and hold harmless) and whether any or all of them would minimize the economic impact on small entities, which may include providers of wireless as well as wireline communications services.

6. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

23. None.

*C. Paperwork Reduction Act*

24. As part of a continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the proposed information collections contained in this notice, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on the notice; OMB comments are due September 7, 2004. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) The accuracy of the Commission's burden estimates; (c) Ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of

automated collection techniques or other forms of information technology.

*D. Comment Filing Procedures*

25. We invite comment on the issues and questions set forth in the Notice and Initial Regulatory Flexibility Analysis contained herein. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before August 6, 2004, and reply comments on or before September 7, 2004. All filings should refer to CC Docket No. 96–45. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

26. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

27. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

28. Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

## IV. Ordering Clauses

29. Pursuant to the authority contained in sections 4(i), 4(j), 201, 205, 214, 218–220, 254, 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201, 205, 214, 218–220, 254, 403, and 410 this *Notice of Proposed Rulemaking* is adopted.

30. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04–15240 Filed 7–6–04; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 101

**[WT Docket No. 04–143; FCC 04–77]**

### Rechannelization of the 17.7–19.7 GHz Frequency Band for Fixed Microwave Services.

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The NPRM proposes rechannelization of portions of the 17.7–19.7 GHz band ("18 GHz band"). We believe that such action is necessary to accommodate the terrestrial fixed services ("FS") licensees within the 18 GHz band that need to relocate and to meet the needs of those FS licensees who seek narrow bandwidth channels. We believe that our proposals and decisions herein will promote more efficient use of the remaining FS spectrum in the 18 GHz band and help to increase spectrum availability for new FS operations, both by incumbents and new entrants.

**DATES:** Comments are due on or before August 6, 2004, Reply comments are due September 7, 2004.

**FOR FURTHER INFORMATION CONTACT:** Peter Daronco, Attorney, 202–418–2487.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking, (NPRM), released on April 19, 2004, (FCC 04–77). The full text of the NPRM is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th St., SW., Washington DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., (BCPI), Portals II, 445 12th St., SW., Room CY–B402, Washington DC, the complete item is available on the Commission's Web site at *http://www.fcc.gov/wtb*.

## Overview

1. In this NPRM, we address the channelization of the 17.7–19.7 GHz band ("18 GHz band") in an effort to promote effective utilization of the portion of the band that is designated for use by terrestrial fixed services ("FS"). Previously, the Commission adopted a band plan to accommodate sharing of the 18 GHz band by the FS, Geostationary Satellite Orbit Fixed Satellite Service ("GSO/FSS"), Non-Geostationary Satellite Orbit Fixed-Satellite Service ("NGSO/FSS"), and Mobile-Satellite Service feeder links ("MSS/FL"). As part of this band plan, the Commission authorized the "blanket licensing" of satellite earth stations in some portions of the band where the FS had previously been co-primary. While the FS community continues to have access to portions of the 18 GHz band either on an exclusive primary or co-primary basis, there is a need to rechannelize the FS portion of the 18 GHz band so that it can effectively and efficiently utilize the spectrum. We believe that such action is necessary not only to accommodate the FS licensees within the 18 GHz band that need to relocate but also to meet the needs of those FS licensees who seek narrow bandwidth channels. We believe that our proposals and decisions herein will promote more efficient use of the remaining FS spectrum in the 18 GHz band and help to increase spectrum

availability for new FS operations, both by incumbents and new entrants.

2. The significant proposals contained in the NPRM are as follows:

We propose a band plan for the FS paired and unpaired spectrum from 17.7–18.3 GHz and 19.3–19.7 GHz, based on a filing by the Fixed Wireless Communications Coalition ("FWCC"), consisting of a variety of channel bandwidths (including narrower bandwidths and those of thirty and fifty megahertz) and a block of unpaired spectrum from 17.7–17.74 GHz.

We propose to designate a contiguous 500 megahertz block of one-way spectrum from 17.8–18.3 GHz for use by multichannel video programming distributors ("MVPDs"). We give licensees flexibility within such block to determine the appropriate bandwidth for their operations.

We decline to grant a request filed by the by FWCC and the National Spectrum Managers Association ("NSMA") for a blanket waiver of the Commission's Rules to permit FS users to be licensed largely in accordance with the proposed band plan. Instead, we have determined that we will consider individual waiver requests meeting the conditions stated in the NPRM.

*A. Initial Regulatory Flexibility Analysis*

3. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the possible economic impact on small entities of the policies and rules proposed in this NPRM. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA"). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

*B. Need for and Objectives of the Proposed Rule*

4. The Commission undertook this rulemaking proceeding to rechannelize that portion of the 17.7–19.7 GHz (18 GHz) band that is now designated as either exclusively primary or co-primary for the terrestrial fixed service ("FS"), in order to accommodate the licensees who need to relocate and to suit the needs of those who seek narrow bandwidth channels. Our proposed actions in this proceeding will also create more efficient use of the remaining FS spectrum and help to increase spectrum availability for new licensees.

5. Specifically, we propose a band plan for the FS paired and unpaired spectrum from 17.7–18.3 GHz and 19.3–19.7 GHz consisting of a variety of channel bandwidths (including narrower bandwidths and those of thirty and fifty megahertz) and a block of unpaired spectrum from 17.7–17.74 GHz. We also propose to designate a contiguous 500 megahertz block of one-way spectrum from 17.8–18.3 GHz for use by multichannel video programming distributors ("MVPDs"). We propose to give MVPD and private cable operator ("PCO") licensees flexibility within such block to determine the appropriate bandwidth for their operations.

*C. Legal Basis*

6. The proposed action is authorized under the Administrative Procedure Act, 5 U.S.C. 553; and Sections 1, 4(i), 7, 301, 303, 308, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 301, 303, 308, and 309(j)

*D. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply*

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (i) is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the Small Business Administration.

8. *Small Businesses.* Nationwide, there are a total of 22.4 million small businesses, according to SBA data.

9. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.

10. *Small Governmental Jurisdictions.* The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

11. The proposed rechannelization would affect all common carrier and private operational fixed microwave licensees who are authorized under part 101 of the Commission's Rules for use of the 18 GHz spectrum.

12. *Fixed Microwave Services.* The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed microwave licensees and up to 61,670 private operational-fixed microwave licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

13. Other proposed rule changes would affect PCOs and other MVPDs. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by these rules.

14. *Cable and Other Program Distribution.* This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. The SBA has developed small business size standard for this census category, which includes all such companies generating $12.5 million or less in revenue annually. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the Commission estimates that the majority

of providers in this service category are small businesses that may be affected by the rules and policies proposed herein.

15. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. The most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies proposed herein.

16. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore are unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

17. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission defined "small business" as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. The SBA has approved of this standard. The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 claimed status as a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities.

18. *Satellite Master Antenna Television ("SMATV") Systems.* The SBA definition of small entities for cable and other program distribution services includes SMATV services and, thus, small entities are defined as all such companies generating $12.5 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001. The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

19. *Open Video Services.* Open Video Service (OVS) systems provide subscription services. The SBA has created a small business size standard for Cable and Other Program Distribution. This standard provides that a small entity is one with $12.5 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of these are currently providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies proposed herein.

*E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

20. Under the proposal contained in the NPRM, we are effecting a change wherein we will allow 18 GHz applicants to propose to operate on spectrum utilizing different bandwidth channels in addition to the ones already in existence. The proposal does not include any changes in the language of FCC Forms nor does it require extra filings. We are also allowing certain flexibility for some modifications to be achieved without the necessity of filing any applications.

*F. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

21. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities."

22. We note that, although we decline to grant a blanket waiver to accommodate licensees needing an immediate switch to channels of sizes not currently available, we will consider granting waivers as appropriate where applicants have met the conditions stated in the NPRM. This will assist all such licensees, and especially small entity licensees, that need less bandwidth than is currently provided.

23. We are attempting to reduce a regulatory burden. We will continue to examine alternatives in the future with the objective of eliminating unnecessary

regulations and minimizing any significant impact on small entities. We seek comment on significant alternatives commenters believe we should adopt.

*G. Federal Rules That Overlap, Duplicate, or Conflict With These Proposed Rules*

None.

**Paperwork Reduction Analysis**

24. This NPRM does not contain either a proposed or modified information collection.

**Ordering Clauses**

1. Pursuant to sections 1, 4(i), 302, and 303(f) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 302, and 303(f) and (r), notice is hereby given of the proposed regulatory changes described in this NPRM and that comment is sought on these proposals.

2. Pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and § 1.925 of the Commission's rules, 47 CFR 1.925, the Request for Blanket Waiver, filed May 29, 2002, by the Fixed Wireless Communications Coalition and the National Spectrum Managers Association, is hereby denied.

3. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

**List of Subjects in 47 CFR Part 101**

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 101 as follows:

## PART 101—FIXED MICROWAVE SERVICES

1. The authority citation for part 101 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

2. Section 101.147 is amended by revising paragraph (r) to read as follows:

**§ 101.147 Frequency assignments.**

* * * * *

(r) 17,700 to 19,700 and 24,250 to 25,250 MHz: Operation of stations using frequencies in these bands is permitted to the extent specified in this paragraph. Until November 19, 2012, stations operating in the band 18.3–18.58 GHz that were licensed or had applications pending before the Commission as of November 19, 2002 shall operate on a shared co-primary basis with other services under parts 21, 25, and 74 of this chapter. Until October 31, 2011, operations in the band 19.26–19.3 GHz and low power systems operating pursuant to § 101.147(r)(10) shall operate on a co-primary basis. Until June 8, 2010, stations operating in the band 18.58'18.8 GHz that were licensed or had applications pending before the Commission as of June 8, 2000 may continue those operations on a shared co-primary basis with other services under parts 21, 25, and 74 of this chapter. Until June 8, 2010, stations operating in the band 18.8–19.3 GHz that were licensed or had applications pending before the Commission as of September 18, 1998 may continue those operations on a shared co-primary basis with other services under parts 21, 25, and 74 of this chapter. After November 19, 2012, stations operating in the band 18.3–18.58 GHz are not entitled to protection from fixed-satellite service operations and must not cause unacceptable interference to fixed-satellite service station operations. After June 8, 2010, operations in the 18.58–19.30 GHz band are not entitled to protection from fixed-satellite service operations and must not cause unacceptable interference to fixed-satellite service station operations. After November 19, 2002, no applications for new stations for part 101 licenses will be accepted in the 18.3–18.58 GHz band. After June 8, 2000, no applications for new stations for part 101 licenses will be accepted in the 18.58–19.3 GHz band. Licensees, except 24 GHz band licensees, may use either a two-way link or one frequency of a frequency pair for a one-way link and must coordinate proposed operations pursuant to the procedures required in § 101.103.

[Option 1] Applicants who request one-way spectrum in 17.7–18.3 GHz can use any size channels necessary, but must request contiguous spectrum (minus channels that are already licensed in the area and thus blocked) for all their needs in order to prevent such applicants from spacing their channels in a manner that effectively could prevent other licensees from using the remaining spectrum within the same area. However, channels still must meet the efficiency requirements of § 101.141.

[Option 2] Applicants who request one-way spectrum in 17.7–18.58 GHz can use any size channels necessary, but must request contiguous spectrum (minus channels that are already licensed in the area and thus blocked) for all their needs in order to prevent such applicants from spacing their channels in a manner that effectively could prevent other licensees from using the remaining spectrum within the same area. However, channels still must meet the efficiency requirements of § 101.141.

(1) 1.25 Megahertz maximum authorized bandwidth channels:

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|---|---|
| 17700.625 | NA |
| 17701.875 | NA |
| 17703.125 | NA |
| 17704.375 | NA |
| 17705.625 | NA |
| 17706.875 | NA |
| 17708.125 | NA |
| 17709.375 | NA |
| 17710.625 | NA |
| 17711.875 | NA |
| 17713.125 | NA |
| 17714.375 | NA |
| 17715.625 | NA |
| 17716.875 | NA |
| 17718.125 | NA |
| 17719.375 | NA |
| 17721.625 | NA |
| 17722.875 | NA |
| 17723.125 | NA |
| 17724.375 | NA |
| 17725.625 | NA |
| 17726.875 | NA |
| 17728.125 | NA |
| 17729.375 | NA |
| 17730.625 | NA |
| 17731.875 | NA |
| 17733.125 | NA |
| 17734.375 | NA |
| 17735.625 | NA |
| 17736.875 | NA |
| 17738.125 | NA |
| 17739.375 | NA |
| 18060.625 | 19620.625 |
| 18061.875 | 19621.875 |
| 18063.125 | 19623.125 |
| 18064.375 | 19624.375 |
| 18065.625 | 19625.625 |
| 18066.875 | 19626.875 |
| 18068.125 | 19628.125 |
| 18069.375 | 19629.375 |
| 18070.625 | 19630.625 |
| 18071.875 | 19631.875 |
| 18073.125 | 19633.125 |
| 18074.375 | 19634.375 |
| 18075.625 | 19635.625 |
| 18076.875 | 19636.875 |
| 18078.125 | 19638.125 |
| 18079.375 | 19639.375 |
| 18080.625 | 19640.625 |
| 18081.875 | 19641.875 |
| 18083.125 | 19643.125 |
| 18084.375 | 19644.375 |
| 18085.625 | 19645.625 |
| 18086.875 | 19646.875 |
| 18088.125 | 19648.125 |
| 18089.375 | 19649.375 |
| 18090.625 | 19650.625 |
| 18091.875 | 19651.875 |

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|---|---|
| 18093.125 | 19653.125 |
| 18094.375 | 19654.375 |
| 18095.625 | 19655.625 |
| 18096.875 | 19656.875 |
| 18098.125 | 19658.125 |
| 18099.375 | 19659.375 |
| 18100.625 | 19660.625 |
| 18101.875 | 19661.875 |
| 18103.125 | 19663.125 |
| 18104.375 | 19664.375 |
| 18105.625 | 19665.625 |
| 18106.875 | 19666.875 |
| 18108.125 | 19668.125 |
| 18109.375 | 19669.375 |
| 18110.625 | 19670.625 |
| 18111.875 | 19671.875 |
| 18113.125 | 19673.125 |
| 18114.375 | 19674.375 |
| 18115.625 | 19675.625 |
| 18116.875 | 19676.875 |
| 18118.125 | 19678.125 |
| 18119.375 | 19679.375 |
| 18120.625 | 19680.625 |
| 18121.875 | 19681.875 |
| 18123.125 | 19683.125 |
| 18124.375 | 19684.375 |
| 18125.625 | 19685.625 |
| 18126.875 | 19686.875 |
| 18128.125 | 19688.125 |
| 18129.375 | 19689.375 |
| 18130.625 | 19690.625 |
| 18131.875 | 19691.875 |
| 18133.125 | 19693.125 |
| 18134.375 | 19694.375 |
| 18135.625 | 19695.625 |
| 18136.875 | 19696.875 |
| 18138.125 | 19698.125 |
| 18139.375 | 19699.375 |

(2) 2 Megahertz maximum authorized bandwidth channel:

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|---|---|
| 18141.0 | N/A |

(3) 2.5 Megahertz maximum authorized bandwidth channels:

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|---|---|
| 17701.25 | N/A |
| 17703.75 | N/A |
| 17706.25 | N/A |
| 17708.75 | N/A |
| 17711.25 | N/A |
| 17713.75 | N/A |
| 17716.25 | N/A |
| 17718.75 | N/A |
| 17721.25 | N/A |
| 17723.75 | N/A |
| 17726.25 | N/A |
| 17728.75 | N/A |
| 17731.25 | N/A |
| 17733.75 | N/A |
| 17736.25 | N/A |
| 17738.75 | N/A |
| 18061.25 | 19621.25 |
| 18063.75 | 19623.75 |
| 18066.25 | 19626.25 |
| 18068.75 | 19628.75 |
| 18071.25 | 19631.25 |
| 18073.75 | 19633.75 |
| 18076.25 | 19636.25 |
| 18078.75 | 19638.75 |
| 18081.25 | 19641.25 |
| 18083.75 | 19643.75 |
| 18086.25 | 19646.25 |
| 18088.75 | 19648.75 |
| 18091.25 | 19651.25 |
| 18093.75 | 19653.75 |
| 18096.25 | 19656.25 |
| 18098.75 | 19658.75 |
| 18101.25 | 19661.25 |
| 18103.75 | 19663.75 |
| 18106.25 | 19666.25 |
| 18108.75 | 19668.75 |
| 18111.25 | 19671.25 |
| 18113.75 | 19673.75 |
| 18116.25 | 19676.25 |
| 18118.75 | 19678.75 |
| 18121.25 | 19681.25 |
| 18123.75 | 19683.75 |
| 18126.25 | 19686.25 |
| 18128.75 | 19688.75 |
| 18131.25 | 19691.25 |
| 18133.75 | 19693.75 |
| 18136.25 | 19696.25 |
| 18138.75 | 19698.75 |

(4) 5 Megahertz maximum authorized bandwidth channels:

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|---|---|
| **340 Megahertz separation (* channels no longer available on a primary basis)** | |
| 18762.5* | 19102.5* |
| 18767.5* | 19107.5* |
| 18772.5* | 19112.5* |
| 18777.5* | 19117.5* |
| 18782.5* | 19122.5* |
| 18787.5* | 19127.5* |
| 18792.5* | 19132.5* |
| 18797.5* | 19137.5* |
| 18802.5* | 19142.5* |
| 18807.5* | 19147.5* |
| 18812.5* | 19152.5* |
| 18817.5* | 19157.5* |

(5) 5 Megahertz maximum authorized bandwidth channels:

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|---|---|
| **1560 Megahertz separation** | |
| 17702.5 | N/A |
| 17707.5 | N/A |
| 17712.5 | N/A |
| 17717.5 | N/A |
| 17722.5 | N/A |
| 17727.5 | N/A |
| 17732.5 | N/A |
| 17737.5 | N/A |
| 18062.5 | 19622.5 |
| 18067.5 | 19627.5 |
| 18072.5 | 19632.5 |
| 18077.5 | 19637.5 |
| 18082.5 | 19642.5 |
| 18087.5 | 19647.5 |
| 18092.5 | 19652.5 |
| 18097.5 | 19657.5 |
| 18102.5 | 19662.5 |
| 18107.5 | 19667.5 |
| 18112.5 | 19672.5 |
| 18117.5 | 19677.5 |
| 18122.5 | 19682.5 |
| 18127.5 | 19687.5 |
| 18132.5 | 19692.5 |
| 18137.5 | 19697.5 |

(6) 6 Megahertz maximum authorized bandwidth channels: New channels from 17.8–18.3 GHz may be of any channel size but must be contiguous and used for video use by an MVPD.

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|---|---|
| **216 Megahertz separation (* channels are no longer available on primary basis)** | |
| 18145.0 | N/A |
| 18151.0 | 18367.0* |
| 18157.0 | 18373.0* |
| 18163.0 | 18379.0* |
| 18169.0 | 18385.0* |
| 18175.0 | 18391.0* |
| 18181.0 | 18397.0* |
| 18187.0 | 18403.0* |
| 18193.0 | 18409.0* |
| 18199.0 | 18415.0* |
| 18205.0 | 18421.0* |
| 18211.0 | 18427.0* |
| 18217.0 | 18433.0* |
| 18223.0 | 18439.0* |
| 18229.0 | 18445.0* |
| 18235.0 | 18451.0* |
| 18241.0 | 18457.0* |
| 18247.0 | 18463.0* |
| 18253.0 | 18469.0* |
| 18259.0 | 18475.0* |
| 18265.0 | 18481.0* |
| 18271.0 | 18487.0* |
| 18277.0 | 18493.0* |
| 18283.0 | 18499.0* |
| 18289.0 | 18505.0* |
| 18295.0 | 18511.0* |
| 18301.0* | 18517.0* |
| 18307.0* | 18523.0* |
| 18313.0* | 18529.0* |
| 18319.0* | 18535.0* |
| 18325.0* | 18541.0* |
| 18331.0* | 18547.0* |
| 18337.0* | 18553.0* |
| 18343.0* | 18559.0* |
| 18349.0* | 18565.0* |
| 18355.0* | 18571.0* |
| 18361.0* | 18577.0* |

(7) 10 Megahertz maximum authorized bandwidth channels:

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|---|---|
| **1560 Megahertz separation (* channels are no longer available on primary basis)** | |
| 17705.0 | 19265.0* |
| 17715.0 | 19275.0* |
| 17725.0 | 19285.0* |
| 17735.0 | 19295.0* |
| 17745.0 | 19305.0 |
| 17755.0 | 19315.0 |
| 17765.0 | 19325.0 |
| 17775.0 | 19335.0 |
| 17785.0 | 19345.0 |
| 17795.0 | 19355.0 |
| 17805.0 | 19365.0 |
| 17815.0 | 19375.0 |
| 17825.0 | 19385.0 |
| 17835.0 | 19395.0 |
| 17845.0 | 19405.0 |
| 17855.0 | 19415.0 |
| 17865.0 | 19425.0 |
| 17875.0 | 19435.0 |
| 17885.0 | 19445.0 |
| 17895.0 | 19455.0 |
| 17905.0 | 19465.0 |
| 17915.0 | 19475.0 |
| 17925.0 | 19485.0 |
| 17935.0 | 19495.0 |
| 17945.0 | 19505.0 |
| 17955.0 | 19515.0 |
| 17965.0 | 19525.0 |
| 17975.0 | 19535.0 |
| 17985.0 | 19545.0 |
| 17995.0 | 19555.0 |
| 18005.0 | 19565.0 |
| 18015.0 | 19575.0 |
| 18025.0 | 19585.0 |
| 18035.0 | 19595.0 |
| 18045.0 | 19605.0 |
| 18055.0 | 19615.0 |
| 18065.0 | 19625.0 |
| 18075.0 | 19635.0 |
| 18085.0 | 19645.0 |
| 18095.0 | 19655.0 |
| 18105.0 | 19665.0 |
| 18115.0 | 19675.0 |
| 18125.0 | 19685.0 |
| 18135.0 | 19695.0 |
| **340 Megahertz Separation** | |
| 18585.0* | 18925.0* |
| 18595.0* | 18935.0* |
| 18605.0* | 18945.0* |
| 18615.0* | 18955.0* |
| 18625.0* | 18965.0* |
| 18635.0* | 18975.0* |
| 18645.0* | 18985.0* |
| 18655.0* | 18995.0* |
| 18665.0* | 19005.0* |
| 18675.0* | 19015.0* |
| 18685.0* | 19025.0* |
| 18695.0* | 19035.0* |
| 18705.0* | 19045.0* |
| 18715.0* | 19055.0* |
| 18725.0* | 19065.0* |
| 18735.0* | 19075.0* |
| 18745.0* | 19085.0* |
| 18755.0* | 19095.0* |
| 18765.0* | 19105.0* |
| 18775.0* | 19115.0* |
| 18785.0* | 19125.0* |
| 18795.0* | 19135.0* |
| 18805.0* | 19145.0* |
| 18815.0* | 19155.0* |

(8) 20 Megahertz maximum authorized bandwidth channels:

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|---|---|
| **1560 Megahertz Separation (* channels are no longer available on primary basis)** | |
| 17710.0 | 19270.0* |
| 17730.0 | 19290.0* |
| 17750.0 | 19310.0 |
| 17770.0 | 19330.0 |
| 17790.0 | 19350.0 |
| 17810.0 | 19370.0 |
| 17830.0 | 19390.0 |
| 17850.0 | 19410.0 |
| 17870.0 | 19430.0 |
| 17890.0 | 19450.0 |
| 17910.0 | 19470.0 |
| 17930.0 | 19490.0 |
| 17950.0 | 19510.0 |
| 17970.0 | 19530.0 |
| 17990.0 | 19550.0 |
| 18010.0 | 19570.0 |
| 18030.0 | 19590.0 |
| 18050.0 | 19610.0 |
| 18070.0 | 19630.0 |
| 18090.0 | 19650.0 |
| 18110.0 | 19670.0 |
| 18130.0 | 19690.0 |
| **340 Megahertz Separation** | |
| 18590.0* | 18930.0* |
| 18610.0* | 18950.0* |
| 18630.0* | 18970.0* |
| 18650.0* | 18990.0* |
| 18670.0* | 19010.0* |
| 18690.0* | 19030.0* |
| 18710.0* | 19050.0* |
| 18730.0* | 19070.0* |
| 18750.0* | 19090.0* |
| 18770.0* | 19110.0* |
| 18790.0* | 19130.0* |
| 18810.0* | 19150.0* |

(9) 30 Megahertz maximum authorized bandwidth channels:

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|---|---|
| **1560 Megahertz Separation** | |
| 17715.0 | N/A |
| 17755.0 | 19315.0 |
| 17785.0 | 19345.0 |
| 17815.0 | 19375.0 |
| 17845.0 | 19405.0 |
| 17875.0 | 19435.0 |
| 17905.0 | 19465.0 |
| 17935.0 | 19495.0 |
| 17965.0 | 19525.0 |
| 17995.0 | 19555.0 |
| 18025.0 | 19585.0 |
| 18055.0 | 19615.0 |
| 18085.0 | 19645.0 |
| 18115.0 | 19675.0 |

(10) 40 Megahertz maximum authorized bandwidth channels:

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|---|---|
| **1560 Megahertz Separation (* channels are no longer available on primary basis)** | |
| 17720.0 | 19280.0* |
| 17760.0 | 19320.0 |
| 17800.0 | 19360.0 |
| 17840.0 | 19400.0 |
| 17880.0 | 19440.0 |
| 17920.0 | 19480.0 |
| 17960.0 | 19520.0 |
| 18000.0 | 19560.0 |
| 18040.0 | 19600.0 |
| 18080.0 | 19640.0 |
| 18120.0 | 19680.0 |

(11) 50 Megahertz maximum authorized bandwidth channels:

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|---|---|
| **1560 Megahertz Separation** | |
| 17765.0 | 19325.0 |
| 17815.0 | 19375.0 |
| 17865.0 | 19425.0 |
| 17915.0 | 19475.0 |
| 17965.0 | 19525.0 |
| 18015.0 | 19575.0 |
| 18065.0 | 19625.0 |
| 18115.0 | 19675.0 |

(12) 80 Megahertz maximum authorized bandwidth channels:

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|---|---|
| **1560 Megahertz Separation (* channels are no longer available on primary basis)** | |
| 17740.0 | 19300.0* |
| 17820.0 | 19380.0 |
| 17900.0 | 19460.0 |
| 17980.0 | 19540.0 |
| 18060.0 | 19620.0 |

(13) 220 Megahertz maximum authorized bandwidth channels:

| Transmit (receive) (MHz) | Receive (transmit) (MHz) |
|---|---|
| **(* channels are no longer available on primary basis)** | |
| 17810.0 | 18470.0* |
| 18030.0 | 19370.0* |
| 18250.0* | 19590.0 |
| 17810.0 (new channel pairing) | 19590.0 |

(14) The following frequencies on channels 35–39 are available for point-to-multipoint systems and are available by geographic area licensing in the 24 GHz Service to be used as the licensee desires. The 24 GHz spectrum can be aggregated or disaggregated and does not have to be used in the transmit/receive manner shown except to comply with international agreements along the U.S. borders. Channels 35 through 39 are licensed in the 24 GHz Service by Economic Areas for any digital fixed service. Channels may be used at either nodal or subscriber station locations for transmit or receive but must be coordinated with adjacent channel and adjacent area users in accordance with the provisions of § 101.509. Stations also must comply with international coordination agreements.

| Channel No. | Nodal station frequency band (MHz) limits | User station frequency band (MHz) limits |
|---|---|---|
| 25 | 18,820–18,830 | 19,160–19,170 |
| 26 | 18,830–18,840 | 19,170–19,180 |
| 27 | 18,840–18,850 | 19,180–19,190 |
| 28 | 18,850–18,860 | 19,190–19,200 |
| 29 | 18,860–18,870 | 19,200–19,210 |
| 30 | 18,870–18,880 | 19,210–19,220 |
| 31 | 18,880–18,890 | 19,220–19,230 |
| 32 | 18,890–18,900 | 19,230–19,240 |
| 33 | 18,900–18,910 | 19,240–19,250 |
| 34 | 18,910–18,920 | 19,250–19,260 |
| 35 | 24,250–24,290 | 25,050–25,090 |
| 36 | 24,290–24,330 | 25,090–25,130 |
| 37 | 24,330–24,370 | 25,130–25,170 |
| 38 | 24,370–24,410 | 25,170–25,210 |
| 39 | 24,410–24,450 | 25,210–25,250 |

(15) Special provision for low power systems in the 17,700–19,700 MHz band: Notwithstanding other provisions in part 101 and except for specified areas around Washington, DC, and Denver, Colorado, licensees of point-to-multipoint channel pairs 25–29 identified in paragraph (r)(9) of this section may continue to operate in accordance with the requirements of § 101.85 and may operate multiple low power transmitting devices within a defined service area. Operations are prohibited within 55 km when used outdoor and within 20 km when used indoor of the coordinates 38 deg.48′ N/76 deg.52′ W (Washington, DC area) and 39 deg.43′ N/104 deg.46′ W (Denver, Colorado area). The service area will be a 28 kilometer omnidirectional radius originating from specified center reference coordinates. The specified center coordinates must be no closer than 56 kilometers from any co-channel nodal station or the specified center coordinates of another co-channel system. Applicants/licensees do not need to specify the location of each individual transmitting device operating within their defined service areas. Such

operations are subject to the following requirements on the low power transmitting devices:

(i) Power must not exceed one watt EIRP and 100 milliwatts transmitter output power;

(ii) A frequency tolerance of 0.001% must be maintained; and

(iii) The mean power of emissions shall be attenuated in accordance with the following schedule:

(A) In any 4 kHz band, the center frequency of which is removed from the center frequency of the assigned channel by more than 50 percent of the channel bandwidth and is within the bands 18,820–18,870 MHz or 19,160–19,210 MHz:

$A = 35 + .003(F - 0.5B)$ dB

or,

80 dB (whichever is the lesser attenuation).

Where

A = Attenuation (in decibels) below output power level contained within the channel for a given polarization.

B = Bandwidth of channel in kHz.

F = Absolute value of the difference between the center frequency of the 4 kHz band measured at the center frequency of the channel in kHz.

(B) In any 4 kHz band the center frequency of which is outside the bands 18.820–18.870 GHz: At least 43+10 log P (mean output power in watts) decibels.

(iv) Low power stations authorized in the band 18.8–19.3 GHz after June 8, 2000, are restricted to indoor use only.

* * * * *

3. Section 101.603 is amended by revising paragraphs (a)(2) and (b)(3) to read as follows:

*§ 101.603 Permissible communications.*

(a) * * *

(2) In the frequency bands 6425–6525 MHz, 17,800–18,580 MHz, and on frequencies above 21,200 MHz, licensees may deliver any of their own products and services to any receiving location;

* * * * *

(b) * * *

(3) Be used to provide the final RF link in the chain of transmission of program material to cable television systems, multipoint distribution systems or master antenna TV systems, except in the frequency bands 6425–6525 MHz and 17,800–18,580 MHz and on frequencies above 21,200 MHz.

[FR Doc. 04–15237 Filed 7–6–04; 8:45 am]
BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[I.D.062804C]**

## Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Petition for Rulemaking; Request for Comments

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

**ACTION:** Notice of receipt of a petition for rulemaking; request for comments.

**SUMMARY:** NMFS announces receipt of a petition for rulemaking from the Fisheries Survival Fund (FSF) and the Garden State Seafood Association (GSSA) (Petitioners), both of which represent participants in the commercial fishing industry. The Petitioners request that NMFS develop and implement an emergency rule pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to require specific modifications to the fishing gear used by Atlantic sea scallop vessels fishing south of Long Island and north of Cape Hatteras, from May 1 through October 15. The gear measures requested are the installation of a chain mesh configuration ("turtle chains") in dredge gear and the installation of turtle excluder devices (TEDs) in trawl gear. These measures would be required for any Atlantic sea scallop vessel, whether fishing under a Limited Access or General Category permit, to protect sea turtles from incidental capture.

**DATES:** Comments will be accepted through August 6, 2004.

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

- Federal e-Rulemaking Portal *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Email: *SCAPetition@noaa.gov*. Include in the subject line of the e-mail comment the following identifier: Scallop Gear Petition
- Mail: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298
- Fax: 978–281–9135

Copies of this petition may be obtained by contacting the NMFS Northeast Regional Office at the above address.

**FOR FURTHER INFORMATION CONTACT:** Peter Christopher, Fishery Policy Analyst, 978–281–9288; fax 978–281–9135.

**SUPPLEMENTARY INFORMATION:** On June 17, 2004, the Petitioners submitted a petition for rulemaking requesting that NMFS promulgate an emergency rule pursuant to section 305(c) of the Magnuson-Stevens Act. The Petitioners assert that sea turtle captures in the scallop fishery, "represent a recently-emerging and relatively modest phenomenon." Petitioners state that, after incidental sea turtle captures were documented in 2001, the FSF began working with Dr. William DuPaul of the Virginia Institute of Marine Sciences (VIMS) and Captain Ronald Smolowitz, a gear researcher, to design and test a chain configuration for the front of the scallop dredge to reduce or eliminate the catch of sea turtles in scallop dredges. The petition describes the 2 years of field trials during which the experimental dredge recorded no takes of sea turtles, while the control dredge recorded nine takes. The petition references an interim report authored by W. DuPaul, D. Rudders, and R. Smolowitz, "Interim Report: Industry Trials of a Modified Sea Scallop Dredge to Minimize the Catch of Sea Turtles," VIMS Marine Research Report No. 2004–08 (May 2004).

The Petitioners note that the VIMS Sea Grant Program and FSF have developed instruction cards for vessel captains, which set forth specifications for use of the turtle chains. They also have developed and distributed instruction cards on how to handle the dredge to reduce interactions with sea turtles not actually caught in the dredge and to minimize potential injury or mortality to any turtle brought to the surface.

The Petitioners request that NMFS initiate immediately emergency rulemaking to require use of the modified gears and encourage adherence to the specifications set forth on the instruction cards, on all vessels fishing for sea scallops south of Long Island and north of Cape Hatteras. The Petitioners request that scallop dredge vessels be required to use "turtle chains" and that scallop trawl vessels be required to install an effective TED to fish in the specified area from May 1 through October 15.

The Assistant Administrator for Fisheries, NOAA (AA) has determined that the petition contains enough information to enable NMFS to consider the substance of the petition. NMFS will consider public comments received in determining whether to proceed with the development of the regulations requested by the Petitioners. Upon

determining whether to initiate the requested rulemaking, the AA will publish in the **Federal Register** a notice of the agency's final disposition of the Petitioner's request.

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

Dated: June 30, 2004.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

[FR Doc. 04–15396 Filed 7–6–04; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 660

**[Docket No. 040618188–4188–01; I.D. 061404A]**

**RIN 0648–AS26**

## Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 16–3

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 16–3 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 16–3 amends the FMP to include overfished species rebuilding plans for bocaccio, cowcod, widow rockfish, and yelloweye rockfish within the FMP and would add two rebuilding parameters, the target year for rebuilding and the harvest control rule, to the Code of Federal Regulations (CFR) for each overfished stock. Amendment 16–3 is intended to address the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to protect and rebuild overfished species managed under a Federal FMP. Amendment 16–3 is also intended to partially respond to a Court order, in which NMFS was ordered to provide Pacific Coast groundfish rebuilding plans as FMPs, FMP amendments, or regulations, as required by the Magnuson-Stevens Act. NMFS also proposes to update the list of rockfish species defined in the CFR to match those listed in the FMP.

**DATES:** Comments must be submitted in writing by August 17, 2004. Copies of Amendment 16–3 and the Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EIS/RIR/IRFA) for the amendment are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE. Ambassador Place, Portland, OR 97220.

**ADDRESSES:** You may submit comments on Amendment 16–3 or supporting documents, identified by [I.D. 061404A], by any of the following methods:

- E-mail: *Amendment16–3PR.nwr@noaa.gov*. Include the I.D. number in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; or Rod McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213.
- Fax: 206–526–6736, Attn: Jamie Goen.

**FOR FURTHER INFORMATION CONTACT:** Jamie Goen (Northwest Region, NMFS), phone: 206–526–4646; fax: 206–526–6736 and; e-mail: *jamie.goen@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

This **Federal Register** document is also accessible via the Internet at the Web site of the Office of the **Federal Register**'s Web site at: *http://www.gpoaccess.gov/fr/index.html*.

### Background

Amendment 16–3 revises the FMP to include overfished species rebuilding plans for bocaccio, cowcod, widow rockfish, and yelloweye rockfish and adds specific rebuilding parameters to the Code of Federal Regulations (CFR) at 50 CFR 660.370, for each overfished species. This rulemaking is necessary to implement the rebuilding plans specified by Amendment 16–3.

Amendment 16–3 addresses the requirements of the Magnuson-Stevens Act to protect and rebuild overfished species managed under a Federal FMP. Amendment 16–3 is also intended to partially respond to a Court order in *Natural Resources Defense Council, Inc.* v. *Evans*, 168 F. Supp. 2d 1149 (N.D. Cal 2001), in which NOAA Fisheries was ordered to provide Pacific Coast groundfish rebuilding plans as FMPs, FMP amendments, or regulations, as required by the Magnuson-Stevens Act. A Notice of Availability for Amendment 16–3 was published on June 18, 2004 (69 FR 34116).

This proposed rule is based on recommendations of the Council, under the authority of the Pacific Coast Groundfish FMP and the Magnuson-Stevens Act. Background information and the Council's recommendations are summarized below. Further detail appears in the EIS/RIR/IRFA for Amendment 16–3.

In the fall of 2000, NMFS had approved the first three rebuilding plans for lingcod, boccacio, and POP (September 5, 2000, 65 FR 53646). Subsequently, requirements for developing overfished species rebuilding plans were addressed in Amendment 12 to the FMP, which was submitted for public review (September 8, 2000, 65 FR 54475) and approved by NMFS on December 7, 2000.

During NMFS's review of Amendment 12, the Agency considered whether the three previously approved rebuilding plans met the requirements of Amendment 12 and concluded that the plans did not. As a result, NMFS instructed the Council to re-submit the rebuilding plans for lingcod, boccacio, and Pacific ocean perch (POP). The final rule to implement Amendment 12 describes NMFS's revocation of the lingcod, boccacio, and POP rebuilding plans (December 29, 2000, 65 FR 82947). At that time, NMFS determined that while the rebuilding plans specified adequately protective harvest limits for these three species, the rebuilding plans did not meet all of the rebuilding plan requirements described in Amendment 12, and are not adequately explained and analyzed. In the absence of final rebuilding plans approved by NMFS, the groundfish fishery has continued to operate under interim rebuilding measures for these species.

While NMFS and the Council were developing rebuilding plans that were consistent with the requirements of Amendment 12, NMFS notified the Council that canary rockfish and cowcod were overfished and that the Council must submit rebuilding plans for these species (January 4, 2000, 65 FR 221). On January 11, 2001 (66 FR 2338), NMFS notified the Council that darkblotched and widow rockfish were overfished and that Council must submit rebuilding plans for these species.

On August 20, 2001, a Federal magistrate ruled in *National Resources Defense Council, Inc.* v. *Evans* (N.D. Cal. 2001) that rebuilding plans under the FMP must be in the form of a plan amendment or proposed regulations as specified by the Magnuson-Stevens Act, 16 U.S.C. 1854 (e)(3). In accordance

with the Court ruling, the magistrate issued an order setting aside those portions of Amendment 12 dealing with rebuilding plans (Amendment 12 provided a framework for rebuilding plans that were not themselves plan amendments or proposed regulations). As a result of the magistrate's decision, the Council was required to amend the FMP to make rebuilding plans consistent with the Magnuson-Stevens Act.

On January 11, 2002 (67 FR 1555), NMFS notified the Council that yelloweye rockfish was overfished and that the Council must submit a rebuilding plan. On April 15, 2002 (67 FR 18117), NMFS notified the Council that Pacific whiting was overfished and that the Council must submit a rebuilding plan.

Amendment 16–1 was prepared, in part, to respond to the court order. Amendment 16 1 established a process for and standards by which the Council would specify rebuilding plans for groundfish stocks that are declared overfished. Amendment 16–1 also amended the FMP to require that Pacific Coast groundfish overfished species rebuilding plans be added into the FMP via FMP amendment, and implemented through Federal regulations. Amendment 16 1 was intended to ensure that overfished species rebuilding plans meet the requirements of the Magnuson-Stevens Act, in particular national standard 1 on overfishing and section 304(e), which addresses rebuilding of overfished fisheries. NMFS approved Amendment 16–1 on November 14, 2003. The final rule to codify provisions of Amendment 16–1 was published in the **Federal Register** on February 26, 2004 (69 FR 8861).

Under Amendment 16–1, for each approved overfished species rebuilding plan, the following parameters will be specified in the FMP: estimates of unfished biomass ($B_0$) and target biomass ($B_{MSY}$), the year the stock would be rebuilt in the absence of fishing (TMIN), the year the stock would be rebuilt if the maximum time period permissible under national standard guidelines were applied ($T_{MAX}$), the target year in which the stock would be rebuilt under the adopted rebuilding plan ($T_{Target}$), and the harvest control rule. Other relevant information listed in Amendment 16–1 will also be included in the FMP, including the probability of the stock attaining BMSY by $T_{MAX}$ ($P_{MAX}$). These estimated rebuilding parameters will serve as management benchmarks in the FMP and the FMP will not be amended if the values for these parameters change after new stock assessments are completed, as is likely to happen. The rebuilding plans will also be included in the periodic stock assessment and fishery evaluation (SAFE) reports required by 50 CFR 600.315(e)(1). However, if and when these rebuilding parameters change, the rebuilding plans, as published in the SAFE document, will be amended to include updated parameters.

Amendment 16–2, which NMFS approved on January 30, 2004, amended the FMP to include rebuilding plans for lingcod, canary rockfish, darkblotched rockfish, and POP. NMFS published a final rule implementing Amendment 16–2 on April 13, 2004 (69 FR 19347).

As required by the standards established by Amendment 16–1, the rebuilding plans being adopted under Amendment 16–3 for bocaccio, cowcod, widow rockfish, and yelloweye rockfish include $B_0$, $B_{MSY}$, $T_{MIN}$, $T_{MAX}$, $T_{Target}$, and the harvest control rule for each species. If adopted, Amendment 16–3 would add these parameters to section 4.5.4. of the FMP. Other relevant information on each of these overfished stocks, such as stock distribution, fishery interaction, and the rebuilding strategy would also be added to section 4.5.4 of the FMP if the rebuilding plans proposed under Amendment 16–3 are adopted.

Amendment 16–1 specified two rebuilding parameters that are to be codified in Federal regulations for individual species rebuilding plans: the target year for rebuilding and the harvest control rule that is to be used during the rebuilding period. This proposed rule adds these rebuilding parameters to the Code of Federal Regulations (CFR) at 50 CFR 660.370 for bocaccio, cowcod, widow rockfish and yelloweye rockfish. The target rebuilding year is the year in which there is a 50 percent probability that the stock will be rebuilt with a given mortality rate. The harvest control rule expresses a given fishing mortality rate that is to be used over the course of rebuilding. These parameters would be used to establish the annual or biennial optimum yields (OYs). Conservation and management goals defined in the FMP require the Council and NMFS to manage to the appropriate harvest levels for a species or species groups, including those harvest levels established for rebuilding overfished species.

If, after a new stock assessment, the Council and NMFS conclude that either or both of the parameters defined in the regulation should be revised, the revision will be implemented through the Federal notification and comment rulemaking process, and the updated values codified in the CFR. Generally, the target year should only be changed in unusual circumstances. Two such unusual circumstances include (1) if it is determined, based on new information, that the existing target year is later than the maximum rebuilding time (TMAX), or (2) if the harvest control rule calculated from the new information is estimated to result in such a low OY as to cause substantial socio-economic impacts. Any change to a harvest control rule must be fully supported by a corresponding analysis and updated through the Federal rulemaking process, which would include opportunity for public notice and comment.

An approved rebuilding plan will be implemented through setting OYs and establishing management measures necessary to maintain the fishing mortality within the OYs to achieve objectives related to rebuilding requirements.

At the Council's April 2004 meeting, rebuilding plans for bocaccio, cowcod, widow rockfish, and yelloweye rockfish were adopted and include the parameters listed below. When making the recommendation to implement these rebuilding plans, the Council sought to balance the rebuilding risks to each stock with the short and long-term socio-economic costs borne by groundfish buyers, commercial harvesters, and recreational operators as a result of constraining the fisheries to reduce total mortality of these overfished species.

*Bocaccio*

Assessment scientists and managers have treated West Coast boccacio as independent stocks north and south of Cape Mendocino, CA. The southern stock, which has been declared overfished, occurs south of Cape Mendocino, CA and the northern stock, which is not overfished, north of 48° N. lat. in northern Washington (off Cape Flattery). The overfished southern bocaccio rockfish stock occurs in Central and Southern California waters, on the continental shelf and in nearshore areas, often in rocky habitat. Bocaccio are caught in both commercial and recreational fisheries in approximately equal amounts. Commercial catches mainly occur in limited entry trawl fisheries.

*Date declared overfished:* March 3, 1999

*Status of the stock when declared overfished:* In 1999, the biomass of the southern stock of bocaccio was believed to be at 2.1 percent of its unfished biomass level. In subsequent stock

assessments, the southern stock of bocaccio was believed to be at 3.6 percent of its unfished biomass in 2002 and 7.4 percent of its unfished biomass in 2003. The northern stock of bocaccio has not been assessed.

$B_0$: 13,387 billion eggs in 2003
$B_{MSY}$: 5,355 billion eggs
$T_{MIN}$: 2018
$T_{MAX}$: 2032
$P_{MAX}$: 70 percent
$T_{TARGET}$: 2023
*Harvest control rule*: F=0.0498
*Rebuilding strategy at the time of rebuilding plan adoption:* Commercial management measures intended to limit catch of bocaccio include prohibiting retention of bocaccio or allowing low landing limits for incidental catch, reducing landing limits (cumulative trip limits) on co-occurring species, establishing extensive time/area closures, and restricting the use of trawl nets equipped with large footropes. Large areas off southern California, known as the Cowcod Conservation Areas or (CCAs), have been closed to groundfish fishing to protect cowcod. These closed areas also protect bocaccio. The CCAs are bounded by straight lines enclosing simple polygons. Beginning in 2002, time/area closures, referred to as Rockfish Conservation Areas (RCAs), also came into use as a way of decreasing bycatch of overfished species. RCAs enclose depth ranges where bycatch of overfished species is most likely to occur. The boundaries vary by season and fishery sector (trawl, non-trawl, and recreational), and may be modified in response to new information about the geographic and seasonal distribution of bycatch. Recreational management measures off California include depth closures, restricting fishing to shallow waters, bag limits, size limits, and seasonal closures.

*Cowcod*

Cowcod are a species of large rockfish that ranges from Ranger Bank and Guadalupe Island in central Baja California to Mendocino County, California, and may infrequently occur as far north as Newport, Oregon. Adult cowcod are primarily found over high relief rocky areas. They are generally solitary, but occasionally aggregate. While cowcod are not a major component of the groundfish fishery, they are highly desired by both recreational and commercial fishers because of their bright color and large size.

*Date declared overfished*: January 4, 2000 (65 FR 221)
*Status of the stock when declared overfished*: 6–9 percent (STAT team preferred model) of its unfished biomass level in 1999. Within this range provided in the stock assessment, the Council and NMFS use a value of 7 percent of its unfished biomass level in 1999 based on the "best case" scenario in the stock assessment.

$B_0$: 3,367 mt
$B_{MSY}$: 1,350 mt
$T_{MIN}$: 2062
$T_{MAX}$: 2099
$P_{MAX}$: 60 percent
$T_{TARGET}$: 2090
*Harvest control rule*: F=0.009
*Rebuilding strategy at the time of rebuilding plan adoption*: Commercial management measures intended to limit catch of cowcod include prohibiting retention of cowcod, reducing landing limits (cumulative trip limits) on co-occurring species, establishing extensive time/area closures, and restricting the use of trawl nets equipped with large footropes. Large areas off southern California, known as the CCAs, have been closed to groundfish fishing to protect cowcod. Because cowcod is a fairly sedentary species, establishment of a closed area is an important strategy for limiting cowcod fishing mortality. The CCAs in the Southern California Bight encompass two areas of greatest cowcod density, as estimated in 2000, based on historical cowcod catch and catch rates in commercial and recreational fisheries. To aid in enforcement, the CCA is bounded by straight lines enclosing simple polygons. Estimated fishery removals have been at levels sufficient to rebuild the stock since the CCAs were implemented, except in 2001, when 5.6 mt was caught in the Conception management area. Most of this catch occurred in the spot prawn trawl fishery; fishing for spot prawns with trawl gear has been subsequently prohibited. In addition to the CCAs, large depth-based time/area closures were implemented off California beginning in 2003, referred to as RCAs. RCAs were implemented as a way of decreasing bycatch of overfished species. RCAs enclose depth ranges where bycatch of overfished species is most likely to occur. The boundaries vary by season and fishery sector, and may be modified in response to new information about the geographic and seasonal distribution of bycatch. Recreational management measures to reduce recreational cowcod catches off California include: time/area closures (both CCAs and RCAs), restricting fishing for other groundfish species to shallow waters, non-retention of cowcod, bag limits for other groundfish species, and seasonal closures.

*Widow rockfish*

Widow rockfish range from the western Gulf of Alaska to northern Baja California and are often found suspended in the water column in large schools. They are an important commercial species from British Columbia to central California, primarily caught with midwater trawl gear. Historically, there have been target fisheries for widow rockfish. Since declared overfished, most widow rockfish catches have occurred incidentally in the midwater fishery for Pacific whiting. Tribal midwater trawl fisheries account for a large part of the remainder of recent catches. Widow rockfish are a minor component of recreational groundfish fisheries.

*Date declared overfished*: January 11, 2001 (66 FR 2338)

Status of the stock when declared overfished: Following a stock assessment in 2000 and a revised rebuilding analysis in 2001, the stock was believed to be at 23.6 percent of its unfished biomass level. In a subsequent stock assessment, widow rockfish was believed to be at 22.4 percent of its unfished biomass in 2002.

$B_0$: 43,580 million eggs
$B_{MSY}$: 17,432 million eggs
$T_{MIN}$: 2026
$T_{MAX}$: 2042
$P_{MAX}$: 60 percent
$T_{TARGET}$: 2038
*Harvest control rule*: F=0.0093
*Rebuilding strategy at the time of rebuilding plan adoption*: Commercial management measures intended to limit catch of widow rockfish include reducing landing limits (cumulative trip limits) on widow rockfish and co-occurring species and establishing extensive time/area closures. Beginning in 2002, time/area closures, referred to as RCAs, came into use as a way of decreasing bycatch of overfished species. RCAs enclose depth ranges where bycatch of overfished species is most likely to occur. The boundaries vary by season and fishery sector, and may be modified in response to new information about the geographic and seasonal distribution of bycatch. Because widow rockfish occur in the water column (midwater) and aggregate at night, elimination of target fishery opportunities is a relatively easy way of reducing widow rockfish bycatch. Management measures to reduce incidental catch of widow rockfish have been directed primarily at the Pacific whiting fishery, which has historically taken widow rockfish in relatively high amounts. While catch in other fisheries is sufficiently small, management measures are still intended to

discourage targeting on widow rockfish. In general, recreational management measures include depth closures, as needed, restricting fishing to shallow waters off California, bag limits, size limits, and fishing seasons established for each West Coast state. No recreational bag or size limits have been established for widow rockfish. However, general bag limits for rockfish may have some constraining effect on widow recreational catches.

*Yelloweye rockfish*

Yelloweye rockfish are common from Central California northward to the Gulf of Alaska. They are bottom-dwelling, generally solitary, rocky reef fish. Boulder areas in deep water (>180 m) are the most densely populated habitat type, and juveniles prefer shallow-zone broken-rock habitat. They also occur around steep cliffs and offshore pinnacles. The presence of refuge space appears to be an important factor affecting their occurrence. Yelloweye rockfish are caught in a range of both commercial and recreational fisheries. Because of their preference for rocky habitat, they are more vulnerable to hook and line gear.

*Date declared overfished*: January 11, 2002

*Status of the stock when declared overfished*: Following a stock assessment in 2001, the stock was believed to be at 7 percent of its unfished biomass level off northern California and 13 percent of its unfished biomass level off Oregon. In a subsequent stock assessment, yelloweye rockfish was believed to be at 24.1 percent of its coastwide unfished biomass in 2002.

$B_0$: 3,875 mt

$B_{MSY}$: 1,550 mt

$T_{MIN}$: 2027

$T_{MAX}$: 2071

$P_{MAX}$: 80 percent

$T_{TARGET}$: 2058

*Harvest control rule*: F=0.0153

*Rebuilding strategy at the time of rebuilding plan adoption*: Commercial management measures intended to limit catch of yelloweye rockfish include prohibiting retention of yelloweye rockfish in the limited entry fixed gear and open access fisheries and allowing low landing limits for incidental catch in the limited entry trawl fisheries as part of minor shelf rockfish limits, reducing landing limits (cumulative trip limits) on co-occurring species, establishing extensive time/area closures, and restricting the use of trawl nets equipped with large footropes. Beginning in 2002, time/area closures, referred to as RCAs, came into use as a way of decreasing bycatch of overfished species. RCAs enclose depth ranges where bycatch of overfished species is most likely to occur. The boundaries vary by season and fishery sector, and may be modified in response to new information about the geographic and seasonal distribution of bycatch. In addition to the depth-based RCAs, a C-shaped closed area off the Washington coast near Cape Flattery, the Yelloweye Rockfish Conservation Area (YRCA), has prohibited recreational groundfish and halibut fishing in an area where yelloweye rockfish are concentrated since 2003. The YRCA is also a voluntary closed area for fishing with commercial longline gear for sablefish and troll gear for salmon. [Note: Areas closed by the RCAs and the YRCA partially overlap.] In general, recreational management measures include depth closures, as needed, restricting fishing to shallow waters off California, bag limits, size limits, and fishing seasons established for each West Coast state. Recreational management measures for yelloweye rockfish include closed areas, bag limits, and seasons. Beginning in 2004, retention of yelloweye rockfish has been prohibited coastwide and has been prohibited off Washington since 2002. Yelloweye rockfish has also been prohibited on most halibut fishing trips off Washington and Oregon since 2002.

*New Rockfish Species in Regulations*

NMFS intends to update the list of rockfish species defined in the CFR at § 660.302 to match the list of rockfish species included in the Pacific Coast Groundfish FMP. The FMP and CFR state that, "Rockfish includes all genera and species of the family Scorpaenidae, even if not listed, that occur in the Washington, Oregon, and California area." These species are already specifically listed in the FMP and will be added to the CFR. The following seven new rockfish species in the family Scorpaenidae are being listed in the CFR as species managed under the FMP: chameleon rockfish, dwarf-red rockfish, freckled rockfish, half-banded rockfish, pinkrose rockfish, pygmy rockfish, and swordspine rockfish. In addition, dusty rockfish is being corrected to read dusky rockfish.

**Classification**

At this time, NMFS has not determined whether Amendment 16–3, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared a draft Environmental Impact Statement (EIS) that discusses the effects on the environment as a result of this action. A notice of availability for this draft EIS was published on April 9, 2004 (69 FR 18897). A copy of the draft EIS is available from the Council office. (see **ADDRESSES**)

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA has been prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A copy of the full analysis is available from the Council office (see **ADDRESSES**). A summary of the analysis follows.

The purpose of this proposed action is to implement rebuilding plans for four overfished species, bocaccio, cowcod, widow rockfish and yelloweye rockfish. This action is necessary to meet the Magnuson-Stevens Act requirements for overfished stocks which are defined in the national standard guidelines (50 CFR 600.310). National standard 1 requires that remedial action be taken by preparing an FMP, FMP amendment or proposed regulation to end overfishing if it is occurring, rebuild overfished stocks to the maximum sustainable yield (MSY) level within an appropriate time frame, and to prevent stocks from becoming overfished if they are approaching an overfished threshold. The objective of this proposed rule is to implement rebuilding parameters that will result in bocaccio, cowcod, widow rockish, and yelloweye rockfish stocks returning to their MSY biomass levels.

There are no recordkeeping, reporting, or other compliance issues forthcoming from this proposed rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

The draft EIS/RIR/IRFA for this proposed rule defines five alternative actions that were considered for each of the four overfished species. The alternatives present a range of rebuilding strategies in terms of rebuilding probabilities for each species. The no action alternative is based on the "40–10 harvest policy", which is the default rebuilding policy for setting OYs. Under the 40–10 harvest policy, stocks with biomass levels below $B_{40\%}$ (40 percent of the unfished biomass, a proxy for $B_{MSY}$) have OYs set in relation to the biomass level. At B40% and greater, an OY may be set equal to the ABC. However, if a stock's spawning

biomass declines below B40%, the OY is scaled downward until at 10 percent ($B_{10\%}$), the harvest OY is set at zero unless modified for a species-specific rebuilding plan. In comparison to the other alternatives, the 40–10 harvest policy generally results in lower OYs in the short term, when a stock is at a low biomass level, but allows greater harvests when a stock is at higher biomass levels. For further information on the 40–10 harvest policy see the preamble to the final rule for Amendment 16–1 (February 26, 2004, 69 FR 8861) or Section 5.3 of the FMP. The 40–10 harvest policy alternative would not result in rebuilding for three of the four overfished species (i.e., only bocaccio would be rebuilt within $T_{MAX}$) within the maximum allowable rebuilding time. Lack of rebuilding for these species makes this alternative not a legally-viable alternative and increases the risk to long-term productivity of the stock.

The maximum conservation alternative, Alternative 4, specifies the most conservative, legally-compliant harvests that would allow these four species to rebuild and has the highest probability, 90 percent, of rebuilding within $T_{MAX}$ (except for cowcod which has a 60–percent probability). Each stock is expected to rebuild fastest under this alternative, but at considerable socioeconomic cost. Short-term socioeconomic costs would be highest under this alternative due to severe restrictions on fishing opportunity to allow the stock to rebuild faster.

The maximum harvest alternative, Alternative 1, for each overfished species was based on a 60 percent probability of rebuilding the stocks to their MSY biomass levels by $T_{MAX}$, except for cowcod which was based on a 55 percent probability. This alternative would delay rebuilding for the longest period of time with the intent of keeping harvests at the highest allowable levels for the duration of rebuilding. Because this alternative would allow fishermen an opportunity to harvest higher levels in the short-term, this alternative would have the least socioeconomic impact. However, allowing higher harvest levels in the short-term would slow down rebuilding and, thus, have the highest risk among the action alternatives of not rebuilding within $T_{MAX}$.

Intermediate alternatives, Alternatives 2 and 3, were defined for each overfished species and were based on 70 and 80 percent probabilities of rebuilding the stocks to their MSY biomass by $T_{MAX}$ (except for cowcod which was based on a 60- percent probability for Alternatives 2 and 3). The socio-economic impacts of the intermediate alternatives fall within the range of the other alternatives that were fully analyzed in EIS analysis. Alternative 2 would have more socio-economic impacts than Alternative 1, but less than Alternative 3. Alternative 3 would have more socio-economic impacts than Alternative 2, but less than Alternative 4. Alternative 2 would have a lower risk of not rebuilding within $T_{MAX}$ than Alternative 1, but higher than Alternative 3. Alternative 3 would have a lower risk of not rebuilding within $T_{MAX}$ than Alternative 2, but higher than Alternative 4.

After the draft EIS was made available by EPA for public review (69 FR 18897, April 9, 2004), the Council selected their preferred alternatives at their April 2004 meeting. The Council's preferred alternatives for each species are as follows: bocaccio, Alternative 2 (using the STATc Model)—70 percent probability of rebuilding the stock to its MSY biomass by TMAX with a $T_{TARGET}$ of 2023 and a harvest rate of 0.0498; cowcod, Alternatives 2 through 4 (all the same)—60 percent probability of rebuilding the stock to its MSY biomass by TMAX with a $T_{TARGET}$ of 2090 and a harvest rate of 0.009; widow rockfish, Alternative 1 (using Model 8)—60 percent probability of rebuilding the stock to its MSY biomass by TMAX with a $T_{TARGET}$ of 2038 and a harvest rate of 0.0093; and yelloweye rockfish, Alternative 3—80 percent probability of rebuilding the stock to its MSY biomass by $T_{MAX}$ with a $T_{TARGET}$ of 2058 and a harvest rate of 0.0153. The Council-preferred alternative for each species was chosen by balancing biological and economic risks, maximizing the likelihood of rebuilding the stock while minimizing the socio-economic impacts on the industry.

A fish-harvesting business is considered a "small" business by the Small Business Administration (SBA) if it has annual receipts not in excess of $3.5 million. For related fish-processing businesses, a small business is one that employs 500 or fewer persons. For wholesale businesses, a small business is one that employs not more than 100 people. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $6 million.

The economic impacts of implementing these rebuilding plans will be shared among the participants and would vary according to their dependancy on groundfish-related income. The proposed action adopts rebuilding plans for four overfished species. The economic impact of implementing these rebuilding plans will be shared among groundfish buyers, commercial harvesters, and recreational operators. There are approximately 4,600 commercial vessels fishing from West Coast ports. Of these, 1,709 vessels had some involvement in West coast groundfish fisheries, 421 of those held groundfish limited entry permits, and an additional 771 participated in open access groundfish fisheries (if vessels derive more than 5 percent of total revenue from groundfish and do not have a limited entry permit, then they are considered to be participating in open access fisheries). After the buyback program in the fall of 2003, 91 limited entry trawl vessels and their permits were permanently retired, representing a 35 percent reduction in the capacity of the limited entry trawl fleet in terms of permits. Regarding buyers and processors, there are approximately 1,780 fish buyers on the West Coast, of which 732 bought at least some groundfish from commercial fishermen. Only 19 of the 732 fish buyers purchased more than $2 million worth of total harvest during the year 2000. In 2001, there were an estimated 753 recreational fishing charter vessels operating in ocean fisheries on the West Coast: 106 in Washington, 232 in Oregon and 415 in California.

Most of these entities would qualify as small businesses under the SBA's criteria. A few processors/buyers may not qualify as small businesses. There are fewer than 9 processors/buyers on the West coast that employ more than 500 people and, therefore, may not qualify as small businesses. Of these 9 processors/buyers, they also process fish other than groundfish and operate in ports in Alaska. Most employees are likely employed in Alaska ports, due to the higher volume of fish processed in Alaska. In addition, most of these employees are seasonal based on when fisheries are open. Therefore, most of these processors/buyers would not have more than 500 employees year round. No alternatives, other than those considered in the draft EIS, have been identified that would reduce the impacts on small entities. This proposed rule is not expected to yield disproportionate economic impacts between small and large entities.

Implementation of specific rebuilding plans may entail substantial economic impacts on some groundfish buyers, commercial harvesters, and in the case of bocaccio, cowcod, and yelloweye rockfish, recreational operators. The economic impact will vary according to their dependency on groundfish-related income, the frequency of overfished species in their area of the coast, and the

severity of those species overfished status. The Council preferred rebuilding alternatives specify annual OY levels for the overfished species that are sufficient to mitigate some of the adverse economic impacts on these entities, while not compromising the statutory requirement for timely rebuilding. NMFS welcomes comments on this issue (see **ADDRESSES**).

This action was developed after meaningful consultation and collaboration with tribal representatives on the Council who have agreed with the provisions that apply to tribal vessels and is, therefore, compliant with Executive Order 13175 (Consultation and coordination with Indian tribal governments).

**List of Subjects in 50 CFR Part 660**

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: June 29, 2004.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

## PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.302, the definition of "Groundfish," is amended by adding seven new rockfish species and correcting "dusty rockfish" to read "dusky rockfish" in alphabetical order to read as follows:

* * * * *

**§ 660.302 Definitions.**

* * * * *

*Groundfish* * * *

* * * * *

chameleon rockfish, *S. phillipsi*

* * * * *

dwarf-red rockfish, *S. rufinanus*

dusky rockfish, *S. ciliatus*

* * * * *

freckled rockfish, *S. lentiginosus*

* * * * *

half-banded rockfish, *S. semicinctus*

* * * * *

pinkrose rockfish, *S. simulator*

pygmy rockfish, *S. wilsoni*

* * * * *

swordspine rockfish, *S. ensifer*

* * * * *

3. In § 660.370, paragraphs (e) through (h) are added to read as follows:

**§ 660.370 Overfished species rebuilding plans.**

* * * * *

(e) *Bocaccio.* The target date for rebuilding the southern bocaccio stock to $B_{MSY}$ is 2023. The harvest control rule to be used to rebuild the southern bocaccio stock is an annual harvest rate of F=0.0498.

(f) Cowcod. The target year for rebuilding the cowcod stock to $B_{MSY}$ is 2090. The harvest control rule to be used to rebuild the cowcod stock is an annual harvest rate of F=0.009.

(g) Widow rockfish. The target year for rebuilding the widow rockfish stock to $B_{MSY}$ is 2038. The harvest control rule to be used to rebuild the widow rockfish stock is an annual harvest rate of F=0.0093.

(h) Yelloweye rockfish. The target year for rebuilding the yelloweye rockfish stock to BMSY is 2058. The harvest control rule to be used to rebuild the yelloweye rockfish stock is an annual harvest rate of F=0.0153.

[FR Doc. 04–15256 Filed 7–6–04; 8:45 am]

BILLING CODE 3510–22–S

# Notices

Federal Register
Vol. 69, No. 129
Wednesday, July 7, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Doc. No. FV–04–326]**

### United States Standards For Grades of Canned Refried Beans

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice; request for public comment.

**SUMMARY:** The Agricultural Marketing Service (AMS), prior to undertaking additional research and other work associated with the establishment of an official grade standard, is soliciting comments on the petition to establish United States Standards for Grades of Refried Beans. AMS received a petition from the National Food Processors Association (NFPA) to create grade standards for refried beans that would include a description of the product, style, sample unit size, grades, designation of grade levels by sample unit and by lot. This proposed standard would provide a common language for trade, a means of measuring value in the marketing of canned refried beans, and provide guidance in the effective utilization of canned refried beans.

**DATES:** Comments must be submitted on or before September 7, 2004.

**ADDRESSES:** Written comments may be submitted to Lydia E. Berry, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, 1400 Independence Avenue, SW., Washington, DC 20250–0247; fax (202) 690–1087; or e-mail *lydia.berry@usda.gov* or *http://www.regulations.gov*. Comments should reference the date and page of this issue of the **Federal Register**. All comments received will be made available for public inspection at the address listed above during regular business hours and on the Internet. A copy of the petition from NFPA requesting the establishment of grade standards for Canned Refried Beans is available either through the address cited above or by accessing AMS's Web site on the Internet at: *http://www.ams.usda.gov/fv/ppb.html*. Any comments received regarding this proposed standard will also be posted on that site.

**FOR FURTHER INFORMATION CONTACT:** Lydia E. Berry, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, 1400 Independence Avenue, SW., Washington, DC 20250–0247; fax (202) 690–1087; or e-mail *lydia.berry@usda.gov*.

**SUPPLEMENTARY INFORMATION:** Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices." AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. Those United States Standards for Grades of Fruits and Vegetables that no longer appear in the Code of Federal Regulations are maintained by USDA/AMS/Fruit and Vegetable Programs. AMS has been asked to establish the U.S. Standards for Grades of Canned Refried Beans using the procedures that appear in part 36, title 7 of the Code of Federal Regulations (7 CFR part 36). NFPA has requested the development of a standard for canned refried beans to be used by the industry. The petition provided information on style, sample size and description to develop the standard and AMS received samples of various styles to collect information on canned refried beans. The petition requests the establishment of a standard that would define "Canned Refried Beans" and establish three styles, designated as "Refried Beans with Lard," "Refried Beans with Vegetable Oil (Vegetarian)" and "Fat Free Refried Beans." It would also establish three types of canned refried beans, based on the "whole bean-to-bean paste ratio", designated as "Type I", "Type II" and "Type III." The petition also requests that quality factors that affect canned refried beans to be designated as "Color," "Absence of Defects," "Consistency," and "Flavor and Odor." The requested standard would also establish the grade levels "A," "B," and "Substandard," and assign the corresponding score points for each level. This proposed standard would provide a common language for trade, a means of measuring value in the marketing of canned refried beans, and provide guidance in the effective utilization of canned refried beans.

### Agricultural Marketing Service

Prior to undertaking detailed work to develop a new standard, AMS is soliciting for comments on the petition submitted to establish United States Standards for Grades of Canned Refried Beans.

This notice provides a 60 day comment period for interested parties to comment on the petition to develop the standard. Should AMS conclude that the standards are needed, the Agency will develop a proposed standard that will be published in the **Federal Register** with a request for comments in accordance with 7 CFR part 36.

Dated: June 30, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 04–15282 Filed 7–6–04; 8:45 am]
BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Cancellation of a Notice of Intent To Prepare an Environmental Impact Statement

**AGENCY:** Forest Service, USDA.

**ACTION:** Cancellation of a notice of intent to prepare an environmental impact statement.

**SUMMARY:** The original Notice of Intent to prepare an Environmental Impact Statement (EIS) was published in the **Federal Register** on 17 March 2003 in Vol. 68, No. 51 on page 12661,for the Manti-La Sal National Forest regarding Fortuna Company Gas Exploration Wells, Emery and Sanpete Counties, Utah.

The Forest Supervisor has determined that the preparation of an EIS is not needed. It has been determined that two

Environmental Assessments, one for each proposed well, is adequate.

The proposed wells, designated the Joe's Valley Federal 20–1, and Lowery Water Federal 32–12, were proposed by Fortuna US (proponent). The proposed Joe's Valley Federal 20–1 is located in NW ¼ Sec 21 T.15S, R6E. SLBM, Sanpete County, Utah. The Lowery Water Federal 32–12 is located in SW ¼ Sec 32 T. 16 S, R. 6 E., SLBM, Emery County, Utah.

**ADDRESSES:** Send written comments to Forest Supervisor, Ferron/Price Ranger District, Manti-La Sal National Forest, 115 West Canyon Road, P.O. Box 310, Ferron, Utah 84523, ATTN: Tom Lloyd.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning the proposed action and EAs should be addressed to Tom Lloyd or Carter Reed, Manti-La Sal National Forest, phone (435) 384–2372 or (435) 637–2817.

Dated: June 15, 2004.

**Alice B. Carlton,**

*Forest Supervisor, Manti-La Sal National Forest.*

[FR Doc. 04–15279 Filed 7–6–04; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Madera County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Resource Advisory Committee Meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, July 19, 2004. The Madera Resource Advisory Committee will meet at the Forest Service Office, North Fork, CA, 93643. The purpose of the meeting is: Whole committee discussion of 2004 project proposals, summary of USDA Forest Service budget and address RAC member mileage reimbursement.

**DATES:** The Madera Resource Advisory Committee meeting will be held Monday, July 19, 2004. The meeting will be held from 7 p.m. to 9 p.m.

**ADDRESSES:** The Madera County RAC meeting will be held at the Forest Service Office, 57003, Road 225, North Fork, CA 93644.

**FOR FURTHER INFORMATION CONTACT:** Dave Martin, U.S.D.A., Sierra National Forest, Bass Lake Ranger District, 57003 Road 225, North Fork, CA 93643 (559) 877–2218 ext. 3100; e-mail: *dmartin05@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** Agenda items to be covered include: (1) Committee discussion of 2004 project proposals, (2) summary of USDA Forest Service budget, and (3) address RAC member mileage reimbursement.

Dated:June 29, 2004.

**David W. Martin,**

*District Ranger, Bass Lake Ranger District.*

[FR Doc. 04–15383 Filed 7–6–04; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Lincoln County Resource Advisory Committee Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Kootenai National Forests' Lincoln County Resource Advisory Committee will meet on July 14, at 6 p.m. in Libby, Montana for a business meeting. The meeting is open to the public.

**DATES:** July 14, 2004.

**ADDRESSES:** The July 14, meeting will be held at the Kootenai National Forest Supervisor's Office, located at 1101 U.S. Highway 2 West, Libby, MT.

**FOR FURTHER INFORMATION CONTACT:** Barbara Edgmon, Committee Coordinator, Kootenai National Forest at (406) 293–6211, or e-mail *bedgmon@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** Agenda topics include informational presentations, status of approved projects, accepting project proposals for consideration and receiving public comment. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Interlake based in Kalispell, MT.

Dated: June 28, 2004.

**Bob Castaneda,**

*Forest Supervisor.*

[FR Doc. 04–15390 Filed 7–6–04; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Southwest Idaho Resource Advisory Committee Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will meet for a business meeting.

**DATES:** Wednesday, July 21, 2004, beginning at 10:30 a.m.

**ADDRESSES:** The meeting will be held at the American Legion Post, Cascade, Idaho.

**FOR FURTHER INFORMATION CONTACT:** Randy Swick, Designated Federal Officer, at (208) 634–0401 or electronically at *rswick@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** Agenda topics include review and approval of project proposals, and an open public forum. The meeting is open to the public.

Dated: July 1, 2004.

**Carol R. Feider,**

*Acting Forest Supervisor, Payette National Forest.*

[FR Doc. 04–15501 Filed 7–6–04; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF COMMERCE

**[I.D. 070104D]**

### Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Interim Capital Construction Fund Agreement and Certificate Family of Forms.

*Form Number(s):* NOAA Form 88-14.

*OMB Approval Number:* 0648-0090.

*Type of Review:* Regular submission.

*Burden Hours:* 2,250.

*Number of Respondents:* 1,000.

*Average Hours Per Response:* 3.5 hours for agreement; 1 hour for certificate.

*Needs and Uses:* The Capital Construction Fund Program allows

commercial fishermen to enter into agreements with the Secretary of Commerce to establish accounts to fund the construction, reconstruction, or replacement of a fishing vessel. The monies placed into the accounts receive tax deferral benefits. Persons must apply for the program to establish their eligibility.

*Affected Public:* Business or other for-profit organizations.

Frequency: On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer,

FAX number 202–395–7285, or *David__Rostker@omb.eop.gov.*

Dated: June 30, 2004.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04–15397 Filed 7–6–04; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

**[I.D. 070104F]**

### Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Marine Mammal Stranding Report/Marine Mammal Rehabilitation Disposition Report.

*Form Number(s):* NOAA Form 89–864.

*OMB Approval Number:* 0648–0178.

*Type of Review:* Regular submission.

*Burden Hours:* 2,400.

*Number of Respondents:* 4,800.

*Average Hours Per Response:* 30 minutes.

*Needs and Uses:* The marine mammal stranding report provides information on strandings so that NMFS can compile and analyze by region the species, numbers, conditions, and causes of illnesses and deaths in stranded marine mammals. The Agency requires this information to fulfill its management responsibilities under the Marine Mammal Protection Act (16 U.S.C. 1421a). The Agency is also responsible for the welfare of marine mammals while in rehabilitation status. The data from the marine mammal rehabilitation disposition reports are required for monitoring and tracking of marine mammals held at various NMFS-authorized facilities. The information is submitted primarily by volunteer members of the marine mammal stranding networks who are authorized by the Agency.

*Affected Public:* Business or other for-profit organizations, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government.

Frequency: On occasion.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number 202–395–7285, or David__Rostker@omb.eop.gov.

Dated: June 30, 2004.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04–15400 Filed 7–6–04; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

**[I.D. 070104H]**

### Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

Title: NOAA Space-Based Data Collection System (DCS) Agreements.

*Form Number(s):* None.

*OMB Approval Number:* 0648–0157.

*Type of Review:* Regular submission.

*Burden Hours:* 440.

*Number of Respondents:* 390.

*Average Hours Per Response:* 3 hours for GOES; 1 hour for ARGOS.

*Needs and Uses:* NOAA operates two space-based data collection systems (DCS): the Geostationary Operational Environmental Satellite (GOES) DCS and the Argos DSC flown on polar-orbiting satellites. NOAA allows users access to the DCS if they meet certain criteria. The applicants must submit information to ensure they meet these criteria. NOAA does not approve agreements when commercial services are available that fulfill users' requirements.

*Affected Public:* Not-for-profit institutions; business and other for-profit organizations; individuals or households, and State, Local or Tribal Government.

*Frequency:* 3–5 years.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number 202–395–7285, or David__Rostker@omb.eop.gov.

Dated: June 30, 2004.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04–15403 Filed 7–6–04; 8:45 am]

BILLING CODE 3510–HR–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–583–816]**

### Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent To Rescind in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Preliminary results of antidumping duty administrative review and notice of intent to rescind in part.

**SUMMARY:** In response to a request from respondent Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen") and from Markovitz Enterprises, Inc. (Flowline Division), Shaw Alloy Piping Products Inc., Gerlin, Inc., and Taylor Forge Stainless, Inc., collectively ("Petitioners"), the Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan. Specifically, the petitioners requested that the Department conduct the administrative review for Ta Chen, Liang Feng Stainless Steel Fitting Co., Ltd. ("Liang Feng"), Tru-Flow Industrial Co., Ltd. ("Tru-Flow"), and PFP Taiwan Co., Ltd. ("PFP"). This review covers Ta Chen, a manufacturer and exporter of the subject merchandise and Liang Feng, Tru-Flow, and PFP, manufacturers of the subject merchandise. The period of review ("POR") is June 1, 2002, through May 31, 2003. With regard to Ta Chen, we preliminarily determine that sales have been made below normal value ("NV"). With regard to Liang Feng, Tru-Flow, and PFP, we are giving notice that we intend to rescind this review based on record evidence that there were no entries into the United States of subject merchandise during the POR. For a full discussion of the intent to rescind with respect to Liang Feng, Tru-Flow, and PFP, see the "Notice of Intent to Rescind in Part" section of this notice.

If these preliminary results are adopted in our final results of this administrative review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties. The preliminary results and cash deposit instructions are listed below in the section titled "Preliminary Results of Review."

**EFFECTIVE DATE:** July 7, 2004.

**FOR FURTHER INFORMATION CONTACT:** Joe Welton or James Doyle, Enforcement Group III—Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0165 and (202) 482–0159, respectively.

## Background

On June 16, 1993, the Department published in the **Federal Register** the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan. *See Amended Final Determination and Antidumping Duty Order: Certain Stainless Steel Butt-Weld Pipe and Tube Fittings from Taiwan,* 58 FR 33250 (June 16, 1993). On June 2, 2003, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on stainless steel butt-weld pipe fittings from Taiwan for the period June 1, 2002, through May 31, 2003. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation,* 68 FR 32727 (June 2, 2003).

On June 30, 2003, Petitioners requested an antidumping duty administrative review for the following companies: Ta Chen, Liang Feng, Tru-Flow, and PFP for the period June 1, 2002, through May 31, 2003. On June 30, 2003, Ta Chen requested an administrative review of its sales to the United States during the POR. On July 29, 2003, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review for the period June 1, 2002, through May 31, 2003. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation In Part,* 68 FR 44524 (July 29, 2003). On March 3, 2004, the Department extended the deadline for the preliminary results in this administrative review until May 30, 2004. *See Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review,* 69 FR 9997 (March 3, 2004). On April 27, 2004, the Department extended the preliminary results further, until June 29, 2004. *See Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review,* 69 FR 22763 (April 27, 2004).

On, August 6, 2003, the Department issued its antidumping questionnaire to Ta Chen, Liang Feng, Tru-Flow, and PFP. On August 26, 2003, Liang Feng, Tru Flow, and PFP each provided letters on the record stating that they had no sales of subject merchandise during the POR. On September 3, 2003, Ta Chen reported in its response to Section A of the Department's questionnaire [1] that it made sales of subject merchandise to the United States during the POR. On October 6, 2003, Ta Chen submitted its response to sections B, C, and D of the Department's questionnaire. On October 17, 2003, and October 21, 2003, Petitioners submitted deficiency comments regarding Ta Chen's Section A response and Section B–D responses, respectively. On October 28, 2003, the Department issued a supplemental Section A questionnaire to Ta Chen. Ta Chen's response to this supplemental Section A was filed on November 19, 2003. Ta Chen submitted additional information in relation to the Section A supplemental on November 24, 2003. On December 1, 2003, the Department issued a supplemental Section B–D questionnaire, to which Ta Chen responded on January 2, 2004. On December 9, 2003, Petitioners submitted deficiency comments regarding Ta Chen's November 19, 2003, supplemental Section A response. These deficiency comments were revised in a submission from Petitioners on December 10, 2003. On December 19, 2003, Ta Chen submitted additional comments expanding upon its November 19, 2003, supplemental Section A response and in response to the Petitioner's December 9 and 10, 2003, deficiency comments.

On January 9, 2004, the Department issued a second supplementary Section A questionnaire to Ta Chen, to which Ta Chen responded on January 23, 2004. On March 9, 2004, the Department issued a third supplemental Section A questionnaire, to which Ta Chen responded on April 14, 2004. On March 23, 2004, the Department issued a supplemental Section C–D questionnaire to Ta Chen, to which Ta Chen responded on April 15, 2004.

On April 28, 2004, Petitioners submitted deficiency comments regarding Ta Chen's April 14, 2004 supplemental Section A questionnaire response. On May 11, 2004, Ta Chen filed comments in response to the deficiency comments from Petitioners, and expanding upon its April 14, 2004 supplemental Section A response.

The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation, and the manner in which the company sells that merchandise in all markets. Section B requests a complete listing of all of the company's home market sales on the foreign like product or, if the home market is not viable, sales of the foreign like product in the most appropriate third-country market. Section C requests a complete listing of the company's U.S. sales of subject merchandise. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further manufacturing.

**Notice of Intent To Rescind Review in Part**

Pursuant to 19 CFR 351.213 (d)(3), the Department may rescind an administrative review, in whole or with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. The Department explained this practice in the preamble to the Department's regulations. *See Antidumping Duties; Countervailing Duties* 62 FR 27296, 27317 (May 19, 1997) ("Preamble"); *see also Stainless Steel Plate in Coils from Taiwan: Notice of Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review,* 67 FR 5789, 5790 (February 7, 2002) and *Stainless Steel Plate in Coils from Taiwan: Final Rescission of Antidumping Duty Administrative Review,* 66 FR 18610 (April 10, 2001).

On August 26, 2003, Liang Feng, Tru Flow, and PFP each submitted letters on the record stating that they had no sales of subject merchandise during the POR. To confirm their statements, on September 5, 2003, the Department conducted a customs inquiry and determined to its satisfaction that there were no entries of subject merchandise during the POR. Therefore, pursuant to 19 CFR 351.213(d)(3), the Department preliminarily intends to rescind this review as to Liang Feng, Tru Flow, and PFP. The Department may take additional steps to confirm that these companies had no sales of subject merchandise to the United States.

**Scope of the Review**

The products covered by this order are certain stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter. Certain welded stainless steel butt-weld pipe fittings ("pipe fittings") are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; and (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, with the following five shapes the most basic: "elbows", "tees", "reducers", "stub ends", and "caps." The edges of finished pipe fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this review. The pipe fittings subject to this review are currently classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive. Pipe fittings manufactured to American Society of Testing and Materials specification A774 are included in the scope of this order.

**Period of Review**

The POR for this administrative review is June 1, 2002, through May 31, 2003.

**Affiliations**

Section 771(33) of the Act states that the Department considers the following as affiliated: (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; (B) any officer or director of an organization and such organization; (C) partners; (D) employer and employee; (E) any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization; (F) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) any person who controls any other person and such other person. For purposes of affiliation, section 771(33) states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

The petitioners assert that Ta Chen was affiliated with numerous companies involved in the trading, distribution, and/or production of specialty steel products during the POR under section 771(33) of the Act. Ta Chen has denied that affiliations exist with these entities. In addition, Ta Chen asserts that these companies have no involvement with the subject merchandise or foreign like product. Applying the standard outlined in section 771(33) of the Act, the evidence on the record supports a finding that the following five entities were affiliated with Ta Chen [2] during the entire POR: Emerdex Stainless Flat-Rolled Products, Inc. ("Emerdex 1"), Emerdex Stainless Steel, Inc. ("Emerdex 2"), Emerdex Group ("Emerdex 3"), Emerdex Shutters, Inc. ("Emerdex 4") (Collectively, these four companies are referred to as the "Emerdex Companies"), and Dragon Stainless, Inc. ("Dragon"). *See Memorandum for Jeffrey May, Deputy Assistant Secretary, from Joseph Welton, Analyst, Ta Chen Affiliations Memorandum: Stainless Steel Butt-Weld Pipe Fittings from Taiwan 2002–2003 Review* (June 29, 2004) ("Affiliation Memo")

There is also information on the record concerning Ta Chen's relationships with numerous other companies. However, there is no evidence indicating that these companies were involved in any way that potentially affected the production, pricing, costs, or sales of subject merchandise or foreign like product, or that these companies had any direct transactions with Ta Chen. Because these companies were not involved in subject merchandise or foreign like product, it is not necessary to consider further whether the following companies are affiliated with Ta Chen: AMS Specialty Steel, Inc., AMS Specialty Steel, LLC SOSID #0654511, AMS Specialty Steel LLC SOSID #552293, AMS Steel Corporation, Stainless Express, Inc., Stainless Express Products, Inc., Estrela Steel, Inc., Estrela, LLC, South Coast Stainless, Inc., Millennium Stainless, Inc., DNC Metals, Inc., Billion Stainless, Inc., Southstar Steel Corporation, NASTA International, Inc., Becman, LLC, Becmen Specialty Steels, Inc., Becmen Trading International, KSI Steel, Inc., K. Sabert, Inc., Sabert Investments, PFP, and two companies owned by the immediate family of the President of Ta Chen whose names are considered business proprietary information by Ta Chen. (*See Affiliation Memo*)

**Ta Chen's Reporting**

In this proceeding, the interested parties have introduced to the record information identifying numerous commercial entities with various degrees of affiliations with Ta Chen (identified in the "Affiliations" section above), nearly all of which trade or produce specialty steel products. Petitioners have alleged that affiliations exist with these companies, however, Petitioners have not provided evidence indicating that these companies were involved in subject merchandise or the foreign like product. Nevertheless, the

[2] Ta Chen and its subsidiaries include Ta Chen Stainless Pipe Co., LTD, Ta Chen International ("TCI"), Ta Chen (BVI) Holdings LTD., Ta-Jei Investment Co., LTD, Ta Ever Investment Co., LTD., Ta Chen Steel Investment Co., LTD., Banner Fastener Inc., Tension Control Bolting, Inc., Shiziazhuang Hitai Precision Casting Co., LTD., and Ta Chen Baoding Precision Casting Co., LTD.

Department further investigated Ta Chen's dealings with these potentially affiliated companies to determine whether there was any potential effect on the margin if they were affiliated with Ta Chen.

The Department issued several supplemental questionnaires seeking information concerning these steel trading companies. Specifically, the Department requested disclosure of Ta Chen's affiliated parties in the original Section A questionnaire, dated August 26, 2004. In addition, we repeated requests for information concerning the identification of affiliated parties in our October 28, 2003, January 9, 2004, and March 9, 2004, supplemental Section A questionnaires. Ta Chen submitted its responses to our questionnaires on September 3, 2003, November 19, 2003, January 23, 2004, and April 14, 2004. Subsequent to each of Ta Chen's responses to our requests for supplemental information (November 19, 2003, January 23, 2004, and April 14, 2004), Petitioners submitted comments asserting that there were additional allegedly affiliated parties which had not been disclosed by Ta Chen, and which the record shows trade or produce specialty steel products. However, Petitioners did not support any allegations that the alleged affiliates were involved in the specialty steel product which is the subject of this review. In addition, Ta Chen submitted rebuttal information identifying certain potentially affiliated parties on November 24, 2003, December 19, 2003, and May 11, 2004, again noting that the companies were not involved in the subject merchandise or foreign like product.

The Department has reviewed all available information regarding Ta Chen's possible affiliates, particularly those which trade or produce specialty steel products. (*See Affiliation Memo*). Although the business activities of these potential affiliates appear to involve products which are close to the subject merchandise, there is no information on the record supporting Petitioners' assertions that most of these companies are involved in subject merchandise or foreign like product. We did, however, find evidence indicating that two of these entities were involved in a certain number of transactions involving subject merchandise. See *Analysis Memorandum for Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Preliminary Results of the 2001–2002 Administrative Review of Certain Stainless Steel Butt-weld Pipe Fittings from Taiwan* (June 29, 2004) ("Analysis Memo"). We have applied adverse facts available in those instances. Since we only found two entities that clearly deal in subject merchandise, we have limited our affiliation and facts available findings to those two entities.

**Partial Adverse Facts Available**

For the reason stated before, we determine that the use of partial AFA is appropriate for the preliminary determination with respect to Ta Chen. For a description of the calculations which apply AFA in this review, *see Analysis Memo.*

*A. Use of Partial Facts Available*

Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the Department, fails to provide such information by the deadline or in the form or manner requested, significantly impedes a proceeding, or provides information which cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination.

Section 782(e) of the Act requires the Department to consider information that is submitted by the respondent and is necessary to the determination but does not meet all the applicable requirements established by the Department if (1) the information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information; and (5) the information can be used without undue difficulties.

The record shows that Ta Chen sold subject merchandise to Emerdex 2, an affiliated company under common control with the Emerdex Companies (*See Analysis Memo at 2*), but Ta Chen failed to report Emerdex 2's downstream sales of subject merchandise to unaffiliated customers during the POR, despite being instructed to report downstream sales to unaffiliated customers (*See* August 6, 2003 questionnaire at G–5). In addition, the record shows that Dragon, an affiliated company, incurred U.S. selling expenses for subject merchandise on behalf of Ta Chen (*See Analysis Memo* at 2–3). Ta Chen failed to report the total amount of these expenses, and the record does not indicate that these expenses were captured in Ta Chen's U.S. sales database. Therefore, with respect to these transactions, we have applied FA under section 776(a)(2)(B) of the Act.

For the preliminary determination, under section 776(a)(2)(B) of the Act, we have used facts otherwise available on the record of this review to calculate a dumping margin for Emerdex 2's downstream sales of subject merchandise in the United States, as the record does not contain those sales. Section 772(b) of the Act states that the Department must base its constructed export price calculations on the price at which the subject merchandise is first sold in the United States to a purchaser not affiliated with the producer or exporter, as adjusted. Ta Chen did not report Emerdex 2's downstream sales of subject merchandise. Therefore, we must use facts otherwise available to determine the constructed export price of those sales.

Also, under section 776(a)(2)(B) of the Act, we have used the facts otherwise available on the record of this review to calculate Dragon's total U.S. selling expenses for subject merchandise which were incurred on behalf of Ta Chen, and to allocate those selling expenses to Ta Chen's U.S. sales of subject merchandise. Section 772(d) of the Act states that the Department must adjust the constructed export price for the amount of any selling expenses incurred in the United States by or for the account of the producer or exporter. The record shows that Dragon incurred selling expenses in the United States related to sales of subject merchandise for the account of Ta Chen (*See* May 11, 2004, comments at Exhibit I–C). However, Ta Chen did not describe the nature or extent of these expenses. We have used facts otherwise available under section 776(a)(2)(B) of the Act to determine the amount of these U.S. selling expenses for our calculation of Ta Chen's constructed export price for the relevant sales.

*B. Application of Adverse Inferences for Partial Facts Available*

In applying facts otherwise available, section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See e.g., Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil,* 67 FR 55792, 55794–96 (August 30, 2002). Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See

Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, at 870 (1994) ("SAA").

In selecting from among the facts available, the Department finds it appropriate to apply an adverse inference because Ta Chen did not cooperate to the best of its ability to provide information concerning Emerdex 2 or Dragon. The Department has determined that each of these companies was controlled by Ta Chen throughout the POR, and thus Ta Chen had the ability to provide such information. (*See Affiliation Memo*)

As noted in the *Analysis Memo* at 2 and the *Affiliation Memo* at 7, Ta Chen failed to report its downstream sales to Emerdex 2, an affiliated company. In our March 9, 2004, supplemental questionnaire, prior to the identification on the record of Emerdex 2, the Department requested Ta Chen to identify any sales of subject merchandise to Emerdex 1, an affiliate of Ta Chen, a steel trader and steel producer, and a customer of and vendor to Ta Chen.[3] (*See* March 9, 2004, questionnaire at 4). Ta Chen responded that no sales of subject merchandise existed. (*See* April 14, 2004, response at 28). Ta Chen also did not identify the sales of subject merchandise to Emerdex 2. Given this opportunity to identify sales to affiliated parties, Ta Chen chose to interpret the Department's question in the narrowest possible manner, and thus only reported whether sales existed to Emerdex 1, an entity which is legally separate, but, as the record indicates, is not commercially separate from Emerdex 2 or the other Emerdex Companies. Thus, with respect to the Emerdex Companies, Ta Chen did not cooperate to the best of its ability because it has withheld information from the Department concerning its relationship with these companies, its sales of subject merchandise to these companies, and its purchases of inputs from these companies.

Regarding Dragon, Ta Chen did not report the total amount of U.S. selling expenses incurred by Dragon for U.S. sales of subject merchandise, and the record does not indicate that these expenses were reported in Ta Chen's Section C database. The Department clearly indicated its interest in Dragon's activities in supplemental questionnaires, dated October 28, 2004, and March 9, 2004. Ta Chen made no indication that Dragon incurred any expenses on behalf of Ta Chen in its responses to those questionnaires, or in its original Section C questionnaire response (*See* October 6, 2003, November 19, 2003, and April 14, 2004, responses). Ta Chen also failed to respond to the Department's request for a full description of its relationship with Dragon. (*See* April 14, 2004, response at 2). Subsequently, Ta Chen provided evidence to the Department on May 11, 2004, which indicated that Dragon was responsible for certain selling activities related to the subject merchandise in the United States, and therefore, that such selling expenses exist (*See* May 11, 2004, comments at Exhibit I–C). However, Ta Chen has failed to describe the nature of those expenses or to report the extent of those expenses. Although this evidence does show one relevant aspect of Ta Chen's relationship with Dragon, the respondent has still not given a clear or full description of the relationship. As such, the Department cannot ascertain whether any additional effects on the margin calculation exist due to transactions between Ta Chen and Dragon. Because the record shows that Ta Chen has the ability to control Dragon, and thus had the ability to provide the information, we find that Ta Chen did not act to the best of its ability to provide such information necessary for the Department to make its preliminary determination, despite repeated requests for information concerning Dragon.

As such, under section 776(b) of the Act, the Department has made adverse inferences in selecting among the facts otherwise available concerning (1) the Emerdex Companies' downstream sales of subject merchandise; and (2) Dragon's selling expenses in the United States. (*See Analysis Memo* at 2–3)

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (Feb. 23, 1998). The Department applies AFA "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See SAA at 870. The Department also considers the extent to which a party may benefit from its own lack of cooperation in selecting a rate. *See Roller Chain, Other than Bicycle, From Japan; Notice of Final Results and Partial Recision of Antidumping Duty Administrative Review*, 62 FR 60472, 60477 (Nov. 10, 1997), SAA at 870. Petitioners have suggested that the Department use 76.20 percent, the highest margin in this proceeding, in its application of AFA to the current review. (*See* December 9, 2003 submission at 6).

Section 776(b) of the Act authorizes the Department to use as partial AFA, information derived from the petition, the final determination from the less-than fair value ("LTFV") investigation, a previous administrative review, or any other information placed on the record. Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* SAA at 870 and 19 CFR 351.308(d). The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870.

To choose a substitute margin for Emerdex 2's known U.S. sales of subject merchandise, we have selected a margin from among all other sales of subject merchandise in the United States by Ta Chen during the POR. We note that the range of margins calculated on these sales is substantially untainted by our application of partial AFA to inputs purchased from Emerdex 1 and expenses incurred by Dragon. However, there is an abnormally wide range of potential values from which to choose. In addition, given the very large number of sales observations with positive margins, a virtual continuum of values exists between the minimum and the maximum margin for these sales, such that no single margin within the continuous range appears to be more reasonable than any other.

We note that the 76.20 percent margin suggested by Petitioners originated from the petition, was applied to Ta Chen as AFA in the 1992–1994 review, and continues to be applicable for imports of subject merchandise from Tru-Flow. (*See Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan; Final Results of Administrative Review* 65 FR 2116 (January 13, 2000); and *Amended Final Determination and Antidumping Duty Order: Certain Welded Stainless Steel Butt-Weld Pipe Fittings From Taiwan* 58 FR 33250, 33251, (June 16, 1993)). Given that no new information

[3] We note that Emerdex 2 had not been identified on the record at the time of this supplemental questionnaire, but that Emerdex 2 and Emerdex 1 share the same commercial facilities in California, and that the Department has found them to be affiliated companies under section 771(33)(G) of the Act (*See Affiliation Memo* at 7).

has been presented to indicate that the rate is unreliable subsequent to its applications in this proceeding as described above, we find that the rate is reliable. We also note that 76.20 percent falls within the range of margins calculated for Ta Chen's U.S. sales of subject merchandise in the POR of the current review, and that a substantial portion of Ta Chen's margins for these sales were both greater than and less than 76.20 percent. Therefore, the 76.20 percent margin is currently relevant to Ta Chen's U.S. sales of subject merchandise.

Therefore, for Ta Chen's known sales of subject merchandise in the United States to Emerdex 2, we preliminarily assigned 76.20 percent as partial AFA. (*See Analysis Memo* at 2).

For selling expenses incurred by Dragon, we have allocated the total amount of all known payments from Ta Chen to Dragon, for its services, to the U.S. sales of subject merchandise for which Dragon was responsible. (*See Analysis Memo* at 2–3) We note that the record indicates that additional payments for services related to selling activities may have been made to Dragon, but we are unaware of the amounts.

**Product Comparison**

For the purpose of determining appropriate product comparisons to pipe fittings sold in the United States, we considered all pipe fittings covered by the scope of review Section Above, which were sold by Ta Chen in the home market during the POR, to be "foreign like products" in accordance with section 771(16) of the Act. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the physical characteristics reported by Ta Chen as follows (listed in order of preference): Specification, seam, grade, size and schedule.

As some of Ta Chen's sales were actually produced by other unaffilated Taiwanese manufacturers, the Department has incorporated that information into the product comparison methodology. The record shows that Ta Chen both purchased from, and entered into tolling arrangements with, unaffiliated Taiwanese manufacturers of subject merchandise, and the record does not indicate that the manufacturers had knowledge that the subject merchandise would be sold into the United States market. *See* Ta Chen's September 3, 2003, Section A questionnaire response at A–19–20. According to Ta Chen's September 3, 2003, Section A response, for subcontracted and resold fittings, Ta Chen labels itself as the producer. We have preliminarily determined that Ta Chen is the sole exporter, and that it is not appropriate to exclude sales of subject merchandise produced by unaffiliated manufacturers from Ta Chen's U.S. sales database.

However, section 771(16)(A) of the Act defines "foreign like product" to be "[t]he subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise." Thus, consistent with the Department's past practice, for products that Ta Chen has identified with *certainty* that it purchased from a particular unaffiliated producer and resold in the U.S. market, we have restricted the matching of products to identical or similar products purchased by Ta Chen from the *same unaffiliated producer* and resold in the home market.

**Fair Value Comparisons**

To determine whether sales of subject merchandise by Ta Chen to the United States were made at prices below NV, we compared, where appropriate, the constructed export price ("CEP") to the NV, as described below. Pursuant to section 777A(d)(2) of the Act, we compared the CEPs of individual U.S. transactions to the monthly weight-averaged NV of the foreign like product.

**Export Price/Constructed Export Price**

Section 772(a) of the Act defines export price as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. * * *" Section 772(b) of the Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. * * * "

Consistent with recent past reviews, certain sales are being considered CEP sales because the sale to the first unaffiliated customer was made between Ta Chen International (CA) Corp. ("TCI"), located in the United States, and the unaffiliated customer in the United States (*See Analysis Memo*). TCI takes title to the subject merchandise, invoices the U.S. customer, and receives payment from the U.S. customer. In addition, TCI handles all communication with the U.S. customer, incurs risk of non-payment, relays orders and price requests from the U.S. customer to Ta Chen, and pays for U.S. customs duties, brokerage charges, U.S. antidumping duties, ocean freight and U.S. inland freight. *See* Ta Chen's January 28, 2003 Section A questionnaire response at pages 8.

Having determined such sales are CEP sales, pursuant to section 772 (b) of the Act, we calculated the price of Ta Chen's sales based on CEP. We calculated CEP based on FOB or delivered prices to unaffiliated purchasers in the United States and, where appropriate, we deducted discounts. In addition, in accordance with section 772(d)(1) of the Act, the Department deducted commissions, direct selling expenses and indirect selling expenses, including inventory carrying costs, which related to commercial activity in the United States. We also made deductions for movement expenses, which include foreign inland freight, foreign brokerage and handling, ocean freight, containerization expense, harbor construction tax, marine insurance, U.S. inland freight, U.S. brokerage and handling, and U.S. customs duties. Finally, where appropriate, in accordance with sections 772(d)(3) and 772(f) of the Act, we deducted CEP profit.

**U.S. Dollar Short Term Interest Rate**

As explained in Policy Bulletin 98.2, *Imputed Credit Expenses and Interest Rates*, (February 23, 1998) ("*Policy Bulletin 98.2*"), the imputation of credit cost is a reflection of the time value of money that must correspond to a figure reasonably calculated to account for such value during the gap period between delivery and payment, and it should conform with "commercial reality." *See Policy Bulletin 98.2* citing *LMI–La Metalli Industriale, S.p.A.* v. *United States*, 912 F.2d 455 (Fed. Cir. 1990) ("*LMI*"). Imputed credit represents "the cost to the respondent for not receiving immediate payment for its sales." *See Policy Bulletin 98.2*. "To calculate the credit expense on U.S. sales, the Department generally uses the weighted-average borrowing rate realized by a respondent on its U.S. dollar-denominated short-term borrowings." *See Policy Bulletin 98.2*.

Ta Chen reported its costs in the Section C U.S. sales database for imputed credit costs and inventory carrying costs based on the Federal

Reserve's short-term prime rate. Ta Chen argued in its original Section C response that it did not borrow short-term in U.S. dollar-denominated loans during the POR. (*See* October 6, 2003 response at 32.) In its April 15, 2004, supplementary Section C response, Ta Chen argued that certain outstanding U.S. dollar-denominated loans related to a revolving line of credit were classified in its financial statements as non-current liabilities because Ta Chen had the ability and intent to refinance those short-term loans over the long-term. (*See* April 15, 2004 response at 4.) Ta Chen noted that this practice of classification of short-term or current loans as non-current liabilities is in accordance with generally accepted accounting principles ("GAAP") in the United States. We note that these particular loans mature in less than one year, according to the terms of Ta Chen's financing agreement which covers these loans. (*See* April 15, 2004, response at Exhibit C–3–2.) We also note that the record indicates that the terms of these loans, which were determined under the financing agreement signed several years ago, have remained unchanged since the previous review. (*See* April 15 2004, questionnaire response at Exhibit C–3–2.) Finally, we note that in the most recent review the Department used these same loans as its basis to calculate Ta Chen's U.S. short-term interest rate, and that these same loans were also classified by Ta Chen as non-current liabilities in its financial statements during that review. (*See Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 78417 (December 24, 2002); and accompanying Issues and Decision Memorandum at Comment 12; and TCI's 2001 audited financial statements in Exhibit 12 of the September 3, 2003, Section A response of this review). Therefore, the record indicates that the terms of these short-term loans have not changed since the previous review, and Ta Chen's presentation of these short-term loans as non-current liabilities in its annual financial statements has been consistent since the previous review.

Thus, in accordance with the above, the Department has determined that these loans continue to be short-term loans for antidumping purposes, as was the case in the previous review. Accordingly, we recalculated U.S. imputed credit costs using Ta Chen's weighted average U.S. dollar-denominated short-term interest rate reported in Ta Chen's January 2, 2004, response. This average rate was based on the actual borrowing experience of Ta Chen for its U.S.-dollar-denominated short-term loans. (*See Analysis Memo* at 3–4.) The recalculated imputed credit costs and inventory carrying costs were deducted from the CEP sales price in accordance with section 772(d)(1) of the Act.

**Normal Value**

After testing home market viability, as discussed below, we calculated NV as noted in the "Price-to-CV Comparisons" and "Price-to-Price Comparisons" sections of this notice.

*1. Home Market Viability*

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared Ta Chen's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, and found that the home market sales are greater than five percent of U.S. sales by volume. In its original Section A response, Ta Chen stated that the home market is viable, as sales to the home market are more than five percent by quantity of sales in the United States. (*See* Ta Chen's September 3, 2003, Section A questionnaire response at page A–3.) Because Ta Chen's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we preliminarily determine that the home market is viable. We, therefore, based NV on home market sales.

*2. Cost of Production Analysis*

Because we disregarded sales below the cost of production ("COP") in the most recently completed segment of this proceeding,[4] we have reasonable grounds to believe or suspect that sales by Ta Chen in its home market were made at prices below the COP, pursuant to sections 773(b)(1) and 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we conducted a COP analysis of home market sales by Ta Chen.

[4] *See Notice of Amended Final Results Antidumping Duty Administrative Review of Stainless Steel Butt-Weld Pipe Fittings From Taiwan*, 68 FR 4763, (January 30, 2003).

*A. Calculation of COP*

In accordance with section 773(b)(3) of the Act, we calculated a weight-averaged COP based on the sum of Ta Chen's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses ("G&A"), interest expenses, and packing costs. We relied on the COP data submitted by Ta Chen in its original and supplemental cost questionnaire responses. For these preliminary results, we did not make any adjustments to Ta Chen's submitted costs.

*B. Test of Home Market Prices*

We compared the weight-averaged COP for Ta Chen to home market sales of the foreign like product, as required under section 773(b) of the Act in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made within an extended period of time in substantial quantities, and were not at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any movement charges, discounts, and direct and indirect selling expenses.

*C. Results of COP Test*

In accordance with section 773(b)(1) of the Act, when less than 20 percent of Ta Chen's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities as defined by section 773(b)(2)(C) of the Act. When 20 percent or more of Ta Chen's sales of a given product during the POR were at prices less than the COP, we determined that such sales have been made in "substantial quantities" within an extended period of time, in accordance with sections 773(b)(2)(B) and 773(b)(2)(C) of the Act. In such cases, because we use POR average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we appropriately disregarded below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

*D. Calculation of Constructed Value*

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Ta Chen's cost of materials, fabrication, G&A (including interest expenses), U.S. packing costs, direct and indirect selling expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based selling expenses and G&A ("SG&A") and profits on the actual amounts incurred and realized by Ta Chen in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weight-averaged home market direct and indirect selling expenses.

*3. Price-to-Price Comparisons*

For those product comparisons for which there were sales at prices above the COP, we based NV on prices to home market customers. Where appropriate, we deducted early payment discounts, credit expenses, and inland freight. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in CEP comparisons. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs. In accordance with section 773(b)(1) of the Act, where there were no usable contemporaneous matches to a U.S. sale observation, we based NV on CV.

**Level of Trade**

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market, or when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP sales affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61732–61733 (November 19, 1997).

In reviewing a respondent's request for an LOT adjustment, we examine all types of selling functions and activities reported in respondent's questionnaire response on LOT. In analyzing differences in selling functions, we determine whether the LOTs identified by the respondent are meaningful. *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27371 (May 19, 1997). In the present review, Ta Chen did not request an LOT adjustment, but did request a CEP offset.

Ta Chen reported one LOT in the home market based on two channels of distribution: Trading companies and end-users. We examined the reported selling functions and found that Ta Chen's selling functions to its home market customers, regardless of channel of distribution, include inventory maintenance, technical services, packing, after-sales services, freight and delivery arrangements, general selling functions, some research and development, and customer service. *See* Ta Chen's September 3, 2003, Section A questionnaire response at page 8; Therefore, we preliminarily conclude that the selling functions for the reported channels of distribution are sufficiently similar to consider them as one LOT in the comparison market.

Because Ta Chen reported that all of its CEP sales are made through TCI, Ta Chen is claiming that there is only one LOT in the U.S. market for its CEP sales and we preliminarily agree with Ta Chen's assertion that its U.S. sales constitute a single LOT. We examined the reported selling functions and found that Ta Chen's selling functions for sales to TCI include order processing, payment of marine insurance and packing for shipment to the United States. TCI handles the remaining selling functions for U.S. sales, such as: Communicating with U.S. customers; handling customer orders; dealing with U.S. customs duties, brokerage, inland freight and U.S. warehousing; taking seller's risk; and incurring inventory carrying costs on the water and ocean freight.

The Department compared Ta Chen's selling functions offered to its home market customers, trading companies and end users with Ta Chen's selling functions for U.S. sales offered to its wholly-owned subsidiary, TCI. Ta Chen's selling functions for sales to the United States, namely, order processing, payment of marine insurance and packing for shipment, are less numerous and less advanced than Ta Chen's selling functions to its home market customers, which include inventory maintenance, technical services, packing, after-sales services, freight and delivery arrangements, general selling functions, some research and development, and customer service. Therefore, we preliminarily find that Ta Chen performed fewer selling functions for its U.S. sales than it did in the home market. Ta Chen requested a CEP offset due to differences in level of trade between its home market and U.S. sales (*see* Ta Chen's September 3, 2002, Section A questionnaire response at 11). The NV is established at an LOT that is at a more advanced stage of distribution than the LOT of the CEP transactions. However, we were unable to quantify an LOT adjustment pursuant to section 773(a)(7)(A) of the Act. Therefore, we applied a CEP offset to the NV–CEP comparisons, in accordance with section 773(a)(7)(B) of the Act.

**Currency Conversion**

For purposes of the preliminary results, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Act.

**Preliminary Results of the Review**

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for Ta Chen for the period June 1, 2002, through May 31, 2003:

| Producer/manufacturer/exporter | Weighted-average margin (percent) |
|---|---|
| Ta Chen Stainless Pipe Co., Ltd | 5.08 |

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of these preliminary results.

*See* 19 CFR 351.310(c). Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. *See* 19 CFR 351.310(d). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. *See* 19 CFR 351.309(d). Further, we would appreciate that parties submitting written comments also provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

**Assessment**

Upon issuance of the final results of this review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b), the Department has calculated an assessment rate applicable to all appropriate entries. We calculated importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value, or entered quantity, as appropriate, of the examined sales for that importer. Upon completion of this review, where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer.

**Cash Deposit**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for each of the reviewed companies will be the rate listed in the final results of review (except that if the rate for a particular product is *de minimis*, *i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "All Others" rate of 51.01 percent, which is the "All Others" rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Notification to Interested Parties**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of the proprietary information disclosed under APO in accordance with 19 CFR 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 29, 2004.

**Jeffrey May,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 04–15411 Filed 7–6–04; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–601]**

## Fresh Cut Flowers From Mexico; Notice of Amended Final Results of Administrative Review in Accordance With North American Free Trade Agreement Panel Decision

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On December 16, 1996, the North American Free Trade Agreement (NAFTA) Panel (the Panel) remanded the final results of review for certain fresh cut flowers from Mexico (for the period April 1, 1991 through March 31, 1992) to the Department of Commerce (the Department) directing the Department to assign to the Complainants a rate of 18.20 percent. As there is now a final and conclusive NAFTA Panel decision in this action, we are amending our final results.

**EFFECTIVE DATE:** July 7, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mark Hoadley at (202) 482–3148, Office of AD/CVD Enforcement VII, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 26, 1995, the Department issued the final results of the antidumping duty administrative review on certain fresh cut flowers from Mexico (*see Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 60 FR 49569 (September 26, 1995) (*Final Results*)). In the *Final Results*, the Department assigned to the three Complainants, Rancho El Aguaje (Aguaje), Rancho Guacatay (Guacatay), and Rancho El Toro (Toro), antidumping duty rates based on the best information otherwise available (BIA), because the Department found that they had been uncooperative in responding to the Department's questionnaires, and had impeded the administrative review. The Department determined that the use of BIA was appropriate in accordance with section 776(c) of the Tariff Act of 1930, as amended (the Act). The Department designated the Complainants as uncooperative respondents, and assigned a "first–tier" dumping margin of 39.95 percent, the second highest rate found for any firm in either the less than

fair value (LTFV) investigation or any administrative review.[1]

On November 27, 1995, the Complainants requested a panel review of the Final Results pursuant to Article 1904 of the North American Free Trade Agreement. On December 16, 1996, the Panel issued its decision in this matter.

In its decision, the Panel upheld the Department's assignment of dumping margins based on BIA, stating that there was substantial evidence in the administrative record to support the Department's determination in the *Final Results* that the Complainants' responses were misleading, evasive, and impeded the progress of review. The Panel also determined that the Department's decision to resort to BIA was in accordance with the broad discretion granted to it by section 776(c) of the Act.

The Panel disagreed with the Department's determination to assign a first–tier BIA rate to the Complainants, however, because the record indicated that the Complainants cooperated with the Department's requests for information in may respects. The Panel noted that the Department has previously assigned second–tier BIA rates in situations in which respondents were cooperative but failed to provide certain information. The Panel cited *Yamaha Motor Co., v. United States*, 910 F.Supp. 679 (CIT 1995), *Emerson Power Transmission Corp. v. United States*, 903 F.Supp. 48 (CIT 1995), and *NSK Ltd. v. United States*, 910 F.Supp. 663 (CIT 1995), in which the Department assigned second–tier BIA rates to respondents, in spite of substantial omissions and misrepresentations in their questionnaire responses.

The Panel also noted that the Complainants are small ranches that have only recently been required to maintain information for the purpose of filing income tax returns, as a result of a change in Mexican law, and that they each developed an accounting system solely for the purpose of responding to the Department's antidumping questionnaires. In light of these factors, the Panel found that Aguaje, Guacatay, and Toro "exhibited substantial cooperation and that any misleading or evasive information supplied by Complainants did not rise to the level of uncooperativeness required, under the Department's own precedents, to apply a first–tier analysis." *See Decision of the Panel in the Matter of Fresh Cut Flowers from Mexico, Final Results of Antidumping Duty Administrative Review (Panel Decision)*, December 16, 1996, at 86.

In assigning a second–tier BIA rate, the Panel considered the following options, in accordance with the Department's normal practice:[2] 1) the Complainants' rates from the LTFV investigation, if they were part of the investigation; 2) the "all others" rate from the investigation, if the Complainants were not part of the LTFV investigation; and, 3) the highest rate calculated in this review for any firm. As the second–tier BIA rate, the Panel chose 18.20 percent, the "all others" rate from the LTFV investigation, because none of the Complainants had participated in the LTFV investigation, and there was no calculated rate in this review that could be assigned. The Panel remanded the *Final Results* to the Department, and directed the Department to assign to each of the Complainants a less adverse, or "second–tier" BIA rate of 18.20 percent, based on the "all others" rate established in the LTFV investigation.

**Amendment to Final Results of Review**

Because no further appeals have been filed and there is now a final and conclusive decision in the panel proceeding, we are amending the *Final Results*, pursuant to the Panel's order, and assigning the second–tier BIA rate of 18.20 percent to Aguaje, Guacatay, and Toro for the period April 1, 1991 through March 31, 1992:

| Company | Amended Final Results 1991–1992 |
|---|---|
| Rancho El Aguaje | 18.20% |
| Rancho Guacatay | 18.20% |
| Rancho El Toro | 18.20% |

Accordingly, the Department will determine, and U.S. Customs and Border Protection will assess, antidumping duties on all entries of subject merchandise from these three companies during the period April 1, 1991, through March 31, 1992, in accordance with these amended final results.

This notice is issued and published in accordance with section 751(a)(1) of the Act.

Dated: June 24, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04–15409 Filed 7–6–04; 8:45 am]

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[1] The Department found that the highest rate was aberrational, and therefore, was unsuitable for use as BIA.

[2] We note that on page 81 of the *Panel Decision* the Panel misstates the Department's normal practice, in place at the time of the review, for assigning second-tier BIA rates. In *Antifriction Bearings from France, et al.; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360 (June 24, 1992), cited by the Panel, we described second-tier BIA as ≥the higher of 1) the highest rate (including the ≥all others≥ rate) ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation *or a prior administrative review*; or 2) the highest calculated rate in this review for the class or kind of merchandise for any firm from the same country of origin.≥ (Emphasis added.)

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–831]**

### Fresh Garlic From the People's Republic of China: Notice of Initiation of New Shipper Antidumping Duty Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In May 2004, the Department of Commerce received three requests to conduct new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China. Two of these requests were withdrawn. With respect to the third request, we have determined that it meets the statutory and regulatory requirements for the initiation of a new shipper review. In addition, we believe that there is sufficient information on the record to support the initiation of a middleman dumping inquiry involving the parties named in this request.

**EFFECTIVE DATE:** July 7, 2004.

**FOR FURTHER INFORMATION CONTACT:** Sochieta Moth or Mark Ross at (202) 482–5047 and (202) 482–4794, respectively, AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

**SUPPLEMENTARY INFORMATION:**

**Background**

The notice announcing the antidumping duty order on fresh garlic from the People's Republic of China (PRC) was published on November 16, 1994. On May 11, 24, and 28, 2004, we received three timely requests, in accordance with 19 CFR 351.214(d), to conduct new shipper reviews of the antidumping duty order from Texing Trading Co., Ltd. (Texing Trading), Shandong Dongyue Produce Co., Ltd. (Dongyue), and Shandong Jining Jinshan Textile Co., Ltd. (Jining Jinshan), respectively. Texing Trading and Dongyue withdrew their requests for

new shipper reviews on June 9, 2004, and June 25, 2004, respectively.

On June 28, 2004, Jining Jinshan resubmitted its request for a new shipper review to correct certain deficiencies (*e.g.*, illegible exhibits, missing English translations, etc.) that we identified in its submission and to provide additional documentation pertaining to the U.S. sale for which it requested a new shipper review.

**Summary of Request for New Shipper Review**

Pursuant to 19 CFR 351.214(b)(2)(i), Jining Jinshan certified that it did not export subject merchandise to the United States during the period of investigation (POI). Pursuant to 19 CFR 351.214(b)(2)(iii)(A), Jining Jinshan further certified that, since the initiation of the investigation, it has never been affiliated with any exporters or producers who exported the subject merchandise to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), Jining Jinshan also certified that its export activities were not controlled by the central government.

In addition to the certifications described above, Jining Jinshan submitted documentation establishing the date of its sale to H & T Trading Co., Ltd. (H & T), an unaffiliated customer outside the PRC. Jining Jinshan also provided the volume and value of this shipment. Further, according to the documentation provided by Jining Jinshan, H & T then issued an invoice and resold the subject merchandise to the United States. Jining Jinshan also provided entry documentation establishing the date on which the subject merchandise entered into the United States, as well as the quantity and value of the merchandise that was resold by H & T to an unaffiliated U.S. purchaser.

**Initiation of New Shipper Review**

Pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(d)(1), we are initiating a new shipper review for shipments of fresh garlic from the PRC grown and exported by Jining Jinshan. Therefore, until completion of the new shipper review, we will instruct U.S. Customs and Border Protection to allow, at the option of the importers, the posting of a bond or security in lieu of a cash deposit for entries of subject merchandise grown and exported from the PRC by Jining Jinshan.

**Initiation of Middleman Dumping Inquiry**

In cases in which the producer under review sells the subject merchandise to an unaffiliated party prior to its arrival in the U.S. with knowledge of the final destination, we normally use export price, the price at which the producer sells the subject merchandise to the first unaffiliated party, as the basis for U.S. price, pursuant to section 772(a) of the Act.

Based on the material that has been submitted on the record, it appears that the sale for review in the instant case is an export–price sale.

However, when an exporter sells its merchandise to an unaffiliated exporter, who resells its merchandise to the United States below acquisition and selling costs, it is possible that "middleman dumping" may exist. In such cases, the Department will calculate an antidumping duty margin based on a combination of the price paid by the middleman to the exporter, and the price paid to the middleman from the unaffiliated U.S. customer. Congress indicated in its legislative history that it intended for the Department to prevent middleman dumping from occurring, and the Courts have affirmed this application of the law as necessary to prevent the circumvention of the antidumping duty law. *See Tung Mung v. United States*, 219 F. Supp. 2d 1333, 1343 (CIT 2002), aff'd 354 F. 3d 1371 (Fed. Cir. 2004); S. Rep. No. 96–249 at 94 (1979), reprinted in 1979 U.S.C.C.A.N. 381, 480; and H.R. Rep. No. 96–317 at 75 (1979) (both discussing the need to prevent middleman dumping).

Our analysis of the sales documentation submitted by Jining Jinshan in its request for a new shipper review appears, at first glance, to suggest that a middleman dumping scenario may exist in this case. Accordingly, the Department is initiating a middleman dumping inquiry and will be issuing middleman–oriented questionnaires consistent with our practice in similar past cases. *See Fuel Ethanol From Brazil: Final Determination of Sales at Less than Fair Value*, 51 FR 5572, 5573 (February 14, 1986); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Taiwan*, 64 FR 30592 (June 8, 1999); and *Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Plate in Coils from Taiwan*, 64 FR 15493 (March 31, 1999).

The period of review is November 1, 2003, through April 30, 2004. *See* 19 CFR 351.214(g)(1)(i)(B). We intend to issue the preliminary results of this review and inquiry no later than 180 days after the date on which this review is initiated, and the final results of this review and inquiry within 90 days after the date on which the preliminary results are issued. *See* section 751(a)(2)(B)(iv) of the Act.

Interested parties that need access to proprietary information in this new shipper review and middleman dumping inquiry should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation notice is in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: June 30, 2004.

**Jeffrey A. May,**

*Deputy Assistant Secretary for Import Administration, Group I.*

[FR Doc. 04–15410 Filed 7–6–04; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[(C–428–829); (C–421–809); (C–412–821)]**

### Final Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium From Germany, the Netherlands, and the United Kingdom

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of countervailing duty administrative reviews.

**SUMMARY:** On February 5, 2004, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative reviews of the countervailing duty (CVD) orders on low enriched uranium from Germany, the Netherlands, and the United Kingdom for the period May 14, 2001, through December 31, 2002 (*see Preliminary Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom*, 69 FR 5498 (February 5, 2004) (*Preliminary Results*)). The Department has now completed these administrative reviews in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Based on information received since the *Preliminary Results* and our analysis of the comments received, the Department has revised the net subsidy rate for Urenco Deutschland GmbH of

Germany (UD), Urenco Nederland B.V. of the Netherlands (UNL), Urenco (Capenhurst) Limited (UCL) of the United Kingdom, Urenco Ltd., and Urenco Inc. (collectively, the Urenco Group or respondents), the producers/exporters of subject merchandise covered by these reviews. For further discussion of the changes we have made since the *Preliminary Results, see* the "Issues and Decision Memorandum from Gary Taverman, Acting Deputy Assistant Secretary for Import Administration, Group I, to Jeffrey May, Acting Assistant Secretary for Import Administration concerning the "Final Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom" (Decision Memorandum) dated June 30, 2004. The final net subsidy rates for the reviewed companies are listed below in the section entitled "Final Results of Reviews."

**DATES:** Effective July 7, 2004.

**FOR FURTHER INFORMATION CONTACT:** Darla Brown or Robert Copyak, Office of AD/CVD Enforcement III, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2786.

**SUPPLEMENTARY INFORMATION:**

**Background**

On February 5, 2004, the Department published in the **Federal Register** its *Preliminary Results*. We invited interested parties to comment on the results. Since the preliminary results, the following events have occurred.

On March 8, 2004, we received case briefs from petitioners [1] and respondents. In their case brief, petitioners requested a hearing. On March 15, 2004, we received rebuttal briefs from petitioners and respondents. On April 1, 2004, a public hearing was held at the Department of Commerce.

On May 27, 2004, we extended the deadline for the publication of these final results from June 4, 2004, until June 30, 2004. *See Low Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom: Extension of Final Results of Countervailing Duty Administrative Reviews*, 69 FR 31792 (June 7, 2004).

Pursuant to 19 CFR 351.213(b), these reviews cover only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, these reviews cover the Urenco Group. These reviews cover the period May 14, 2001, through December 31, 2002, and five programs.

[1] Petitioners are the United States Enrichment Corporation (USEC) and USEC Inc.

**Scope of Reviews**

For purposes of these reviews, the product covered is all low enriched uranium (LEU). LEU is enriched uranium hexafluoride ($UF_6$) with a $U^{235}$ product assay of less than 20 percent that has not been converted into another chemical form, such as $UO_2$, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down-blending of highly enriched uranium).

Certain merchandise is outside the scope of these orders. Specifically, these orders do not cover enriched uranium hexafluoride with a $U^{235}$ assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of these orders. For purposes of these orders, fabricated uranium is defined as enriched uranium dioxide ($UO_2$), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates ($U_3O_8$) with a $U^{235}$ concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a $U^{235}$ concentration of no greater than 0.711 percent are not covered by the scope of these orders.

Also excluded from these orders is LEU owned by a foreign utility end-user and imported into the United States by or for such end-user solely for purposes of conversion by a U.S. fabricator into uranium dioxide ($UO_2$) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported LEU (i) remain in the possession and control of the U.S. fabricator, the foreign end-user, or their designated transporter(s) while in U.S. customs territory, and (ii) are re-exported within eighteen (18) months of entry of the LEU for consumption by the end-user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end user.

The merchandise subject to these orders is currently classifiable in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to these reviews are addressed in the Decision Memorandum, which is hereby adopted by this notice. A list of the issues contained in the Decision Memorandum is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum, which is on file in the Central Record Unit (CRU), room B–099 of the Main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at *http://ia.ita.doc.gov*, under the heading "Federal Register Notices." The paper copy and electronic version of the Decision Memorandum are identical in content.

**Final Results of Reviews**

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated an *ad valorem* subsidy rate for the Urenco Group for calendar years 2001 and 2002. For 2001, we determine the net subsidy rate for the Urenco Group to be 1.57 percent *ad valorem*, and for 2002, we determine the net subsidy rate for the Urenco Group to be 1.47 percent *ad valorem*.

We will instruct U.S. Customs and Border Protection (CBP), within 15 days of publication of the final results of these reviews, to liquidate shipments of low enriched uranium by Urenco from Germany, the Netherlands, and the United Kingdom entered, or withdrawn from warehouse, for consumption from May 14, 2001, through September 10, 2001, at 1.57 percent *ad valorem* and from February 13, 2002, through December 31, 2002, at 1.47 percent *ad valorem* of the f.o.b. invoice price. We have determined that the estimated net subsidy for future Urenco imports is zero (*see* the Decision Memorandum at Comment 3: Cash Deposit Rate for Future Urenco Imports). Therefore, the Department also will instruct CBP not to collect cash deposits of estimated countervailing duties on all shipments of the subject merchandise from the reviewed entity, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews. In addition, for the periods May 14, 2001, through September 10, 2001, and February 13; 2002, through December 31, 2002, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Because the Uruguay Round Agreements Act (URAA) replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except those covered by these reviews will be unchanged by the results of these reviews.

We will instruct CBP to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. *See Notice of Amended Final Determinations and Notice of Countervailing Duty Orders: Low Enriched Uranium from Germany, the Netherlands and the United Kingdom*, 67 FR 6688 (February 13, 2002) (*Amended Final*). This rate shall apply to all non-reviewed companies until a review of a company assigned this rate is requested. In addition, for the period May 14, 2001, through December 31, 2002, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and this notice are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: June 30, 2004.

**Jeffrey May,**

*Acting Assistant Secretary for Import Administration.*

### Appendix I—Issues and Decision Memorandum



[FR Doc. 04–15412 Filed 7–6–04; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–427–819]**

### Final Results of Countervailing Duty Administrative Review: Low Enriched Uranium from France

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Countervailing Duty Administrative Review.

**SUMMARY:** On February 5, 2004, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty (CVD) order on low enriched uranium from France for the period May 14, 2001, through December 31, 2002 (*see Preliminary Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium from France*, 69 FR 5502 (February 5, 2004) (*Preliminary Results*)). The Department has now completed the administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Based on information received since the *Preliminary Results* and our analysis of the comments received, the Department has revised the net subsidy rate for Eurodif S.A. (Eurodif)/Compagnie Generale Des Matieres Nucleaires (COGEMA), the producer/exporter of subject merchandise covered by this review. For further discussion of the changes we have made since the *Preliminary Results, see* the "Issues and Decision Memorandum from Gary Taverman, Acting Deputy Assistant Secretary for Import Administration to Jeffrey May, Acting Assistant Secretary for Import Administration concerning the Final Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium from France" (Decision Memorandum) dated June 30, 2004. The final net subsidy rate for Eurodif/COGEMA is listed below in the section entitled "Final Results of Reviews."

**EFFECTIVE DATE:** July 7, 2004.

**FOR FURTHER INFORMATION CONTACT:** Carrie Farley or Tipten Troidl, Office of AD/CVD Enforcement III, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2786.

**SUPPLEMENTARY INFORMATION:**

### Background

On February 5, 2004, the Department published in the **Federal Register** its *Preliminary Results*. We invited interested parties to comment on the results. On March 9, 2004, we received case briefs from petitioners and respondents. In their case briefs, petitioners and respondents requested a hearing. On March 16, 2004, we received rebuttal briefs from petitioners[1] and respondents[2]. On March 18, 2004, respondents and petitioners withdrew their request for a hearing. Pursuant to 19 CFR 351.213(b), this review covers

[1] Petitioners are the United States Enrichment Corporation (USEC) and USEC Inc.

[2] Respondents are Eurodif and COGEMA.

only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers Eurodif/COGEMA. The review covers the period May 14, 2001, through December 31, 2002, and two programs.

**Scope of Review**

For purposes of this review, the product covered is all low enriched uranium (LEU). LEU is enriched uranium hexafluoride ($UF_6$) with a $U^{235}$ product assay of less than 20 percent that has not been converted into another chemical form, such as $UO_2$, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down–blending of highly enriched uranium).

Certain merchandise is outside the scope of this order. Specifically, this order does not cover enriched uranium hexafluoride with a $U^{235}$ assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of this order. For purposes of this order, fabricated uranium is defined as enriched uranium dioxide ($UO_2$), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates ($U_3O_8$) with a $U^{235}$ concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a $U^{235}$ concentration of no greater than 0.711 percent are not covered by the scope of this order.

Also excluded from this order is LEU owned by a foreign utility end–user and imported into the United States by or for such end–user solely for purposes of conversion by a U.S. fabricator into uranium dioxide ($UO_2$) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported LEU (i) remain in the possession and control of the U.S. fabricator, the foreign end–user, or their designed transporter(s) while in U.S. customs territory, and (ii) are re–exported within eighteen (18) months of entry of the LEU for consumption by the end–user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end- user.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to these reviews are addressed in the Decision Memorandum, which is hereby adopted by this notice. A list of the issues contained in the Decision Memorandum is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit (CRU), room B–099 of the Main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at http://ia.ita.doc.gov, under the heading "**Federal Register** Notices." The paper copy and electronic version of the Decision Memorandum are identical in content.

**Final Results of Reviews**

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated an *ad valorem* subsidy rate for Eurodif/COGEMA for calendar years 2001 and 2002. For 2001, we determine the net subsidy rate to be 3.63 percent *ad valorem*, and for 2002, we determine the net subsidy rate to be 0.71 percent *ad valorem*.

We will instruct U.S. Customs and Border Protection (CBP), within 15 days of publication of the final results of these reviews, to liquidate shipments of low enriched uranium by Eurodif/COGEMA entered, or withdrawn from warehouse, for consumption from May 14, 2001, through September 10, 2001, at 3.63 percent *ad valorem* and from February 13, 2002, through December 31, 2002, at 0.71 percent *ad valorem* of the f.o.b. invoice price. We have determined that the cash deposit rate for future Eurodif/COGEMA imports should be set at 0.71. Therefore, Department also will instruct CBP to collect cash deposits of estimated countervailing duties at 0.71 percent *ad valorem* of the f.o.b. invoice price on all shipments of the subject merchandise from the reviewed entity, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews. In addition, for the periods May 14, 2001, through September 10, 2001, and February 13, 2002, through December 31, 2002, the assessment rates applicable to all non–reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Because the Uruguay Round Agreements Act (URAA) replaced the general rule in favor of a country–wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non–reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal–Mogul Corporation and The Torrington Company v. United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except those covered by these reviews will be unchanged by the results of this review.

We will instruct CBP to continue to collect cash deposits for non–reviewed companies at the most recent company–specific or country–wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non–reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. *See Notice of Amended Final Determination and Notice of Countervailing Duty Order: Low Enriched Uranium From France*, 67 FR 6689 (February 13, 2002). This rate shall apply to all non–reviewed companies until a review of a company assigned this rate is requested. In addition, for the period May 14, 2001, through December 31, 2002, the assessment rates applicable to all non–reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and this notice are issued and published in accordance with section 751(a)(1) of the Act.

Dated: June 30, 2004.

**Jeffrey May,**

*Acting Assistant Secretary for Import Administration.*

**Appendix I—Issues and Decision Memorandum**

**I. Subsidies Valuation Information**

A. Calculation of Ad Valorem Rates

**II. Analysis of Programs**

A. Programs Determined to Confer Subsidies

1. Purchases at Prices that Constitute More than Adequate Remuneration

2. Exoneration/Reimbursement of Corporate Income Taxes

**III. Total Ad Valorem Rate**

**IV. Analysis of Comments**

Comment 1: Currency Conversion Errors
Comment 2: Electricite de France's purchases from Eurodif made at More than Adequate Remuneration
Comment 3: Benchmark used for More than Adequate Remuneration Program
Comment 4: Inclusion of Pre-POR Transactions in the Subsidy Calculation
Comment 5: Additional Benefit from Transaction
Comment 6: Tax Benefit
Comment 7: Draft Customs Instructions
Comment 8: Total Sales
Comment 9: "Part Energie" Charges for 2002
Comment 10: Use of Separative Work Units Delivered for the Calculation of Part Usine
Comment 11: Comparison between Prices Paid by EdF to Eurodif and to other Suppliers
Comment 12: Changes to Calculations if the CIT Sustains USEC's Appeal

[FR Doc. 04–15413 Filed 7–6–02; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 070104C]**

### Proposed Information Collection; Comment Request; Local Fisheries Knowledge Schools Pilot Project

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before September 7, 2004.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Susan Abbott-Jamieson, NMFS ST5, 1315 East-West Hwy, Silver Spring, MD 20910.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The data will be collected in two Maine high schools that are participating in a local fisheries knowledge oral history pilot project. This information is needed to evaluate the project. The respondents will be all the students in both schools who participate in the project, and a matched sample of students in each schools who do not participate in the project.

**II. Method of Collection**

Students will complete a paper questionnaire administered in their classroom by a teacher. The completed questionnaires will be mailed back to NMFS or a contractor overseeing the project on NMFS' behalf.

**III.Data**

*OMB Number:* None.
*Form Number:* None.
*Type of Review:* Regular submission.
*Affected Public:* Individuals or households.
*Estimated Number of Respondents:* 150.
*Estimated Time Per Response:* 10 minutes.
*Estimated Total Annual Burden Hours:* 50.
*Estimated Total Annual Cost to Public:* 0.

**IV. Request for Comments**

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 30, 2004.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04–15398 Filed 7–6–04; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 070104E]**

### Proposed Information Collection; Comment Request; Southwest Region Gear Identification Requirements

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Proposed information collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13(44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before September 7, 2004.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Alvin Katekaru, Pacific Islands Regional Office, NMFS, 1601 Kapiolani Blvd., Honolulu, HI 96814.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

Regulations at 50 CFR 660.24 and 660.47 require that certain fishing gear must be marked. In the western Pacific pelagic longline fisheries, the vessel operator must ensure that the official number of the vessel is affixed to every longline buoy and float. In the western Pacific crustacean fisheries (Permit Area 1, Northwestern Hawaiian Islands) each trap and float must be marked with the vessel's identification number. The marking of gear links fishing or other activity to the vessel, aids law enforcement, and is valuable in actions concerning the damage, loss of gear, and civil proceedings.

**II. Methods of Collection**

No information is collected (Third party disclosure).

**III. Data**

*OMB Number:* 0648-0360.

*Form Number:* None.

*Type of Review:* Regular Submission.

*Affected Public:* Business or other for-profit organizations, and Individuals or households.

*Estimated Number of Respondents:* 232.

*Estimated Time Per Response:* 2 minutes per marking.

*Estimated Total Annual Burden Hours:* 1,420.

*Estimated Total Annual Cost to Public:* $23,200.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 30, 2004.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04–15399 Filed 7–6–04; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 070104J]**

### Proposed Information Collection; Comment Request; Alaska License Limitation Program for Groundfish, Crab, and Scallops

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before September 7, 2004.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, 907–586–7008 or patsy.bearden@noaa.gov

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

Any person who wishes to deploy a harvesting vessel in the license limitation program (LLP) king and Tanner crab fisheries in the Bering Sea/Aleutian Islands (BSAI), in the LLP groundfish fisheries in the Gulf of Alaska (GOA) or the BSAI, or in the Scallop LLP scallop fisheries off the coast of Alaska must hold a valid LLP groundfish, LLP crab license, or LLP scallop license, respectively. Further, an original license must name a vessel and be on board that vessel when it is engaged in such fishing. Applications for permits were a one-time process. An LLP application originally was used to determine owners of vessels who were qualified to obtain an LLP license, and no new LLP permits may be issued except under very specific conditions. The permits have no expiration date, but are transferable. This collection now supports LLP transfer activities for crab, scallops, and groundfish, and any appeals resulting from denied actions.

By providing stability in the industry and identifying the field of participants in the groundfish, crab, and scallops fisheries, LLP is an interim step toward a more comprehensive solution to the conservation and management problems of an open access fishery. The LLP restricts access to the commercial groundfish fisheries in the EEZ off Alaska except for certain areas where alternative programs exist. The LLP also restricts access to the commercial crab fisheries for the BSAI and access to the commercial scallop fisheries off Alaska.

**II. Method of Collection**

Transfer requests may be submitted by FAX or as paper submissions. Appeals may be submitted by mail as paper submissions.

**III. Data**

*OMB Number:* 0648–0334.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations, individuals or households.

*Estimated Number of Respondents:* 244.

*Estimated Time Per Response:* License transfer application, 1 hour; appeals process, 4 hours.

*Estimated Total Annual Burden Hours:* 144.

*Estimated Total Annual Cost to Public:* $1,056.

**IV. Request for Comments**

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency=s estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB

approval of this information collection; they also will become a matter of public record.

Dated: June 30, 2004.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04–15401 Filed 7–6–04; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 070104I]**

### Proposed Information Collection; Comment Request; Coastal Zone Management Program Administration

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before September 7, 2004.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Masi Okasaki, 301–713–3155, extension 185 or e-mail at masi.okasaki@noaa.gov.

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The coastal zone management grants provide funds to states and territories to implement federally-approved coastal management plans; revise assessment document and multi-year strategy; submit Section 306A documentation on the approved coastal zone management plans; submit requests to approve amendments or program changes; and complete the state's coastal nonpoint source pollution program.

#### II. Method of Collection

Information for Performance Reports is collected according to the Performance Report Guideline; Assessment and Strategy documents is collected according to the Assessment and Strategy Guidelines; Section 306A documentation is collected according to the Section 306A Guidance; Amendment or program changes is collected according to the Final Program Change Guidance; and Coastal Nonpoint Source Pollution Program document is collected according to guidance specifying management measures for sources of nonpoint pollution in coastal waters and coastal nonpoint pollution control program, program development and approval guidance.

#### III. Data

*OMB Number:* 0648–0119.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* State, Local and Tribal Government.

*Estimated Number of Respondents:* 34.

*Estimated Time Per Response:* Performance Reports 27 hours; Assessment and Strategy 240 hours; 306A documentation - 5 hours; Amendments and Routine Program Changes 8 hours; and 6,217 Nonpoint Pollution Control Program 150 hours.

*Estimated Total Annual Burden Hours:* 6,598 hours.

*Estimated Total Annual Cost to Public:* $450.

#### IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 30, 2004.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04–15402 Filed 7–6–04; 8:45 am]

BILLING CODE 3510–08–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 062904E]**

### Pacific Fishery Management Council; Public Hearings

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

**ACTION:** Notice of public hearings.

**SUMMARY:** The Pacific Fishery Management Council (Council) and NMFS will hold two public scoping hearings on alternatives and impacts to be included in an environmental impact statement (EIS) on dedicated access privileges for the Pacific Coast groundfish trawl fishery.

**DATES:** The hearings will be held Tuesday, July 20, 2004, at 3 p.m. and Tuesday, July 27, 2004, at 3:30 p.m.

**ADDRESSES:** The hearings will be held respectively at the Jim Traynor Conference Room, Building 4, 7600 Sand Point Way, Seattle, WA 98115; telephone: (206) 526–4490 and in the Auditorium of the Mark O. Hatfield Marine Science Center, 2030 S. Marine Science Drive, Newport, OR 97365; telephone: (541) 867–0212.

**FOR FURTHER INFORMATION CONTACT:** Jim Seger, Staff Officer (Economist); Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384; telephone (503) 820–2280.

**SUPPLEMENTARY INFORMATION:** The Council and NMFS announced their intent to hold public scoping meetings on May 24, 2004, (69 FR 29482–29485) when the Council and NMFS issued their notice of intent to prepare an EIS on dedicated access privileges for the Pacific Coast groundfish trawl fishery. The first scoping meeting was held June 13, 2004, in conjunction with a Council meeting in Foster City, CA. The purpose of these hearings is to identify alternatives to be considered and the notable impacts that should be evaluated. These scoping hearings are not intended as a forum for comments in favor of or opposed to the alternatives. A scoping information pamphlet and detailed public scoping

information document are available from the Council website (*www.pcouncil.org*) or on request from the Council office (see **ADDRESSES**).

The hearings will be restricted to those issues specifically listed in this document.

**Special Accommodations**

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: July 1, 2004.

**Alan D. Risenhoover,**

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

[FR Doc. E4–1487 Filed 7–6–04; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

**[Docket No. 2004–P–039]**

### Grant of Interim Extension of the Term of U.S. Patent No. 4,591,585; Atamestane

**AGENCY:** United States Patent and Trademark Office.

**ACTION:** Notice of interim patent term extension.

**SUMMARY:** The United States Patent and Trademark Office has issued a certificate under 35 U.S.C. 156(d)(5) for a one-year interim extension of the term of U.S. Patent No. 4,591,585.

**FOR FURTHER INFORMATION CONTACT:** Karin Ferriter by telephone at (703) 306–3159; by mail marked to her attention and addressed to the Commissioner for Patents, Mail Stop Patent Ext., P.O. Box 1450, Alexandria, VA 22313–1450; by fax marked to her attention at (703) 872–9411, or by e-mail to *Karin.Ferriter@uspto.gov*.

**SUPPLEMENTARY INFORMATION:** Section 156 of title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to a year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On May 21, 2004, patent owner Schering Aktiengesellschaft, timely filed an application under 35 U.S.C. 156(d)(5) for an interim extension of the term of U.S. Patent No. 4,591,585. The patent claims the product atamestane. The application indicates that a New Drug Application for the human drug product atamestane has been filed and is currently undergoing regulatory review before the Food and Drug Administration for permission to market or use the product commercially.

Review of the application indicates that except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for one year as required by 35 U.S.C. 156(d)(5)(B). Since it is apparent that the regulatory review period will continue beyond the expiration date of the patent (June 18, 2004), interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

An interim extension under 35 U.S.C. § 156(d)(5) of the term of U.S. Patent No. 4,591,585 is granted for a period of one year from the expiration date of the patent, *i.e.*, until June 18, 2005.

Dated: June 24, 2004.

**Jon W. Dudas,**

*Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.*

[FR Doc. 04–15270 Filed 7–6–04; 8:45 am]

**BILLING CODE 3510–16–P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

**[Docket No. 2004–P–041]**

### Grant of Second Interim Extension of the Term of U.S. Patent No. 4,585,597; Ecamsule

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice of interim patent term extension.

**SUMMARY:** The United States Patent and Trademark Office has issued a certificate under 35 U.S.C. 156(d)(5) for a second one-year interim extension of the term of U.S. Patent No. 4,585,597.

**FOR FURTHER INFORMATION CONTACT:** Karin Ferriter by telephone at (703) 306–3159; by mail addressed to Mail Stop Patent Ext., Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450; by fax at (703) 872–9411, or by e-mail to *Karin.Ferriter@uspto.gov*.

**SUPPLEMENTARY INFORMATION:** Section 156 of title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to a year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On April 30, 2004, patent owner, L'Oreal S.A., timely filed an application under 35 U.S.C. 156(d)(5) for a second interim extension of the term of U.S. Patent No. 4,585,597. The patent claims the active ingredient Mexoryl™SX (ecamsule) in the human drug product ANTHÉLIOS™SP, a method of use of the ecamsule, and a method of manufacturing ecamsule. The application indicates, and the Food and Drug Administration has confirmed, that a New Drug Application for the human drug product ANTHÉLIOS™SP (ecamsule) has been filed and is currently undergoing regulatory review before the Food and Drug Administration for permission to market or use the product commercially. The patent was previously extended for a term of one year.

Review of the application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156. Since it is apparent that the regulatory review period will continue beyond the extended expiration date of the patent (June 16, 2004), the term of the patent is extended under 35 U.S.C. 156(d)(5) for an additional term of one year, *i.e.*, until June 16, 2005.

Dated: June 24, 2004.

**Jon W. Dudas,**

*Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.*

[FR Doc. 04–15272 Filed 7–6–04; 8:45 am]

**BILLING CODE 3510–16–P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

**[Docket No. 2004–P–040]**

### Grant of Interim Extension of the Term of U.S. Patent No. 4,600,706; Natamycin

**AGENCY:** United States Patent and Trademark Office.

**ACTION:** Notice of interim patent term extension.

**SUMMARY:** The United States Patent and Trademark Office has issued a certificate under 35 U.S.C. 156(d)(5) for

a one-year interim extension of the term of U.S. Patent No. 4,600,706.

**FOR FURTHER INFORMATION CONTACT:** Karin Ferriter by telephone at (703) 306–3159; by mail marked to her attention and addressed to the Commissioner for Patents, Mail Stop Patent Ext., P.O. Box 1450, Alexandria, VA 22313–1450; by fax marked to her attention at (703) 872–9411, or by e-mail to *Karin.Ferriter@uspto.gov.*

**SUPPLEMENTARY INFORMATION:** Section 156 of title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to a year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On November 3, 2003, patent owner Arkion Life Sciences timely filed an application under 35 U.S.C. 156(d)(5) for an interim extension of the term of U.S. Patent No. 4,600,706. The patent claims the method of making the animal feed product NSURE® (natamycin). The application indicates that an amended Food Additive Petition for the animal feed product has been filed and was undergoing regulatory review before the Food and Drug Administration for permission to market or use the product commercially. The petition was granted by the Food and Drug Administration, and the regulations for food additives in feed and drinking water were amended to provide for the safe use of natamycin. *See Food Additives Permitted in Feed and Drinking Water of Animals; Natamycin,* 69 FR 19320 (April 13, 2004) (final rule).

Review of the application indicates that except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for one year as required by 35 U.S.C. 156(d)(5)(B). Since regulatory review period continued beyond the expiration date of the patent (November 17, 2003, due to the terminal disclaimer disclaiming the term of the patent subsequent to the expiration date of U.S. Patent No. 4,536,494), interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

An interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 4,600,706 is granted for a period of one year from the expiration date of the patent, *i.e.*, until November 17, 2004.

Dated: June 24, 2004.

**Jon W. Dudas,**

*Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.*

[FR Doc. 04–15271 Filed 7–6–04; 8:45 am]

BILLING CODE 3510–16–P

## DEPARTMENT OF DEFENSE

**[OMB Control Number 0704–0252]**

### Information Collection Requirements; Defense Federal Acquisition Regulation Supplement; Use of Government Sources by Contractors

**AGENCY:** Department of Defense (DoD).

**ACTION:** Notice and request for comments regarding a proposed extension of an approved information collection requirement.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through October 31, 2004. DoD proposes that OMB extend its approval for use through October 31, 2007.

**DATES:** DoD will consider all comments received by September 7, 2004.

**ADDRESSES:** You may submit comments, identified by OMB Control Number 0704–0252, using any of the following methods:

- Defense Acquisition Regulations Web Site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil.* Include OMB Control Number 0704–0252 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Donna Hairston-Benford, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Donna Hairston-Benford, (703) 602–0289. The information collection requirements addressed in this notice are available electronically via the Internet at: *http://www.acq.osd.mil/dpap/dfars/index.htm.* Paper copies are available from Ms. Donna Hairston-Benford, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

**SUPPLEMENTARY INFORMATION:**

*Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Part 251, Use of Government Sources by Contractors, and related clauses in DFARS 252.251; OMB Control Number 0704–0252.

*Needs and Uses:* This information collection requirement facilitates contractor use of Government supply sources. Contractors must provide certain information to the Government to verify their authorization to purchase from Government supply sources or to use Interagency Fleet Management System vehicles and related services.

*Affected Public:* Businesses or other for-profit and not-for-profit institutions.

*Annual Burden Hours:* 5,250.

*Number of Respondents:* 3,500.

*Responses Per Respondent:* 3.

*Annual Responses:* 10,500.

*Average Burden Per Response:* .5 hours.

*Frequency:* On occasion.

**Summary of Information Collection**

The clause at DFARS 252.251–7000, Ordering from Government Supply Sources, requires a contractor to provide a copy of an authorization when placing an order under a Federal Supply Schedule, a Personal Property Rehabilitation Price Schedule, or an Enterprise Software Agreement.

The clause at DFARS 252.251–7001, Use of Interagency Fleet Management System Vehicles and Related Services, requires a contractor to submit a request for use of Government vehicles when the contractor is authorized to use such vehicles, and specifies the information

to be included in the contractor's request.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

[FR Doc. 04–15355 Filed 7–6–04; 8:45 am]

**BILLING CODE 5001–08–P**

## DEPARTMENT OF DEFENSE

**[OMB Control Number 0704–0245]**

## Information Collection Requirements; Defense Federal Acquisition Regulation Supplement; Transportation

**AGENCY:** Department of Defense (DoD).

**ACTION:** Notice and request for comments regarding a proposed extension of an approved information collection requirement.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through July 31, 2004. DoD proposes that OMB extend its approval for use through July 31, 2007.

**DATES:** DoD will consider all comments received by September 7, 2004.

**ADDRESSES:** You may submit comments, identified by OMB Control Number 0704–0245, using any of the following methods:

- Defense Acquisition Regulations Web Site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil*. Include OMB Control Number 0704–0245 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Mr. Steven Cohen, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf*.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven Cohen, (703) 602–0293. The information collection requirements addressed in this notice are available electronically via the Internet at: *http://www.acq.osd.mil/dpap/dfars/index.htm*. Paper copies are available from Mr. Steven Cohen, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

**SUPPLEMENTARY INFORMATION:**

*Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Part 247, Transportation, and related clauses in DFARS 252.247; OMB Control Number 0704–0245.

*Needs and Uses:* DoD contracting officers use this information to verify that prospective contractors have adequate insurance prior to award of stevedoring contracts; to provide appropriate price adjustments to stevedoring contracts; and to assist the Maritime Administration in monitoring compliance with requirements for use of U.S.-flag vessels in accordance with the Cargo Preference Act of 1904 (10 U.S.C. 2631).

*Affected Public:* Businesses or other for-profit and not-for-profit institutions.

*Annual Burden Hours:* 150,114.

*Number of Respondents:* 60,400.

*Responses Per Respondent:* Approximately 8.

*Annual Responses:* 465,842.

*Average Burden Per Response:* .32 hours.

*Frequency:* On occasion.

**Summary of Information Collection**

The clause at DFARS 252.247–7000, Hardship Conditions, is prescribed at DFARS 247.270–6(a) for use in all solicitations and contracts for acquisition of stevedoring services. Paragraph (a) of the clause requires the contractor to notify the contracting officer of unusual conditions associated with loading or unloading a particular cargo, for potential adjustment of contract labor rates; and to submit any associated request for price adjustment to the contracting officer within 10 working days of the vessel sailing time.

The clause at DFARS 252.247–7001, Price Adjustment, is prescribed at DFARS 247.270–6(b) for use in solicitations and contracts when using sealed bidding to acquire stevedoring services. Paragraphs (b) and (c) of the clause require the contractor to notify the contracting officer of certain changes in the wage rates or benefits that apply to its direct labor employees. Paragraph (g) of the clause requires the contractor to include with its final invoice a statement that the contractor has experienced no decreases in rates of pay for labor or has notified the contracting officer of all such decreases.

The clause at DFARS 252.247–7002, Revision of Prices, is prescribed at DFARS 247.270–6(c) for use in solicitations and contracts when using negotiation to acquire stevedoring services. Paragraph (c) of the clause provides that, at any time, either the contracting officer or the contractor may deliver to the other a written demand that the parties negotiate to revise the prices under the contract. Paragraph (d) of the clause requires that, if either party makes such a demand, the contractor must submit relevant data upon which to base negotiations.

The clause at DFARS 252.247–7007, Liability and Insurance, is prescribed at DFARS 247.270–6(g) for use in all solicitations and contracts for acquisition of stevedoring services. Paragraph (f) of the clause requires the contractor to furnish the contracting officer with satisfactory evidence of insurance.

The provision at DFARS 252.247–7022, Representation of Extent of Transportation by Sea, is prescribed at DFARS 247.573(a) for use in all solicitations except those for direct purchase of ocean transportation services or those with an anticipated value at or below the simplified acquisition threshold. Paragraph (b) of the provision requires the offeror to represent whether or not it anticipates that supplies will be transported by sea in the performance of any contract or subcontract resulting from the solicitation.

The clause at DFARS 252.247–7023, Transportation of Supplies by Sea, is prescribed at DFARS 247.573(b) for use in all solicitations and contracts except those for direct purchase of ocean transportation services. The clause is used with its Alternate III in solicitations and contracts with an anticipated value at or below the simplified acquisition threshold. Paragraph (d) of the clause requires the contractor to submit any requests for use of other than U.S.-flag vessels in writing to the contracting officer. Paragraph (e) of the clause requires the contractor to submit one copy of the rated on board vessel operating carrier's ocean bill of

lading. Paragraph (f) of the clause requires the contractor to represent, with its final invoice, that: (1) No ocean transportation was used in the performance of the contract; (2) only U.S.-flag vessels were used for all ocean shipments under the contract; (3) the contractor had the written consent of the contracting officer for all non-U.S.-flag ocean transportation; or (4) shipments were made on non-U.S.-flag vessels without the written consent of the contracting officer. Contractors must flow down these requirements to noncommercial subcontracts and certain types of commercial subcontracts. Subcontracts at or below the simplified acquisition threshold are excluded from the requirements of paragraph (f) stated above.

The clause at DFARS 252.247–7024, Notification of Transportation of Supplies by Sea, is prescribed for use at DFARS 247.573(c) in all contracts for which the offeror represented, by completion of the provision at DFARS 252.247–7022, that it did not anticipate transporting any supplies by sea in performance of the contract. Paragraph (a) of the clause requires the contractor to notify the contracting officer if the contractor learns after award of the contract that supplies will be transported by sea.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

[FR Doc. 04–15356 Filed 7–6–04; 8:45 am]

**BILLING CODE 5001–08–P**

## DEPARTMENT OF DEFENSE

**[OMB Control Number 0704–0386]**

### Information Collection Requirements; Defense Federal Acquisition Regulation Supplement; Small Business Programs

**AGENCY:** Department of Defense (DoD).

**ACTION:** Notice and request for comments regarding a proposed extension of an approved information collection requirement.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through October 31, 2004. DoD proposes that OMB extend its approval for use through October 31, 2007.

**DATES:** DoD will consider all comments received by September 7, 2004.

**ADDRESSES:** You may submit comments, identified by OMB Control Number 0704–0386, using any of the following methods:

- Defense Acquisition Regulations Web Site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil*. Include OMB Control Number 0704–0386 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Donna Hairston-Benford, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf*.

**FOR FURTHER INFORMATION CONTACT:** Ms. Donna Hairston-Benford, (703) 602–0289. The information collection requirements addressed in this notice are available electronically via the Internet at: *http://www.acq.osd.mil/dpap/dfars/index.htm*. Paper copies are available from Ms. Donna Hairston-Benford, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

**SUPPLEMENTARY INFORMATION:**

*Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Part 219, Small Business Programs, and the clause at DFARS 252.219–7003; OMB Control Number 0704–0386.

*Needs and Uses:* DoD uses this information in assessing contractor compliance with small business subcontracting plans in accordance with 10 U.S.C. 2323(h).

*Affected Public:* Businesses or other for-profit and not-for-profit institutions.

*Annual Burden Hours:* 41.

*Number of Respondents:* 41.

*Responses Per Respondent:* 1.

*Annual Responses:* 41.

*Average Burden Per Response:* 1 hour.

*Frequency:* On occasion.

**Summary of Information Collection**

DFARS 219.704 and the clause at DFARS 252.219–7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts), require prime contractors to notify the administrative contracting officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in those subcontracting plans that specifically identify small, small disadvantaged, and women-owned small businesses. Notifications must be in writing and may be submitted in a contractor-specified format.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

[FR Doc. 04–15357 Filed 7–6–04; 8:45 am]

**BILLING CODE 5001–08–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Availability of Government-Owned Invention; Available for Licensing

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent No. 6,750,031: Displacement Assay on a Porous Membrane, Navy Case No. 83,243.

**ADDRESSES:** Requests for copies of the invention cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

**FOR FURTHER INFORMATION CONTACT:** Jane F. Kuhl, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–3083. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: June 30, 2004.

**S. K. Melancon,**

*Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.*

[FR Doc. 04–15388 Filed 7–6–04; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Meetings of the Naval Research Advisory Committee

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice of closed meetings.

**SUMMARY:** The Naval Research Advisory Committee (NRAC) Panel on Sea Basing will meet to hold classified government briefs and receive proprietary information from the commercial sector that the Department of the Navy should incorporate in its recommendations for near and far term technologies or equipment to be developed.

**DATES:** The meetings will be held on Tuesday, July 13, 2004, and Wednesday, July 14, 2004, from 8 a.m. to 5 p.m.

**ADDRESSES:** The meetings will be held at the Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5660.

**FOR FURTHER INFORMATION CONTACT:** Dennis Ryan, Program Director, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, (703) 696–6769.

**SUPPLEMENTARY INFORMATION:** This notice is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2). All sessions of the meetings will be devoted to executive sessions that will include discussions and technical examination of information related to sea basing technologies. These briefings and discussions will contain proprietary information and classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The proprietary, classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meetings.

In accordance with 5 U.S.C. app. 2, section 10(d), the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meetings be closed to the public because they will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and (4). Due to an unavoidable delay in administrative processing, the 15 days advance notice could not be provided.

Dated: July 1, 2004.

**J.T. Baltimore,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.*

[FR Doc. 04–15494 Filed 7–6–04; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF DEFENSE

### Department of Navy

### Notice of Intent To Grant Exclusive License; SurTec International, GmbH

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The Department of the Navy gives notice of its intent to grant to SurTec International, GmbH, of 9 Skyline Drive, West Orange, NJ 07052, a revocable, nonassignable, exclusive license to practice in Japan, China, and all member countries of the European Patent Convention, the Government-Owned inventions, as identified in U.S. Patent Number 6,375,726 entitled "Corrosion Resistant Coatings for Aluminum and Aluminum Alloys", Navy Case No. 82512, Inventors Matzdorf *et al.*, Issue Date 23 April 2002, Patent Cooperation Treaty (PCT) filing.//U.S. Patent Number 6,511,532 entitled "Post Treatment for Anodized Aluminum", Navy Case No. 83248, Inventors Matzdorf *et al.*, Issue Date 28 January 2003, PCT filling.//U.S. Patent Number 6,527,841 entitled "Post Treatment for Metal Coated Substrates", Navy Case No.83075, Inventors Matzdorf *et al.*, Issue Date 4 March 2003, PCT filing, in the field of corrosion prevention.

**DATES:** Anyone wishing to object to the granting of this license must file written objections along with supporting evidence, if any, not later than fifteen (15) days after the date of publication in the **Federal Register**.

**ADDRESSES:** Written objections are to be filed with Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Building 304, Room 107, 22541 Millstone Rd, Patuxent River, MD 20670.

**FOR FUTHER INFORMATION CONTACT:** Mr. Paul Fritz, Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Building 304, Room 107, 22541 Millstone Rd, Patuxent River, MD 20670, telephone (301) 342–5586, fax (301) 342–1134, E-mail: *paul.fritz@navy.mil*.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: June 30, 2004.

**S.K. Melancon,**

*Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.*

[FR Doc. 04–15389 Filed 7–6–04; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before August 6, 2004.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, 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: June 29, 2004.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

**Office of Vocational and Adult Education**

*Type of Review:* Extension.

*Title:* Carl D. Perkins Vocational and Technical Education Act of 1998—State Plan Revisions Guidance.

*Frequency:* One time.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 54.

Burden Hours: 2,430.

*Abstract:* This collection solicits from States revisions to their State plans under the Carl D. Perkins Vocational and Technical Education Act and proposed performance levels for FY 2004.

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 2532. 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 *SheilaCarey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–15404 Filed 7–6–04; 8:45 am]

BILLING CODE 4000–01–U

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, 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 September 7, 2004.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, 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: July 1, 2004.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

**Office of the Chief Financial Officer**

*Type of Review:* Extension of a currently approved collection.

*Title:* Streamlined Process for Education Department General Administrative Regulations (EDGAR) Approved Grant Applications.

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs; businesses or other for-profit, not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:*

Responses: 1.

Burden Hours: 1.

*Abstract:* Since April 1997, EDGAR's menu of selection criteria become effective. For each competition, the Secretary would select one or more criteria that best enable the Department to identify the highest quality applications consistent with the program purpose, statutory requirements, and any priorities established. This allows the Secretary the flexibility to weigh the criteria according to the needs of each individual program. This menu of selection criteria will provide the Department the flexibility to choose a set of criteria tailored to a given competition and obviate the need to create specific selection criteria through individual program regulations. ED is requesting a streamlined clearance process for programs of approved applications who choose to change: (1) Criteria from the same EDGAR menu; (2) old EDGAR to new EDGAR criteria, or (3) program criteria to EDGAR criteria.

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 2580. 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. 04–15405 Filed 7–6–04; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Information Management Group, 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 September 7, 2004.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, 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: July 1, 2004.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

*Office of Postsecondary Education*

*Type of Review:* Reinstatement.

*Title:* Paul Douglas Teacher Scholarship Program Performance Report.

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.

*Reporting and Recordkeeping Hour Burden:*

Responses: 59.

Burden Hours: 148.

*Abstract:* This program has not received funding since 1977. It was originally designed to assist State agencies to provide scholarships to talented and meritorious students who were seeking careers as teaching professionals.

Requests for copies of the 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 2571. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_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 Joe Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–15407 Filed 7–6–04; 8:45 am]

**BILLING CODE 4000–01–U**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Correction notice.

**SUMMARY:** On June 30, 2004, the Department of Education published a 30-day notice in the **Federal Register** (Page 39442–39443) for the information collection, "Early Reading First National Evaluation." Under Responses and Reporting and Recordkeeping Hour Burden, the responses are corrected to 9,752 and the Burden Hours are hereby corrected to 2,702. The Leader Regulatory Information Management Group, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: July 1, 2004.

**Angela C. Arrington,**

*Regulatory Information Management Group, Office of the Chief Information Officer.*

[FR Doc. 04–15406 Filed 7–6–04; 8:45 am]

**BILLING CODE 4001–01–U**

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services; Overview Information; Research and Innovation To Improve Services and Results for Children With Disabilities—Center on Standards and Assessment Development; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.324U

*Dates:* Applications Available: July 7, 2004.

Deadline for Transmittal of Applications: August 9, 2004.

*Eligible Applicants:* State educational agencies (SEAs); local educational agencies (LEAs); institutions of higher education (IHEs); other public agencies; nonprofit private organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

*Estimated Available Funds:* $1,000,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding $1,000,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

*Number of Awards:* 1.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* The purpose of this program is to produce, and advance the use of, knowledge to improve the results of education and early intervention for infants, toddlers, and children with disabilities.

*Priority:* In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from allowable activities specified in the statute (see sections 661(e)(2) and 672 of the Individuals with Disabilities Education Act, as amended (IDEA)).

*Absolute Priority:* For FY 2004 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

*Research and Innovation to Improve Services and Results for Children with*

*Disabilities—Center on Standards and Assessment Development.*

*Background:* Alternate assessments based on alternate achievement standards present a number of challenges for States. For example, questions have arisen concerning the best methods for aligning alternate achievement standards with grade-level academic content standards, maximizing access to the general curriculum, developing and administering technically sound alternate assessments, and determining cut scores on assessments that reflect expectations that are high but attainable. Similarly, alternate assessments based on grade-level achievement standards present challenges, such as determining the degree to which such alternate assessments measure grade-level standards with equivalent rigor to the general assessments.

Failure to meet these challenges will have compliance implications both for the approval of State standards and assessments under the No Child Left Behind Act of 2001 (NCLB) (which must be approved by the 2005–2006 school year), and compliance with provisions of the IDEA regarding alternate assessments and access to the general curriculum. However, educational reform is not a static process, and States may continue to examine and improve their assessments and accountability systems beyond meeting the requirements of Federal laws. Thus, there will be a continued need for federally supported development and technical assistance to support States in identifying and implementing evidence-based best practices to ensure that alternate achievement standards and alternate assessments are technically sound and universally designed to be accessible for the widest possible range of students.

*Priority:* This priority supports one cooperative agreement for a center (Center) to support States in developing, implementing, and improving alternate achievement standards aligned to grade-level content standards, alternate assessments based on alternate achievement standards, and alternate assessments based on grade-level achievement standards.

The Center's activities must have two phases, with phase one in years 1 and 2 of the project and phase two in years 3 through 5. Some activities occur in both phases. Required activities and their phases are as follows:

*Activity 1—Phase 1:* Convene and support expert work groups to summarize extant data and other information, identify and discuss critical issues, identify promising and best practices, and produce reports and recommendations on specific topics. During the first project year, the Center must convene an expert work group to produce guidelines and procedures aimed at ensuring the technical quality of alternate assessments. Additional required topics to be addressed by expert work groups during the first two project years include: Methodologies and principles for aligning alternate achievement standards with grade-level academic content standards; best practices for developing and administering alternate assessments based on alternate achievement standards; and best practices for developing and administering alternate assessments based on grade-level achievement standards.

*Activity 2—Phases 1 and 2:* Convene on an annual basis an advisory committee representing key perspectives and stakeholder groups, including professionals working in special education, assessment, and Title I of the Elementary and Secondary Education Act of 1965, as amended; and parents and individuals with disabilities. The primary purposes of this advisory committee are to review and advise on the plans for activities 3 through 5 and to provide liaison with significant stakeholder groups.

*Activity 3—Phases 1 and 2:* Coordinate with other technical assistance and dissemination resources to provide technical assistance and information to States in improving and implementing (1) alternate achievement standards aligned to grade-level achievement standards, (2) alternate assessments based on alternate achievement standards and on grade-level achievement standards, and (3) approaches to using alternate assessments in improving educational outcomes and access to the general curriculum.

*Activity 4—Phase 2:* Conduct research on the characteristics of alternate achievement standards and alternate assessments implemented in States, and their impact on student learning and access to the general curriculum.

*Activity 5—Phase 2:* Conduct development and demonstration projects with a small number of States on improving and implementing (a) alternate achievement standards aligned to grade-level achievement standards, (b) alternate assessments based on alternate achievement standards and on grade-level achievement standards, and (c) approaches to using alternate assessments in improving educational outcomes and access to the general curriculum. To the extent possible, States should be selected to be broadly representative of size, socio-cultural factors, educational system characteristics, etc. Applicants are encouraged to provide evidence of potential State cooperation in these activities.

*Additional Activities—Phases 1 and 2:* (a) Maintain regular communication with staff of the U.S. Department of Education to obtain input and approval of project plans.

(b) Budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(c) If the project has a Web site, include relevant information and documents in an accessible form on the project's Web site.

*Fourth and Fifth Years of Project*

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary which review will be conducted during the last half of the project's second year in Washington, DC. Projects must budget for the travel associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) The degree to which the project's design and methodology demonstrates the potential for advancing significant new knowledge.

*Waiver of Proposed Rulemaking*

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of the IDEA makes the public comment requirements inapplicable to the priorities in this notice.

*Program Authority:* 20 U.S.C. 1461, 1472.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

**Note:** The regulations in 34 CFR part 86 apply to IHEs only.

## II. Award Information

*Type of Award:* Cooperative Agreement.

*Available Funds:* $1,000,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding $1,000,000 for a single budget period of 12 months. The Assistant

Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

*Number of Awards:* 1.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

**III. Eligibility Information**

1. *Eligible Applicants:* SEAs; LEAs; IHEs; other public agencies; nonprofit private organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities (*see* section 606 of the IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (*see* section 661(f)(1)(A) of the IDEA).

**IV. Application and Submission Information**

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.324U.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under *For Further Information Contact* in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 70 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: July 7, 2004.

Deadline for Transmittal of Applications: August 9, 2004. The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

**Application Procedures:**

**Note:** Some of the procedures in these instructions for transmitting applications differ from those in EDGAR (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Special Education—Research and Innovation to Improve Services and Results for Children with Disabilities Program—Center on Standards and Assessment Development competition—CFDA Number 84.324U is one of the competitions included in this project. If you are an applicant under the Special Education—Research and Innovation to Improve Services and Results for Children with Disabilities Program—Center on Standards and Assessment Development competition, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- 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 the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an

automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the Special Education—Research and Innovation to Improve Services and Results for Children with Disabilities Program—Center on Standards and Assessment Development competition and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this competition; and
2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Special Education—Research and Innovation to Improve Services and Results for Children with Disabilities Program—Center on Standards and Assessment Development competition at: *http://e-grants.ed.gov.*

## V. Application Review Information

*Selection Criteria:* The selection criteria for this competition are listed in 34 CFR 75.210 of EDGAR. The specific selection criteria to be used for this competition are in the application package.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department is currently developing indicators and measures that will yield information on various aspects of the quality of the Research and Innovation to Improve Services and Results for Children with Disabilities program. Included in these indicators and measures will be those that assess the quality and relevance of newly funded research projects. Two indicators will address the quality of new projects. First, an external panel of eminent senior scientists will review the quality of a randomly selected sample of newly funded research applications, and the percentage of new projects that are deemed to be of high quality will be determined. Second, because much of the Department's work focuses on questions of effectiveness, newly funded applications will be evaluated to identify those that address causal questions and then to determine what percentage of those projects use randomized field trials to answer the causal questions. To evaluate the relevance of newly funded research projects, a panel of experienced education practitioners and administrators will review descriptions of a randomly selected sample of newly funded projects and rate the degree to which the projects are relevant to practice.

Other indicators and measures are still under development in areas such as the quality of project products and long-term impact. Data on these measures will be collected from the projects funded under this notice. Grantees will also be required to report information on their projects' performance in annual reports to the Department (EDGAR, 34 CFR 75.590).

We will notify grantees of the performance measures once they are developed.

## VII. Agency Contact

*For Further Information Contact:* Dave Malouf, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4078, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7427.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 205–8207.

## VIII. Other Information

*Electronic Access to This Document:* You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code

of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: June 30, 2004.

**Troy R. Justesen,**

*Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 04–15408 Filed 7–6–04; 8:45 am]

**BILLING CODE 4000–01–U**

## DEPARTMENT OF ENERGY

### Privacy Act of 1974;

### Notice of Amendment to an Existing System of Records

**AGENCY:** Department of Energy.

**ACTION:** Notice.

**SUMMARY:** As required by the Privacy Act of 1974, 5 U.S.C. 552a, and Office of Management and Budget (OMB) Circular A–130, the Department of Energy (DOE) is publishing a notice of a proposed amendment to an existing system of records. DOE proposes to amend DOE–50 "Personnel Assurance Program Records." The notice proposes to change the name of DOE–50 "Personnel Assurance Program Records" to DOE–50 "Human Reliability Program Records." The notice also identifies the new authority for collecting and maintaining the information. The categories of records and the categories of individual sections also will be expanded. In addition, this notice identifies the new locations where the records will be maintained and clearly states the purpose for collecting and maintaining the information.

**DATES:** The proposed amendment to an existing system of records will become effective without further notice on August 23, 2004, unless in advance of that date, DOE receives adverse comments and determines that this amendment should not become effective on that date.

**ADDRESSES:** Written comments should be directed to the following address: U.S. Department of Energy, Lynn Gebrowsky, Director, Office of Safeguards and Security, SO–10.1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Abel Lopez, Director, Freedom of Information Act and Privacy Act Group, ME–74, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5955; Lynn Gebrowsky, Director, Office of Safeguards and Security, SO–10.1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (301) 903–3200; and Isiah Smith, Office of the General Counsel, GC–77, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8618.

**SUPPLEMENTARY INFORMATION:** In 1989, as part of its ongoing efforts to protect national security, DOE published regulations that appear at title 10, Code of Federal Regulations (CFR), part 710 subpart B, "Criteria and Procedures for Establishment of the Personnel Security Assurance Program Determinations of an Individual's Eligibility for Access to a Personnel Security Assurance Program (PSAP) Position." The PSAP is an access authorization program for individuals who apply for or occupy certain positions critical to the national security. The PSAP requires an initial and annual supervisory review, medical assessment, management evaluation and DOE personnel security review of all applicants and incumbents. Since the PSAP was an element of the access authorization process, the information generated from PSAP will remain in DOE–43 "Personnel Security Files."

In 1998, DOE published regulations that appear at 10 CFR Part 711 for the "Personnel Assurance Program (PAP)." At that time, DOE also published a new system of records for PAP entitled DOE–50 "Personnel Assurance Program Records." The PAP is a nuclear explosive safety program for individuals who occupy positions that involve hands-on work with, or access to nuclear explosives. The PAP includes many of the same evaluations as the PSAP to ensure that employees assigned to nuclear explosive duties do not have a mental/personality disorder or physical condition that could result in an accidental or unauthorized detonation of nuclear explosives.

As the PSAP and PAP evolved, significant similarities developed in the objectives, requirements, and administration of the two programs. DOE concluded that the monetary and time requirements of administering two very similar programs could not be justified as consistent with good management practices when compared to the benefits of consolidation.

On January 23, 2004, DOE published a final rule establishing the Human Reliability Program (HRP); the final rule appears at 10 CFR part 712. The final rule establishes a single unified HRP management structure that incorporates all of the important elements of the PSAP and PAP into one comprehensive program. By adopting a uniform set of requirements applicable to both PSAP and PAP employees, DOE has developed a stronger, more efficient, and more effective human reliability program for personnel who occupy these positions.

The January 23, 2004, rule consolidates the PSAP and the PAP into a single program. Today's notice proposes to amend DOE–50 "Personnel Assurance Program Records" by changing the name to DOE–50 Reliability Program Records," expanding the categories of records and categories of individual sections, identifying the new locations where the records will be maintained, and designating a new system manager. The documents generated by the HRP will be maintained in the DOE–50 "Human Reliability Program Records."

The information collected and the records maintained in DOE–50 will be used by the Department to ensure that HRP candidates and HRP-certified individuals have met all the requirements for HRP certification. The categories of records are being expanded to include the following: (1) Acknowledgement and Agreement to Participate in the Human Reliability Program (HRP) Form; (2) Authorization and Consent to Release Human Reliability Program (HRP) Records in Connection with HRP Form; (3) Refusal of Consent Form; (4) Human Reliability Program (HRP) Alcohol Testing Form; (5) Human Reliability Program (HRP) Certification Form; (6) random alcohol testing results, (7) drug test results and information related to substance abuse, and (8) results from the Office of Hearings and Appeals relating to a safety certification issue. The drug testing results will be sent to the Medical Review Officer who will report to the HRP management official that the test is negative or a confirmed positive and may provide an assessment related to substance abuse. The information is recorded on the Human Reliability Program (HRP) Certification Form and/or attached to the form.

The information collected will be used for screening, selecting, and continuously evaluating individuals assigned to or being considered for assignment to HRP duties. This continuous evaluation process identifies individuals whose judgment and reliability may be impaired by physical or mental/personality disorders, alcohol abuse, use of illegal drugs or the abuse of legal drugs or other substances, or any condition or circumstance that may be a security or safety concern. The categories of individuals will be expanded to include all individuals

who were in the PSAP and now are part of the HRP.

The HRP records will be maintained at the following locations: DOE Headquarters; Chicago Operations Office; Idaho Operations Office; Oak Ridge Operations Office; Richland Operations Office, and Savannah River Operations Office; the Rocky Flats Field Office; Pittsburgh Naval Reactors Office; Schenectady Naval Reactors Office; National Nuclear Security Administration (NNSA) Office of Secure Transportation at Albuquerque; NNSA Amarillo Site Office (Pantex); NNSA Kansas City Site Office; NNSA Livermore Site Office, NNSA Los Alamos Site Office; NNSA Nevada Site Office; NNSA Oakland Site Office; NNSA Sandia Site Office; NNSA Y–12 Site Office; and NNSA Service Center at Albuquerque.

DOE is submitting the report required by OMB Circular A–130 concurrently with the publication of this notice. The text of this notice contains the information required by the Privacy Act, 5 U.S.C. 552a(e)(4).

Issued in Washington, DC on June 29, 2004.

**James T. Campbell,**

*Acting Director, Office of Management, Budget and Evaluation/Acting Chief Financial Officer.*

**DOE–50**

**SYSTEM NAME:**

Human Reliability Program Records.

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION(S):**

U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Idaho Falls, ID 83401.

U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box E, Oak Ridge, TN 37830.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Rock Flats Field Office, P.O. Box 928, Golden, CO 80401.

U.S. Department of Energy, Pittsburgh Naval Reactors Office, P.O. Box 109, Pittsburgh, PA 15122.

U.S. Department of Energy, Schenectady Naval Reactors Office, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, NNSA Amarillo Site Office (Pantex) P.O. Box 30030, Amarillo, TX 79120.

U.S. Department of Energy, NNSA Kansas City Site Office, 2000 E 9th Street, Kansas City, MO 64141–3202.

U.S. Department of Energy, NNSA Livermore Site Office, P.O. Box 808, Livermore, CA 94551.

U.S. Department of Energy, NNSA Los Alamos Site Office, 528 35th Street, Los Alamos, NM 89193–8518.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, NNSA Oakland Site Office, 1301 Clay Street, Oakland, CA 94612–5208.

U.S. Department of Energy, NNSA Office of Secure Transportation, NA–121, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Sandia Site Office, P.O. Box 5800, Albuquerque, NM 87115.

U.S. Department of Energy, NNSA Y–12 Site Office, P.O. Box 2050, Oak Ridge, TN 37831–8009.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87115–5400.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Department of Energy, including National Nuclear Security Administration, and contractor employees performing work that affords both technical knowledge and access to assembled nuclear explosives or certain nuclear weapon components and assigned to, or applying for a position that: (1) Affords access to Category I Special Nuclear Material (SNM) or has responsibility for transportation or protection of Category I quantities of SNM; (2) involves nuclear explosive duties or has responsibility for working with, protecting, or transporting nuclear explosives, nuclear devices, or selected components; (3) affords access to information concerning vulnerabilities in protective systems when transporting nuclear explosives, nuclear devices, selected components, or Category I quantities of SNM; or (4) affords the potential to significantly impact national security or cause unacceptable damage and has been approved as an HRP position.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Results of medical examination; employment review; credit/consumer reports; data pertaining to access authorizations (clearances); training records pertaining to individual's duties involving assembled nuclear explosives or certain nuclear weapon components; employee name; department division; job title; L-code (mail code); telephone number; pager number; employee number; and social security number; Acknowledgement and Agreement to Participate in the Human Reliability Program (HRP) Form; Authorization and Consent to Release Human Reliability Program (HRP) Records in Connection with HRP Form; Refusal of Consent Form; Human Reliability Program (HRP) Alcohol Testing Form; Human Reliability Program (HRP) Certification Form; random alcohol testing results; drug test results and information related to substance abuse; results from the Office of Hearings and Appeals relating to a safety certification issue; psychological evaluations; and polygraph results.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

41 U.S.C. 2165; 42 U.S.C. 2201; 42 U.S.C. 5814–5815; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; E.O. 10450, 3 CFR 1949–1953 as amended; E.O. 10865, 3 CFR 1959–1963, as amended; and 10 CFR 712, Personnel Assurance Program.

**PURPOSE(S):**

The records are maintained and used by the Department to ensure that individuals assigned to nuclear explosive duties do not have emotional, mental, or physical incapacities that could result in a threat to nuclear explosive safety. This is done through a continuous evaluation process that identifies individuals whose judgment or reliability may be impaired by physical or mental/personality disorders, alcohol abuse, use of illegal drugs or the abuse of legal drugs or other substances, or any condition or circumstance that may be a security or safety concern.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

1. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to a (1) person representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witness, potential witness, or their representatives and assistants, and any other person who

possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

2. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; and (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who are acting in an official capacity, or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

3. A record from this system of records may be disclosed to a Federal agency, in response to its written request, to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

4. A record from the system may be disclosed as a routine use to the appropriate local, State or Federal agency when records alone or in conjunction with other information, indicate a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

5. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

6. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records may be stored as paper files and electronic media.

**RETRIEVABILITY:**

Records may be retrieved by name, social security number and employee number.

**SAFEGUARDS:**

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

**RETENTION AND DISPOSAL:**

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director of Security, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The HRP certifying official, or his or her designee of the "System Locations" listed above are the system managers for their respective portions of this system.

**NOTIFICATION PROCEDURES:**

In accordance with the DOE regulation implementing the Privacy Act, at 10 CFR part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the Director, Headquarters Freedom of Information Act and Privacy Act Group, U.S. Department of Energy, or the Privacy Act Officer at the appropriate address identified above under "System Locations." For records maintained by Laboratory, Area Office or Site Offices, the request should be directed to the Privacy Act Officer at the Operations Office, Field Office or Service Center that has jurisdiction over that office or facility. The request should include the requester's complete name, time period for which records are sought, and the office locations(s) where the requester believes the records are located.

**RECORDS ACCESS PROCEDURES:**

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

**CONTESTING RECORD PROCEDURES:**

Same as Notification Procedures above.

**RECORD SOURCE CATEGORIES:**

The individual, medical records, occupational training records, and HRP program and personnel security records. Information also may be obtained from the supervisor, site occupational medical director, and the management official when completing the Human Reliability Program Certification.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 04–15331 Filed 7–6–04; 8:45 am]
BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–344–000]**

### ANR Pipeline Company; Notice of Tariff Filing

June 28, 2004.

Take notice that on June 24, 2004, ANR Pipeline Company (ANR) tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to become effective July 1, 2004:

Fifty-Eighth Revised Sheet No. 8
Fifty-Eighth Revised Sheet No. 9
Fifty-Seventh Revised Sheet No. 13
Seventieth Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to reduce the Dakota Gasification Company (Dakota) reservation and commodity surcharges to $0.00 as of July 1, 2004. ANR projects that as of June 30, 2004, it will have fully recovered all the Dakota above-market costs and buyout costs that it has been authorized to collect. ANR requests that it be permitted to eliminate the Dakota surcharges immediately to avoid any further overcollections.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing 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. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–1482 Filed 7–6–04; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–343–000]**

### CenterPoint Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 28, 2004.

Take notice that on June 24, 2004, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 603, to be effective July 1, 2004.

CEGT states that the purpose of this filing is to remove the transactions from its Tariff that are no longer eligible for zero fuel and Electric Power Costs charges.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing 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. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–1481 Filed 7–6–04; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. RT04–2–002; ER04–116–002; ER04–157–005; and EL01–39–002]**

### ISO New England Inc., et al.; Bangor Hydro-Electric Company, et al.; The Consumers of New England v. New England Power Pool; Notice of Extension of Time

June 28, 2004.

On June 22, 2004, ISO New England Inc. (ISO), and the New England transmission owners (consisting of Bangor Hydro-Electric Company; Central Maine Power Company; New England Power Company; Northeast Utilities Service Company on behalf of its operating companies: The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, Holyoke Power and Electric Company, and Holyoke Water Power Company; NSTAR Electric & Gas Corporation on behalf of its operating affiliates: Boston Edison Company, Commonwealth Electric Company, Canal Electric Company, and Cambridge Electric Light Company; The United Illuminating Company; Vermont Electric Power Company, Inc.; Fitchburg Gas and Electric Light Company; and Unitil Energy Services, Inc. (collectively New England TOs) submitted a partial compliance filing, as directed by the Commission's Order (Order) issued March 24, 2004, in Docket Nos. RT04–2–000, *et al.*, 106 FERC ¶ 61,280 (2004). The June 22, 2004, filing included a request for an extension of time to file the portion of the compliance filing relating to reversionary interests (and revisions to the Participants Agreement otherwise required in the March 24, 2004, Order.)

The ISO and the New England TOs state that an extension of time is necessary to allow the parties to continue ongoing settlement discussions aimed at resolving outstanding issues in these proceedings.

Upon consideration, notice is hereby given that the date for filing the portion of the compliance filing relating to reversionary interests (and revisions to the Participants Agreement required by the March 24, 2004, Order) is granted to and including August 20, 2004, as requested by ISO New England and New England TOs.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–1476 Filed 7–6–04; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–342–000]**

### Questar Pipeline Company; Notice of Tariff Filing

June 28, 2004.

Take notice that on June 24 2004, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be effective August 1, 2004:

Thirty-First Revised Sheet No. 5
Original Volume No. 3
Thirty-Eighth Revised Sheet No. 8.

Questar states that the revised tariff sheets reflect the Gas Research Institute's instructions to discontinue collecting GRI surcharges effective August 1, 2004.

Questar further states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing 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. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–1480 Filed 7–6–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP04–347–000]**

### Questar Pipeline Company; Notice of Filing

June 7, 2004.

Take notice that on June 2, 2004, Questar Pipeline Company (Questar), 180 East 100 South, Salt Lake City, Utah 84111, filed in the captioned docket an abbreviated application, pursuant to section 7(c) of the Natural Gas Act (NGA) requesting authority to reconfigure Questar's existing Oak Spring Compressor Station (Oak Spring). Oak Spring is located adjacent to Questar's existing Main Line Nos. 40 and 104 in Carbon County, Utah. The application is on file with the Commission and open for public inspection. This filing 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Questar notes that Oak Spring is part of Questar's southern transmission system and that the station consists of three compressor units previously certificated by the Commission. Questar seeks authorization to reconfigure Oak Spring by placing one existing compressor unit in series with two other existing compressor units. Questar asserts that the configuration will provide an additional 10,000 Dth per day of capacity which will become available for an approximate 12-month period, commencing upon the in-service date of the reconfiguration and terminating upon the in-service date of Questar's proposed Southern System Expansion Project (SSXP).[1] Questar proposed that Oak Spring's reconfiguration will be completed and made available for service by November 1, 2004.

Any questions regarding the application are to be directed to Lenard G. Wright, Director, Federal Regulation, Questar Pipeline Company, 180 East 100 South, P.O. Box 45360, Salt Lake City, Utah 84145–0360.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Motions to intervene, protests and comments 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.

[1] Questar states that the target date for filing the SSXP application with the Commission is September 2004.

*Comment Date:* June 17, 2004.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–1483 Filed 7–6–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP04–367–000]**

### Unocal Windy Hill Gas Storage LLC; Notice of Petition

June 28, 2004.

Take notice that on June 25, 2004, Unocal Windy Hill Gas Storage LLC (Windy Hill), 14141 Southwest Freeway, Sugarland, Texas 77478, filed in Docket No. CP04–367–000 a petition for Exemption of Temporary Acts and Operations from Certificate Requirements, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure (18 CFR 385.207(a)(5)), and section 7(c)(1)(B) of the Natural Gas Act (15 U.S.C. 717(c)(1)(B)), seeking approval of an exemption from certificate requirements to perform temporary activities related to drilling a test well and performing other activities to assess the feasibility of developing an underground natural gas storage facility in Morgan County, Colorado all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web 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, call (202) 502–3676 or TYY, (202) 502–8659.

Any questions regarding the petition should be directed to Rex Bigler, Unocal Windy Hill Gas Storage LLC, 14141 Southwest Freeway, Sugarland, Texas 77478, and phone: 281–287–5513; fax 281–287–7327.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. *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.

*Comment Date:* July 6, 2004.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–1477 Filed 7–6–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER99–1213–002, et al.]**

### Lakewood Cogeneration, L.P., et al.; Electric Rate and Corporate Filings

June 28, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. Lakewood Cogeneration, L.P.**

[Docket No. ER99–1213–002]

Take notice that on June 23, 2004, Lakewood Cogeneration L.P., (Lakewood) submitted a for filing amending its Tariff for the Wholesale Sale of Electricity at Market-Based Rates to include the Market Behavior Rules promulgated by the Commission, Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,218 (2003), and to reflect the transfer of certain ownership interests.

*Comment Date:* July 14, 2004.

**2. Bangor Hydro-Electric Company**

[Docket No. ER00–980–011]

Take notice that on June 23, 2004, Bangor Hydro-Electric Company (Bangor Hydro) submitted an Errata to June 15, 2004, Informational Filing showing the implementation of Bangor Hydro's open access transmission tariff formula rate for the charges that became effective on June 1, 2004.

*Comment Date:* July 14, 2004.

**3. Monongahela Power Company**

[Docket No. ER01–1716–001]

Take notice that on June 10, 2004, Monongahela Power Company (dba Allegheny Power) (Monongahela) submitted for filing Final Order of the Public Utilities Commission (PUC) of Ohio accepting Monongahela Power Company's proposed transmission/distribution separation methodology.

Monongahela states that copies of this letter have been served on PUC of Ohio.

*Comment Date:* July 9, 2004.

**4. Rock River I, LLC.**

[Docket No. ER01–2742–003]

Take notice that on June 23, 2004, Rock River I, LLC, in compliance with the Letter Order issued March 9, 2004, in Docket No. ER01–2742–002, submitted an amendment to its market-based rate tariff to include certain market behavior rules adopted by the Commission in Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorization, 105 FERC ¶ 61,218 (2003).

*Comment Date:* July 14, 2004.

**5. NewCorp Resources Electric Cooperative, Inc.**

[Docket No. ER03–1116–003]

Take notice that on June 23, 2004, NewCorp Resources Electric Cooperative, Inc. (NewCorp) submitted an amendment to its compliance filing submitted on September 29, 2003, as amended on October 2, 2003, in response to the Commission's Letter

Order issued August 29, 2003, in Docket No. ER03–1116–000.

*Comment Date:* July 14, 2004.

**6. Devon Power LLC, Middletown Power LLC, Montville Power LLC, and NRG Power Marketing Inc.**

[Docket No. ER04–464–006]

Take notice that on June 23, 2004, Devon Power LLC, Middletown Power LLC, Montville Power LLC, and Norwalk Power LLC (collectively Applicants) tendered for filing a Refund Report regarding refunds made under each of Applicants' Reliability Must Run Agreements with ISO–NE in compliance with the Commission's order issued March 22, 2004, in Docket No. ER04–464–000, *et al.*, 106 FERC ¶ 61,264 (2004).

Applicants state that they have provided copies of the Refund Report to ISO–NE and served each person designated on the official service list compiled by the Secretary in this proceeding.

*Comment Date:* July 14, 2004.

**7. Southern Company Services, Inc.**

[Docket No. ER04–952–000]

Take notice that on June 23, 2004, Southern Company Services, Inc. (SCS), on behalf of Georgia Power Company (GPC), filed with the Commission a Notice of Cancellation of the Interconnection Agreement between Southern Power Company and GPC, Service Agreement No. 458 under Southern Companies' Open Access Transmission Tariff, Fourth Revised Volume No. 5. SCS requests an effective date of May 24, 2004.

*Comment Date:* July 14, 2004.

**8. Southern Company Services, Inc.**

[Docket No. ER04–953–000]

Take notice that on June 23, 2004, Southern Company Services, Inc. (SCS), on behalf of Georgia Power Company (GPC), filed with the Commission a Notice of Cancellation of the Interconnection Agreement between Southern Power Company and GPC, Service Agreement No. 459 under Southern Companies' Open Access Transmission Tariff, Fourth Revised Volume No. 5. GPC requests an effective date of May 24, 2004.

*Comment Date:* July 14, 2004.

**Standard Paragraph**

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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 motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. 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. E4–1475 Filed 7–6–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EC04–121–000, et al.]**

## American Electric Power Service Corporation, et al.; Electric Rate and Corporate Filings

June 22, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. American Electric Power Service Corporation; AEP Texas Central Company**

[Docket No. EC04–121–000]

Take notice that on June 18, 2004, American Electric Power Service Corporation (AEPSC), acting on behalf of its electric utility subsidiary, AEP Texas Central Company, formerly known as Central Power and Light Company (TCC) (collectively, Applicant), submitted an application for approval of the transfer by TCC of certain jurisdictional facilities associated with TCC's 7.81 percent undivided ownership interest in the 690 MW Oklaunion Unit No. 1 to the City of Brownsville, Texas, acting by and through the Brownsville Public Utilities Board (PUB), or in the alternative to PUB and the Oklahoma Municipal Power Authority (OMPA), pursuant to section 203 of the Federal Power Act (Act), 16 U.S.C. 824b (2003), and part 33 of the Regulations of the Federal Energy Regulatory Commission (Commission), as revised pursuant to Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000). Applicant states that such transfer is proposed to be made to comply with the Texas Public Utility Regulatory Act. Applicant requests expedited consideration of the application and privileged treatment of certain exhibits to the application.

The Applicant states that a copy of the filing has been served on the Public Utility Commission of Texas, the Office of Attorney General of Texas, the Oklahoma Corporation Commission and TCC's wholesale customers.

*Comment Date:* July 9, 2004.

**2. Cedar II Power Corporation**

[Docket No. EL04–111–000]

Take notice that on June 18, 2004, Cedar II Power Corporation filed with the Federal Energy Regulatory Commission (Commission) a Petition for Declaratory Order pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207 (2003). Cedar II Power Corporation states that the petition concerns the proper implementation of the electric utility ownership "true-up" requirements applicable to Cedar Bay Generating Company, Limited Partnership.

*Comment Date:* July 19, 2004.

**3. California Independent System Operator Corporation**

[Docket Nos. ER03–1046–004; ER04–609–002]

Take notice that on June 17, 2004, California Independent System Operator Corporation, (ISO) submitted a response to the Commission's letter order issued June 10, 2004, in Docket Nos. ER03–1046–001, 002, and 003 and Docket Nos. ER04–609–000 and 001.

ISO states that it has served copies of the response, and all attachments, upon all parties on the official service lists for the captioned dockets. In addition, the ISO states that it is posting this response and all attachments on the ISO home page.

*Comment Date:* June 28, 2004.

**4. Commonwealth Edison Company**

[Docket No. ER04–897–001]

Take notice that on June 17, 2004, Commonwealth Edison Company (ComEd) submitted for filing a supplement to its June 1, 2004, in

Docket No. ER04–897–000. ComEd requests an effective date of May 1, 2004.

ComEd states that a copy of the filing has been served on the affected State regulatory bodies, the counterparties to these service agreements and PJM Interconnection, LLC.

*Comment Date:* July 8, 2004.

**5. Allied Energy Resources Corporation**

[Docket No. ER04–923–000]

Take notice that on June 14, 2004, Allied Energy Resources Corporation (AERC) submitted for filing a request for acceptance of AERC Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. AERC states that it intends to engage in wholesale electric power and energy transactions as a markerter. AERC further states that it is not in the business of generating or transmitting electric power. AERC requests an effective date of June 15, 2004.

*Comment Date:* July 6, 2004.

**6. Bangor Hydro-Electric Company**

[Docket No. ER04–935–000]

Take notice that on June 16, 2004, Bangor Hydro-Electric Company (BHE) filed proposed revisions to its FERC Open Access Transmission Tariff to reflect minor modifications to BHE's existing "Rate Formula" to comply with changes made by the Commission to the FERC Annual Report Form 1. BHE requests an effective date of June 1, 2004.

BHE states that copies of this filing were served on all interested parties.

*Comment Date:* July 7, 2004.

**7. Duke Energy Lee, LLC**

[Docket No. ER04–936–000]

Take notice that on June 17, 2004, Duke Energy Lee, LLC (Duke Lee) tendered for filing its Rate Schedule No. 2, a Black Start Agreement by and between Duke Lee and Commonwealth Edison Company (ComEd) pursuant to which Duke Lee will provide black start service to ComEd from its 640 MW natural gas-fired generating facility located in Lee County, Illinois. Duke Lee requests an effective date of August 16, 2004.

Duke Lee states that it has served copies of the filing on the Illinois Commerce Commission, ComEd, and PJM Interconnection, L.L.C.

*Comment Date:* July 8, 2004.

**8. Volunteer Energy Services, Inc.**

[Docket No. ER04–937–000]

Take notice that on June 17, 2004, Volunteer Energy Services, Inc. (VESI) submitted for filing a request for acceptance of VESI Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. VEIS states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. VESI further states that it is not in the business of generating or transmitting electric power.

*Comment Date:* July 8, 2004.

**9. California Independent System Operator Corporation**

[Docket No. ER04–940–000]

Take notice that on June 18, 2004, the California Independent System Operator Corporation (ISO), tendered for filing an amendment (Amendment No. 2) to revise the Metered Subsystem Agreement between the ISO and Silicon Valley Power (SVP) for acceptance by the Commission. ISO states that the purpose of Amendment No. 2 is to revise Schedule 1 and Schedule 15.1 of the Metered Subsystem Agreement to include the new Nortech-Northern Receiving Station Point of Interconnection. The ISO is requesting waiver of the 60-day prior notice requirement to allow the revised Schedule 1 and Schedule 15.1 to be made effective as of April 23, 2004.

The ISO states that this filing has been served on SVP, the California Public Utilities Commission, and all entities on the official service list for Docket No. ER02–2321–000 and for Docket No. ER04–185–000.

*Comment Date:* July 9, 2004.

**10. Salmon River Electric Cooperative, Inc.**

[Docket No. ES04–16–001]

Take notice that on June 9, 2004, Salmon River Electric Cooperative, Inc. (Salmon River) submitted for filing an amended application for authority to issue securities pursuant to section 204 of the Federal Power Act (FPA), 16 U.S.C. 824c, and part 34 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 34. Salmon River requests that the Commission: (1) Authorize prospective issuances of debt under a loan agreement and two line of credit agreements with the National Rural Utilities Cooperative Finance Corporation during a two-year period commencing July 9, 2004; (2) authorize prospectively the issuance of securities and a guaranty that were originally inadvertently issued without requisite approval under section 204 of the FPA; (3) waive the restrictions on public utility issuances of secured and unsecured debt set forth in Westar with respect to these authorizations; and (4) waive the competitive bidding requirement with respect to these issuances.

*Comment Date:* June 30, 2004.

**11. ISO New England Inc.**

[Docket No. ES04–39–000]

On June 18, 2004, the Commission issued a Notice of Filing regarding ISO New England Inc.'s June 15, 2004, filing in the above-docketed proceeding. By this notice, the comment period for interventions and protests regarding the June 15, 2004, filing is shortened to and including July 6, 2004.

**Standard Paragraph**

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 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 motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. 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. E4–1484 Filed 7–6–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EC04–124–000, et al.]**

### Boston Generating, LLC, et al.; Electric Rate and Corporate Filings

June 25, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. Boston Generating, LLC, Tyr Energy, LLC, Exelon Boston Services, LLC, Exelon New England Power Services, Inc., Exelon New England Power Marketing, and Limited Partnership**

[Docket No. EC04–124–000]

Take notice that on June 24, 2004, pursuant to section 203 of the Federal Power Act (FPA), Boston Generating, LLC, Tyr Energy, LLC, Exelon Boston Services, LLC, Exelon New England Power Services, Inc., and Exelon New England Power Marketing, Limited Partnership (the latter three, collectively the Exelon Entities), filed an application requesting authorization for the disposition of jurisdictional assets due to the proposed transfer of the operations and maintenance and power marketing responsibilities for three Boston Generating, LLC publicly-owned utility companies—Mystic I, LLC, Mystic Development, LLC and Fore River Development, LLC.

*Comment Date:* July 15, 2004.

**2. Central Hudson Gas & Electric Corporation, LIPA, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Rochester Gas and Electric Corporation v. New York Independent System Operator, Inc.**

[Docket No. EL04–113–000]

Take notice that on June 24, 2004, Central Hudson Gas & Electric Corporation; New York Power Authority; Long Island Power Authority and its operating subsidiary LIPA; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation, a National Grid company; and Rochester Gas & Electric Corporation (collectively, Complainants) filed a complaint, pursuant to section 206 of the Federal Power Act and rule 206 of the Commission's regulations, against the New York System Independent System Operator (NYISO) concerning the NYISO's administration of its Transmission Congestion Contract (TCC) authority. Complainants seek historic and prospective relief from the NYISO's alleged past and ongoing tariff violations regarding TCCs. The Complainants request Fast Track processing for the complaint.

Complainants state that they served a copy of the filing by overnight mail and by e-mail on the respondent and the New York State Public Service Commission. In addition, Complainants state that they have also served a copy of the Complaint on all parties on the Commission's official service list in Docket No. EL04–110–000, a related proceeding, by overnight mail.

*Comment Date:* July 14, 2004.

**3. Consolidated Edison Energy Massachusetts, Inc.**

[Docket No. ER99–3248–004]

Take notice that on June 23, 2004, Consolidated Edison Energy Massachusetts, Inc. (CEEMI), submitted for filing amending its Tariff for the Wholesale Sale of Electricity at Market-Based Rates (Tariff) to include the Market Behavior Rules promulgated by the Commission, Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,218 (2003). CEEMI states that the Tariff has also been revised to provide for transmission service pursuant to either the open access transmission tariff of an affiliate or the affected Independent System Operator or Regional Transmission Operator.

*Comment Date:* July 17, 2004.

**4. Newington Energy, L.L.C.**

[Docket No. ER01–1526–002]

Take notice that on June 23, 2004, Newington Energy, L.L.C. (Newington) submitted a filing amending its Tariff for the Wholesale Sale of Electricity at Market-Based Rates to include the Market Behavior Rules promulgated by the Commission, Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,218 (2003). Newington states that the tariff has also been revised to replace a reference to the Consolidated Edison Company of New York Inc. Open Access Transmission Tariff (OATT) with the applicable OATT of either the Independent System Operator or the Regional Transmission Operator.

*Comment Date:* July 14, 2004.

**5. Entergy Services, Inc. Generator Coalition v. Entergy Services, Inc.**

[Docket Nos. ER01–2201–006 and EL02–46–005]

Take notice that on June 22, 2004, Entergy Services, Inc. (Entergy) filed a refund report relating to refunds ordered by the Commission in an order issued April 16, 2004, 107 FERC ¶ 61,035 (2004).

Entergy states that a copy of this filing has been served upon International Paper and the respective State commissions.

*Comment Date:* July 13, 2004.

**6. Southern California Edison Company**

[Docket Nos. ER04–667–001 and 002]

Take notice that on June 15, 2004, as amended on June 22, 2004, Southern California Edison Company submitted partial compliance filings pursuant to the Commission's order issued May 21, 2004, in Docket Nos. EL03–228–000 and ER04–667–000, 107 FERC ¶ 61,179.

*Comment Date:* July 13, 2004.

**7. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER04–779–001]

Take notice that on June 22, 2004, the Midwest Independent Transmission System Operator, Inc., (Midwest ISO) on behalf of the Midwest ISO Transmission Owners, including certain of the Midwest Stand Alone Transmission Companies, GridAmerica LLC, and the GridAmerica Companies, filed a response to the Commission's deficiency letter issued June 15, 2004, regarding the April 29, 2004, filing by Midwest ISO, *et al.*, in Docket No. ER04–779–000.

*Comment Date:* July 13, 2004.

**8. POSDEF Power Company, LP**

[Docket No. ER04–947–000]

Take notice that on June 22, 2004, POSDEF Power Company, LP submitted for filing an application pursuant to section 205 of the Federal Power Act for authorization to sell energy, capacity, and ancillary services at market-based rates.

*Comment Date:* July 13, 2004.

**9. The Detroit Edison Company, DTE East China, LLC, DTE River Rouge No. 1, LLC**

[Docket No. ER04–948–000]

Take notice that on June 22, 2004, the Detroit Edison Company (Detroit Edison), DTE East China, LLC (East China) and DTE River Rouge No. 1, LLC (Rouge 1), (collectively, Applicants) submitted for filing, pursuant to section 205 of the Federal Power Act, an application requesting authorization for Detroit Edison to engage in limited, short-term purchases of power from East China and Rouge 1 during the summer 2004 season. Applicants request an effective date of June 23, 2004.

Applicants state that a copy of the application was served upon the Michigan Public Service Commission.

*Comment Date:* July 2, 2004.

**10. Pacific Gas and Electric Company**

[Docket No. ER04–949–000]

Take notice that on June 23, 2004, Pacific Gas and Electric Company (PG&E) tendered for filing the System Bulk Power Sale and Purchase Agreement (Bulk Power Agreement) by and between PG&E and the City of Santa Clara, California, also known as Silicon Valley Power (SVP); revisions to Appendix A of the Bulk Power Agreement to change the energy rate for three periods effective April 1, 1999, 2000 and 2001; and a Notice of Termination First Revised PG&E Rate Schedule No. 108.

PG&E states that copies of the filing were served upon SVP, the California Independent System Operator Corporation and the California Public Utilities Commission.

*Comment Date:* July 14, 2004.

**11. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER04–950–000]

Take notice that on June 23, 2004, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and section 35.12 of the Commission's regulations, 18 CFR 35.12 (2003), submitted for filing an Interconnection and Operating Agreement among Minnesota Municipal Power Agency, the Midwest ISO and Northern States Power Company d/b/a Xcel Energy. Midwest ISO requests an effective date of June 9, 2004.

Midwest ISO states that a copy of this filing was served on all parties.

*Comment Date:* July 14, 2004.

**12. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER04–951–000]

Take notice that on June 23, 2004, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Second Revised Interconnection and Operating Agreement among Valley Queen Cheese Factory, Inc., the Midwest ISO and Otter Tail Power Company. Midwest ISO states that the fully executed Second Revised Interconnection Agreement replaces the previously filed unexecuted Interconnection Agreement. Midwest ISO requests an effective date of June 1, 2004.

Midwest ISO states that a copy of this filing was served on all parties.

*Comment Date:* July 14, 2004.

**13. ISO New England Inc., et al., Bangor Hydro-Electric Company, et al., the Consumers of New England v. New England Power Pool**

[Docket Nos. RT04–2–002, ER04–116–002, ER04–157–005, and EL01–39–002]

Take notice that on June 22, 2004, ISO New England Inc. (ISO), and the New England transmission owners (consisting of Bangor Hydro-Electric Company; Central Maine Power Company; New England Power Company; Northeast Utilities Service Company on behalf of its operating companies: The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, Holyoke Power and Electric Company, and Holyoke Water Power Company; NSTAR Electric & Gas Corporation on behalf of its operating affiliates: Boston Edison Company, Commonwealth Electric Company, Canal Electric Company, and Cambridge Electric Light Company; the United Illuminating Company; Vermont Electric Power Company, Inc.; Fitchburg Gas and Electric Light Company; and Unitil Energy Services, Inc. (collectively New England TOs) submitted for filing a report in compliance with the Commission's order issued March 24, 2004, in Docket Nos. RT04–2–000, *et al.*, 106 FERC ¶ 61,280 (2004).

The ISO and the New England TOs state that copies of the filing have been served upon all parties to this proceeding, the NEPOOL Participants (electronically), non-Participant Transmission Customers, and the governors and regulatory agencies of the six New England states.

*Comment Date:* July 13, 2004.

**Standard Paragraph**

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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 motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. 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. E4–1485 Filed 7–6–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER04–817–001, et al.]**

### Indeck Maine Energy, L.L.C., et al.; Electric Rate and Corporate Filings

June 21, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. Indeck Maine Energy, L.L.C.**

[Docket No. ER04–817–001]

Take notice that on June 16, 2004, Indeck Maine Energy, L.L.C. submitted an amendment to its May 5, 2004, filing in Docket No. ER04–817–000.

*Comment Date:* July 7, 2004.

**2. Orange and Rockland Utilities, Inc.**

[Docket No. ER04–905–001]

Take notice that on June 17, 2004, Orange and Rockland Utilities, Inc. submitted an amendment to its June 2, 2004, filing in Docket No. ER04–905–000.

*Comment Date:* July 8, 2004.

**3. New York Independent System Operator, Inc.**

[Docket No. ER04–932–000]

Take notice that on June 16, 2004, the New York Independent System Operator, Inc. (NYISO), submitted for filing proposed revisions to the NYISO's Open Access Transmission Tariff (OATT) and Market Administration and Control Area Services Tariff (Services Tariff). NYISO states that the proposed filing would amend the NYISO's creditworthiness requirements to add a component for Wholesale Transmission Service Charges to the Operating Requirement and clarify the Unsecured Credit starting point for certain affiliated

municipal electric systems. The NYISO requests an effective date of August 16, 2004.

The NYISO states that it has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's OATT or Services Tariff.

*Comment Date:* July 7, 2004.

**4. Consolidated Edison Company of New York, Inc.**

[Docket No. ER04–934–000]

Take notice that, on June 16, 2004, Consolidated Edison Company of New York, Inc. (Con Edison) submitted for filing an Interconnection Agreement by and between Con Edison and Power Authority of the State of New York (NYPA), dated as of June 2, 2004. Con Edison states that the agreement provides for the interconnection to Con Edison's transmission system of a 500 MW electric generating facility that NYPA is constructing and proposes to operate in the Borough of Queens, New York.

Con Edison states that copies of this filing have been served on NYPA and the New York Independent System Operator, Inc.

*Comment Date:* July 7, 2004.

**5. Bangor Hydro-Electric Co.**

[Docket No. ER00–980–010]

Take notice that on June 8, 2004, Bangor Hydro-Electric Company (BHE) submitted for filing a Supplement to Settlement Agreement (Supplement). BHE states that the sole purpose of the Supplement is to reflect the negotiated resolution of an issue reserved under Article 11.2 of the Settlement Agreement filed on October 10, 2003, and approved by Commission order issued October 30, 2003, in Docket No. ER00–980–008.

BHE states that copies of the filing were served on the official service list in Docket No ER00–980, participants in this proceeding, and the BHE Open Access Transmission Tariff customers.

*Comment Date:* June 29, 2004.

**Standard Paragraph**

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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 motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. 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. E4–1486 Filed 7–6–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2210–095]**

### Appalachian Power Company; Notice of Availability of Draft Environmental Assessment

June 28, 2004.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed Appalachian Power Company's application requesting approval to permit Resource Partners, L.L.C. (permittee) to install and operate fifteen stationary docks with a total of 62 covered boat slips and 30 floaters. Fourteen of the docks have four slips each and one dock has six slips. Each dock has two floaters, one on each side of the structure. There is one slip proposed per townhouse and the slips are being clustered into 15 docks. All of the described work is to take place within the project boundary of the Smith Mountain Project at the Cottages of Contentment Island development located along the Blackwater River portion of Smith Mountain Lake. A Draft Environmental Assessment (DEA) has been prepared for the proposal.

The DEA contains the staff's analysis of the potential environmental impacts of the project and concludes that approving the request with modifications would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the DEA 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 P–2210 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.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 2210–095 to all comments. Comments 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 (*http://www.ferc.gov*) under the "e-Filing" link. The Commission strongly encourages electronic filings.

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 further information, contact Heather Campbell at (202) 502–6182.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–1479 Filed 7–6–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 11512–002]**

### John Bigelow; Notice of Availability of Draft Environmental Assessment

June 28, 2004.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations, 18 CFR part 380, the Office of Energy Projects staff (staff) reviewed the application for surrender of project license for the McKenzie Hydroelectric Project, located on the McKenzie River, Lane County, Oregon, and prepared a draft environmental assessment (DEA) for the project. In this DEA, staff analyzes the potential environmental effects of the surrender of license and concludes that the surrender would not constitute a major Federal action

significantly affecting the quality of the human environment.

A copy of the DEA is available for review at the Commission in the Public Reference Room, or it may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "e-Library" link. Enter the docket number P–11512 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.

Any comments should be filed by August 2, 2004, and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please refer to (McKenzie Project No. 11512–002, on all comments.

Comments 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 at *http://www.ferc.gov* under the "e-Filing" link. The Commission strongly encourages electronic filings.

You may 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 further information, please contact Robert Fletcher at (202) 502–8901, or at *robert.fletcher@ferc.gov*.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–1478 Filed 7–6–04; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[OAR–2004–0065; FRL–7782–6]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Application Requirements for the Approval and Delegation of Federal Air Toxics Programs to State, Territorial, Local, and Tribal Agencies (Renewal), ICR Number 1643.05, OMB Number 2060–0264

**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 an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on June 30, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before August 6, 2004.

**ADDRESSES:** Submit your comments, referencing docket ID number OAR–2004–0065 to (1) EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket and Information Center, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeff Whitlow, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C439–04, Research Triangle Park, NC 27711; telephone number 919–541–5523; fax number 919–541–0942; e-mail address: *whitlow.jeff@epa.gov*.

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 30, 2004 (69 FR 23739), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR–2004–0065, 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 submit or view public comments, to 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 and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, 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 *www.epa.gov/edocket*.

*Title:* Application Requirements for the Approval and Delegation of Federal Air Toxics Programs to State, Territorial, Local, and Tribal Agencies (Renewal).

*Abstract:* This information collection is a voluntary application from State, Territorial, Local, and Tribal Agencies (S/L/Ts) for delegation of regulations developed under section 112 of the Clean Air Act (CAA). In the time frame for this submittal, the EPA estimates that the majority of the delegated regulations will be those developed under section 112(d) of the CAA. The procedures and requirements that the S/L/Ts will use to request the delegations are codified as 40 CFR part 63, subpart E, in accordance with section 112(l) of the CAA.

The subpart E regulations contain the following five options for delegation:

- Straight delegation
- Rule adjustment
- Rule substitution
- Equivalency by permit
- State program approval

Straight delegation is the option where the respondents, S/L/Ts, choose to accept delegation of a section 112 provision and to implement and enforce the provision as written. The S/L/Ts may use the rule adjustment option when they want to substitute a rule and/or requirement that is unequivocally no less stringent than the otherwise applicable section 112 standard, such as a part 63 national emission standards

for hazardous air pollutants (NESHAP). They may use rule substitution when they wish to substitute individual rules and/or requirements in place of the otherwise applicable section 112 standard. They may use the equivalency by permit option when they wish to substitute operating permit terms and conditions for a section 112 standard; this option is only applicable to a limited number of sources using title V permit terms and conditions. Finally, S/L/Ts may use the State program approval option if they want to substitute their overall air toxics program for the Federal air toxics program; *i.e.*, the section 112(d) standards.

The delegation options vary in the types of changes allowed, the level of demonstration required, and the amount of time and process needed to implement them. Respondents must submit any packages requesting delegation to their EPA Regional office. We must then review and approve, partially approve, or disapprove the request based on the subpart E approval criteria. The request may only take effect after our approval (or partial approval of a subset of the request), public notice, and, in some cases, public comment.

The information is needed and used to determine if the entity submitting an application has met the criteria established in the subpart E rule. This information is necessary for the Administrator to determine the acceptability of approving the S/L/T's rules, requirements, or programs in lieu of the Federal section 112 rules or programs. The collection of information is authorized under 42 U.S.C. 7401–7671q.

All information submitted to us for which a claim of confidentiality is made will be safeguarded according to the policies set forth in Title 40, Chapter 1, part 2, subpart B, Confidentiality of Business 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 are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 41,577 hours per response. 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; to adjust the existing ways to comply with any previously applicable instructions and requirements; to train personnel to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Entities potentially affected by this action are State, territorial, local, or tribal agencies (SLTs).

*Estimated Number of Respondents:* 124.

*Frequency of Response:* One time per request for substitution.

*Estimated Total Annual Hour Burden:* 41,577.

*Estimated Total Annual Cost:* $1,816,490, which includes $1,790,760 annual labor costs, $25,720 total annual capital costs, and $0 O&M costs.

*Changes in the Estimates:* There is a decrease of 95,972 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to a program adjustment. The following discussion explains these changes. The changes in burden are related to four main changes: (1) A reduced number of occurrences related to the number of participating S/L/Ts and the number of NESHAP delegated; (2) a change in the distribution of S/L/Ts using each option; (3) the assumption that some portions of the subpart E program will not be used over the next 3 years; and (4) the reduction of hours per occurrence related to overall program approval.

Dated: June 9, 2004.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 04–15343 Filed 7–6–04; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–2003–0073; FRL–7782–5]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Reporting and Recordkeeping for Asbestos Abatement Worker Protection; EPA ICR No. 1246.09, OMB No. 2070–0072

**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 an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on July 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before August 6, 2004.

**ADDRESSES:** Submit your comments to both (1) EPA, referencing docket ID number OPPT–2003–0073, online at *http://www.epa.gov/edocket* (our preferred method), or by *mailto:oppt.ncic@epa.gov*. Mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mailcode: 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503 (reference OMB Control No. 2070–0072).

**FOR FURTHER INFORMATION CONTACT:** Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mailcode: 7408, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On January 12, 2004, EPA sought comments on this renewal ICR (69 FR 1738) pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period.

EPA has established a public docket for this ICR under Docket ID No. OPPT–2003–0073, which is available for public viewing at the OPPT 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 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 Pollution Prevention and Toxics Docket is 202–566–0280. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to 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 and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

*ICR Title:* Reporting and Recordkeeping for Asbestos Abatement Worker Protection.

*Abstract:* EPA's asbestos worker protection rule is designed to provide occupational exposure protection to state and local government employees who are engaged in asbestos abatement activities in states that do not have state plans approved by the Occupational Safety and Health Administration (OSHA). The rule provides protection for public employees not covered by the OSHA standard from the adverse health effects associated with occupational exposure to asbestos.

This rule requires state and local governments to monitor employee exposure to asbestos, take action to reduce exposure, monitor employee health, train employees about asbestos hazards, and provide employees with information about exposures to asbestos and the associated health effects. The rule also requires state and local governments to notify EPA before commencing any asbestos abatement project. State and local governments must maintain medical surveillance and monitoring records and training records on their employees, must establish a set of written procedures for respirator programs and must maintain procedures and records of respirator fit tests. EPA will use the information to monitor compliance with the asbestos worker protection rule.

Responses to the collection of information are mandatory (see 40 CFR part 763, subpart G). Respondents may claim all or part of a notice as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

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 title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9 and included on the related collection instrument or form, if applicable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.33 hour per response. 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.

*Respondents/Affected Entities:* State or local government agencies in states without an OSHA-approved State Asbestos Plan or State Asbestos Worker Protection Plan that have employees engaged in asbestos-related construction, custodial, and brake and clutch repair activities.

*Frequency of Collection:* On occasion; includes third-party notification requirement.

*Estimated No. of Respondents:* 25,312.

*Estimated Total Annual Burden on Respondents:* 412,243 hours.

*Estimated Total Annual Costs:* $13,281,559.

*Changes in Burden Estimates:* This request reflects a decrease of 24,046 hours (from 436,289 hours to 412,243 hours) in the total estimated respondent burden from that currently in the OMB inventory. This decrease is due to a reduction in the number of supervisors at affected entities that need to read and interpret the regulation. In the previous ICR EPA anticipated that all supervisors undertook this activity. In the current ICR EPA expects that only new supervisors must do so. The change in burden represents an adjustment.

Dated: June 28, 2004.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 04–15344 Filed 7–6–04; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[SFUND–2000–0009; FRL–7782–4]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Notification of Episodic Releases of Oil and Hazardous Substances (Renewal), EPA ICR Number 1049.10, OMB Control Number 2050–0046

**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 the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on July 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. The ICR describes the nature of the information collection and estimated burden and cost.

**DATES:** Additional comments must be submitted on or before August 6, 2004.

**ADDRESSES:** Submit your comments, referencing docket ID number SFUND–2000–0009, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *superfund.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency,

Superfund Docket, Mail Code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Lynn M. Beasley, Office of Emergency Preparedness, Prevention and Response, Mail Code 5204G, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 603–9086; fax number: (703) 603–9104; e-mail address: *beasley.lynn@epa.gov*.

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 12, 2003 (68 *FR* 69397), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. SFUND–2000–0009, which is available for public viewing at the Superfund 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 Office of Solid Waste and Emergency Response Docket is (202) 566–0276. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to 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 and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

*Title:* Notification of Episodic Releases of Oil and Hazardous Substances (Renewal)

*Abstract:* Section 103(a) of CERCLA, as amended, requires the person in charge of a facility or vessel to immediately notify the National Response Center (NRC) of a hazardous substance release into the environment if the amount of the release equals or exceeds the substance's reportable quantity (RQ) limit. The RQ of every hazardous substance can be found in Table 302.4 of 40 CFR 302.4.

Section 311 of the CWA, as amended, requires the person in charge of a vessel to immediately notify the NRC of an oil spill into U.S. navigable waters if the spill causes a sheen, violates applicable water quality standards, or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

The reporting of a hazardous substance release that is above the substance's RQ allows the Federal government to determine whether a Federal response action is required to control or mitigate any potential adverse effects to public health or welfare or the environment. Likewise, the reporting of oil spills allows the Federal government to determine whether cleaning up the oil spill is necessary to mitigate or prevent damage to public health or welfare or the environment.

The hazardous substance and oil release information collected under CERCLA section 103(a) and CWA section 311 also is available to EPA program offices and other Federal agencies who use the information to evaluate the potential need for additional regulations, new permitting requirements for specific substances or sources, or improved emergency response planning. Release notification information, which is stored in the national Emergency Response Notification System (ERNS) data base, is available to State and local government authorities as well as the general public. State and local government authorities and the regulated community use release information for purposes of local emergency response planning. Members of the general public, who have access to release information through the Freedom of Information Act, may request release information for purposes of maintaining an awareness of what types of releases are occurring in different localities and what actions, if any, are being taken to protect public health and welfare and the environment. ERNS fact sheets, which provide summary and statistical information about hazardous substance and oil release notifications, also are available to the public.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4 hours per response. 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.

*Respondents/Affected Entities:* Entities potentially affected by this action are facilities or vessels that manufacture, process, transport, or otherwise use certain specified hazardous substances and oil.

*Estimated Number of Respondents:* 24,082.

*Frequency of Response:* When a reportable release occurs.

*Estimated Total Annual Hour Burden:* 98,736.

*Estimated Total Annual Cost:* $7,230,537, includes $0 annual capital/startup costs, $0 annual O&M costs and $7,230,537 annual labor costs.

*Changes in the Estimates:* There is an increase of 1,459 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is the result of adjustments to the estimates. Annual

respondent burden hours are equal to the number of releases reported to the NRC in a year multiplied by the unit burden hours associated with reporting a release.

Dated: June 24, 2004.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 04–15345 Filed 7–6–04; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[RCRA–2004–0006; FRL–7782–7]**

### Agency Information Collection Activities: Proposed Collection; Comment Request; Hazardous Waste Generator Standards, EPA ICR Number 0820.09, OMB Control Number 2050–0035

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before September 7, 2004.

**ADDRESSES:** Submit your comments, referencing docket ID number RCRA–2004–0006, to EPA online using EDOCKET (our preferred method), by e-mail to *rcra-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, OSWER Docket, mail code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Anna Tschursin, Office of Solid Waste, Mail Code 5304W, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8805; fax number: (703) 308–0514; e-mail address: *tschursin.anna@epa.gov*.

**SUPPLEMENTARY INFORMATION:** EPA has established a public docket for this ICR under Docket ID number RCRA–2004–0006. Documents in the official public docket are listed in the index list in EPA's electronic public docket and comment system, EDOCKET. Documents may be available either electronically or in hard copy. Electronic documents may be viewed through EDOCKET. Hard copy documents may be viewed at the OSWER 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 OSWER Docket is (202) 566–0270. You may use EDOCKET at *http://www.epa.gov/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.

Certain types of information will not be placed in EDOCKET. 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 EDOCKET. EPA's policy is that copyrighted material will not be placed in EDOCKET but will be available only in printed, paper form in the official public docket. Publicly available docket materials that are not available electronically may be viewed at the docket facility identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. 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 EDOCKET 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 EDOCKET. 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 EDOCKET. Public comments that are mailed or delivered to the Docket will be scanned and placed in EDOCKET. Where practical, physical objects will be photographed, and the photograph will be placed in EDOCKET along with a brief description written by the docket staff.

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification 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 in formulating a final decision.

If you submit an electronic comment as prescribed below, 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 EDOCKET. 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.

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 EDOCKET 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 No. RCRA–2004–0006. 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. Electronic comments may also be sent through the federal wide eRulemaking Web site at *http://www.regulations.gov*.

Comments may be sent by electronic mail (e-mail) to *rcra-docket@epa.gov*, Attention Docket ID No. RCRA–2004–0006. In contrast to EDOCKET, 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 EDOCKET.

You can mail your comments to: EPA Docket Center, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. RCRA–2004–0006. You may submit comments on paper, or on a disk or CD ROM. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

You can deliver your comments to: EPA Docket Center, Room B102, EPA West Building, 1301 Constitution Ave NW., Washington, DC, Attention Docket ID No. RCRA–2004–0006. Such deliveries are only accepted during the Docket's normal hours of operation as identified above.

*Affected entities:* Entities potentially affected by this action are generators of hazardous wastes; transporters who commingle wastes with different Department of Transportation descriptions; and importers or exporters of hazardous wastes.

*Title:* Hazardous Waste Generator Standards (OMB Control Number 2050–0035; EPA ICR No. 0820.09) expiring 10/31/04.

*Abstract:* In the Resource Conservation and Recovery Act (RCRA), as amended, Congress directed the U.S. Environmental Protection Agency (EPA) to implement a comprehensive program for the safe management of hazardous waste. The core of the national waste management program is the regulation of hazardous waste from generation to transport to treatment and eventual disposal, or from "cradle to grave." Section 3001(d) of RCRA requires EPA to develop standards for small quantity generators. Section 3002 of RCRA among other things states that EPA shall establish requirements for hazardous waste generators regarding recordkeeping practices. Section 3002 also requires EPA to establish standards on appropriate use of containers by generators.

Finally, Section 3017 of RCRA specifies requirements for individuals exporting hazardous waste from the United States, including a notification of the intent to export, and an annual report summarizing the types, quantities, frequency, and ultimate destination of all exported hazardous waste (additional reporting requirements for exporters and importers of recyclable materials are covered under ICR Number 1647.01).

This ICR addresses five categories of informational requirements in part 262 of the Code of Federal Regulations: pre-transport requirements for both large quantity generators (LQG) and small quantity generators (SQG); air emission standards requirements for LQGs (referenced in 40 CFR Part 265, Subparts I and J); recordkeeping and reporting requirements for LQGs and SQGs; and export requirements for LQGs and SQGs (*i.e.*, notification of intent to export and annual reporting). This collection of information is necessary to help generators and EPA: (1) Identify and understand the waste streams being generated and the hazards associated with them; (2) determine whether employees have acquired the necessary expertise to perform their jobs; and (3) determine whether LQGs have developed adequate procedures to respond to unplanned sudden or non-sudden releases of hazardous waste or hazardous constituents to air, soil, or surface water. This information is also needed to help EPA determine whether tank systems are operated in a manner that is fully protective of human health and the environment and to ensure that releases to the environment are managed quickly and efficiently. Additionally, this information contributes to EPA's goal of preventing contamination of the environment from hazardous waste accumulation practices, including contamination from equipment leaks and process vents. Export information is needed to ensure that: (1) foreign governments consent to U.S. exported wastes; (2) exported waste is actually managed at facilities listed in the original notifications; and (3) documents are available for compliance audits and enforcement actions. In general, these requirements contribute to EPA's goal of preventing contamination of the environment.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Burden Statement:* The average annual public reporting burden per response for LQGs under this collection of information is estimated to range from 21 minutes to 32.6 hours, and the average annual public reporting burden per response for SQGs is estimated to range from 21 minutes to 7.2 hours. The average annual recordkeeping burden per response for LQGs under this collection of information is estimated to range from 2.5 to 3.2 hours, and the average annual recordkeeping burden per response for SQGs is estimated to range from 1.2 to 1.6 hours.

*Respondents/Affected Entities:* Hazardous Waste Generators, Hazardous Waste Transporters who commingle waste with different Department of Transportation descriptions; and Importers or Exporters of Hazardous Waste.

*Estimated Number of Respondents:* 130,511.

*Frequency of Response:* On occasion.

*Estimated Total Annual Hour Burden:* 475,802 hours.

*Estimated Total Annualized Capital and O&M Cost Burden:* $54,288. 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: June 20, 2004.

**Robert Springer,**

*Director, Office of Solid Waste.*

[FR Doc. 04–15346 Filed 7–6–04; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–7782–9]

### National Advisory Council for Environmental Policy and Technology; Notice of Charter Renewal

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Charter renewal.

The Charter for the Environmental Protection Agency's National Advisory Council for Environmental Policy and Technology (NACEPT) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2 section 9(c). The purpose of NACEPT is to provide advice and recommendations to the Administrator of EPA on a broad range of environmental policy, technology and management issues.

It is determined that NACEPT is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Sonia Altieri, U.S. EPA, (mail code 1601–E), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 233–0061, or *altieri.sonia @epa.gov.*

Dated: June 28, 2004.

**Daiva Balkus,**

*Director, Office of Cooperative Environmental Management.*

[FR Doc. 04–15342 Filed 7–6–04; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–7781–7]

### Announcement of the Board of Trustees for the National Environmental Education and Training Foundation, Inc.

*Summary:* The National Environmental Education and Training Foundation was created by section 10 of Public Law 101–619, the National Environmental Education Act of 1990. It is a private 501(c)(3) non-profit organization established to promote and support education and training as necessary tools to further environmental protection and sustainable, environmentally sound development. It provides the common ground upon which leaders from business and industry, all levels of government, public interest groups, and others can work cooperatively to expand the reach of environmental education and training programs beyond the traditional classroom. The Foundation supports a grant program that promotes innovative environmental education and training programs; it also develops partnerships with government and other organizations to administer projects that promote the development of an environmentally literal public.

The Administrator of the U.S. Environmental Protection Agency, as required by the terms of the Act, announces the following appointment to the National Environmental Education and Training Foundation, Inc. Board of Trustees. The appointee is Guillermo L. Hysaw, Vice President of Cultural Transformation and Corporate Development for Toyota Motor Sales, U.S.A., Inc. This appointee will join the current Board members which include:

- Braden Allenby, Vice President, Environment, Health and Safety, AT&T;
- Richard Bartlett, (NEETF Chairman) Vice Chairman, Mary Kay Holding Corporation;
- Walter Higgins, Chairman, President and C.E.O., Sierra Pacific Resources;
- Dorothy Jacobson, Consultant;
- Karen Bates Kress, President, KBK Consulting, Inc.;
- Dorothy McSweeny (NEETF Vice Chair), Chair, DC Commission on the Arts and Humanities;
- Dwight Minton, Chairman Emeritus, Church and Dwight (Arm&Hammer, Inc.);
- Honorable William Sessions, former Director of the Federal Bureau of Investigation.

*Additional Considerations:* Great care has been taken to assure that this new appointee not only has the highest degree of expertise and commitment, but also brings to the Board diverse points of view relating to environmental education and training.

This appointment shall be for two consecutive four year terms.

*For Further Information Contact:* C. Michael Baker, Acting Director, Office of Environmental Education, Office of Public Affairs (1704A) U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Telephone: (202) 564–0446.

Dated: June 25, 2004.

**Michael O. Leavitt,**

*Administrator.*

BIO of New Member:

**Guillermo L. Hysaw, Vice President, Cultural Transformation—Corporate Development, Toyota Motor Sales, U.S.A., Inc.**

Guillermo L. Hysaw is vice president of cultural transformation and corporate development for Toyota Motor Sales (TMS), U.S.A., Inc.

He is responsible for oversight and direction of the company's diversity strategy, ensuring its implementation and integration into overall business strategy. He also serves as the company's most senior advisor on diversity issues and as the principal liaison with outside organizations.

Hysaw began his career at TMS in 1987 as part of the Lexus Division. Since then he has served as corporate manager of Toyota Certified Used Vehicles, national fleet marketing operations manager, national marketing development manager, marketing development manager, national advertising manager, market representation planning manager, business manager and senior market representation administrator. Most recently, he served as corporate manager of market representation.

Prior to joining Toyota, Hysaw spent 16 years with the General Motors Corp. (GMC) and its Pontiac Division. He held various positions at GMC including zone business manager, corporate remarketing manager, all national sales and marketing manager positions, and all field and staff manager positions.

A native of Bakersfield, Calif., Hysaw earned his bachelor's degree in psychology from Oakland University in Rochester, Mich. He earned a master's degree in marketing as well as an MBA in finance and an advanced MBA in strategic management from Claremont Graduate School in Claremont, Calif. Hysaw has completed three years of his doctorate degree from the Peter F. Drucker Executive Management Program at Claremont Graduate School.

Recognized by the National Eagle Leadership Institute (NELI), Hysaw became an Eagle Award recipient in 2003. He was also selected as a member of the Executive Leadership Council (ELC), an elite group of business leaders.

Hysaw is a past president and lifetime member of the 100 Black Men of Los Angeles, Inc.; lifetime member of the National Black Master's in Business Administration Association, Inc.; lifetime member of the National Association for the Advancement of Colored People and its national committee; lifetime member of Alpha Phi Alpha Fraternity, Inc. and the Beta Psi Lambda Chapter of Los Angeles.

Hysaw resides in Irvine, Calif., with his wife, Kimberly, and daughter, Megan Ashley.

[FR Doc. 04–15347 Filed 7–6–04; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–7783–2; E–docket No.: ORD–2004–0007]

### Draft Toxicological Review of Naphthalene: In Support of Summary Information on the Integrated Risk Information System (IRIS)

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of an external peer review panel meeting.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is announcing an external peer review panel meeting to review the inhalation cancer assessment and selected text in the external review draft document entitled, "Toxicological Review of Naphthalene: In Support of Summary Information on the Integrated Risk Information System (IRIS)" (NCEA–S–1707). The document was prepared by EPA's National Center for Environmental Assessment (NCEA) of the Office of Research and Development. EPA will use comments and recommendations from the expert panel meeting to finalize the draft document.

**DATES:** The one-day meeting will be held on July 30, 2004 from 8:30 a.m. until 5 p.m. Members of the public may attend as observers.

**ADDRESSES:** The external peer review panel meeting will be held at the American Geophysical Union (AGU) Headquarters, 2000 Florida Ave., NW., Washington, DC 20009. Under an Interagency Agreement with EPA and the Department of Energy, the Oak Ridge Institute of Science and Education (ORISE) is organizing, convening, and conducting the peer review panel meeting. To attend the meeting, register by July 23, 2004, by visiting the ORISE Web site: *http://www.orau.gov/naphthalene*. Interested parties may also register by contacting Leslie Shapard (ORISE) at (865) 241–5784. Space is limited and reservations will be accepted on a first-come, first-served basis.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding registration and logistics should be directed to Leslie Shapard, ORISE, PO Box 117, MS 17, Oak Ridge, TN 37831–0117, (865) 241–5784 (telephone), (865) 241–3168 (facsimile) or *ShapardL@orau.gov* (e-mail). If you have questions about the document (see **SUPPLEMENTARY INFORMATION** below regarding access to the document), contact Lynn Flowers, IRIS Staff, National Center for Environmental Assessment, 1200 Pennsylvania Avenue, NW., MS–8601D, Washington, DC 20460, (202) 564–1537 (telephone), (202) 565–0075 (facsimile) or *flowers.lynn@epa.gov* (e-mail).

**SUPPLEMENTARY INFORMATION:** IRIS is a data base that contains Agency scientific positions on potential adverse human health effects that may result from chronic (or lifetime) exposure to specific chemical substances found in the environment. The data base (available on the Internet at *http://www.epa.gov/iris*) contains qualitative and quantitative health effects information for more than 500 chemical substances that may be used to support the first two steps (hazard identification and dose-response evaluation) of the risk assessment process. When supported by available data, the data base provides risk estimates for chronic noncancer health effects and carcinogenic effects. Combined with specific exposure information, government and private entities use IRIS to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

Naphthalene (CASRN 91–20–3) is a bicyclic aromatic hydrocarbon produced by distillation and fractionation of either petroleum or coal tar. Naphthalene's principal use is as an intermediate in the production of phthalic anhydride, which is important in the manufacturing of plasticizers, resins, dyes, and insect repellants. It has been used as a moth repellant and as a deodorizer for diaper pails and toilets and has been detected in soil and water at hazardous waste sites and in smoke from wood and cigarettes. The current IRIS assessment for naphthalene was placed on the data base in 1998 and contains quantitative risk estimates for noncancer effects, both from oral and inhalation exposure, and a cancer assessment. A reassessment of potential human carcinogenicity from inhalation exposure has been undertaken in response to newer studies that have become available. The assessment does not contain a reevaluation of noncancer effects or oral cancer assessment.

EPA has established an official public docket for this action under Docket ID No. ORD–2004–0007. The official public docket consists of the document referenced in this notice and a list of charge questions that have been submitted to the external peer reviewers. Both the document and the charge are available on the Internet at *http://www.epa.gov/edocket/*. Once in the system, select "advanced search," then key in the appropriate docket identification number [ORD–2004–0007]. A limited number of paper copies are available by contacting the IRIS Hotline at (202) 566–1676 or (202) 566–1749 (facsimile). If you are requesting a paper copy, please provide your name, mailing address, and the document title and number, "Draft Toxicological Review of Naphthalene: In Support of Summary Information on the Integrated Risk Information System (IRIS)" (NCEA–S–1707). Copies are not available from ORISE.

You may also find a copy of the document at the EPA Docket Center Reading Room. The address of the Public Reading Room is EPA Docket Center, Environmental Protection Agency, Room B102, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Visitation is between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

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.

Dated: June 30, 2004.

**Peter W. Preuss,**

*Director, National Center for Environmental Assessment.*

[FR Doc. 04–15348 Filed 7–6–04; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7783–1]**

### Consultation Workshop on a Preliminary Draft of the Framework for Metals Risk Assessment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing the convening of a scientific peer consultation to seek expert opinion on a preliminary draft of a Framework for Metals Risk Assessment (Framework, EPA/630–P/04–068a). The meeting is being organized and convened by Versar, Inc., a contractor to EPA's Risk Assessment Forum. Meeting participants invited by Versar, Inc., will be provided with the draft Framework, covering areas such as environmental chemistry, exposure, health and ecological effects, and the bioavailability and bioaccumulation of metals. EPA and other government experts will also participate in the meeting discussions. Participants will be asked to suggest improvements to the document. EPA intends to revise the preliminary document based on the meeting discussions and then make it available for EPA Science Advisory Board peer review, interagency review, and public comment in Fall 2004.

**DATES:** The meeting will be held from 8:30 a.m. to 4:30 p.m. on Tuesday, July 27, 2004 and Wednesday, July 28, 2004, from 8:30 a.m. to 1 p.m. Members of the public may attend as observers, and

there will be a limited time for comments from the public. The Framework will be available to the public on or about July 7, 2004, from the Risk Assessment Forum Web site.

**ADDRESSES:** The meeting will be held at the Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209. Versar, Inc., an EPA contractor, will convene the workshop. To attend the workshop as an observer, register by July 23, 2004, by visiting *www.versar.com/epa/metalriskworkshop.htm* or send an e-mail to Ms. Traci Brody of Versar at *tbrody@versar.com*. You can also call Ms. Brody at (703) 750–3000 extension 449, or send a facsimile to (703) 642–6954. Space is limited, and reservations will be accepted on a first-come, first-served basis. There will be a limited time for comments from the public during the workshop. If you wish to make a statement during the observer comment period of the workshop, please check the appropriate box when you register at the Web site (*www.versar.com/epa/metalriskworkshop.htm*) or in your e-mail to Ms. Brody. Also provide Versar with one written copy of comments prior to the start of the meeting. Note that all technical comments received will be public information. For that reason, commentors should not submit personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright. The draft Framework for Metals Risk Assessment is available primarily via the Internet at *http://cfpub1.epa.gov/ncea/raf/recordisplay.cfm?deid=56752*. A limited number of paper copies are available from the Technical Information Staff (8623D), NCEA-W; telephone: 202–564–3261; facsimile: 202–565–0050. If you are requesting a paper copy, please provide your name, mailing address, and the document title, draft Framework for Metals Risk Assessment (EPA/630/P–04/068a). Copies are not available from Versar.

**FOR FURTHER INFORMATION CONTACT:** For technical inquiries concerning the draft Framework for Metals Risk Assessment, please contact Dr. William Wood, U.S. EPA Office of Research and Development, Risk Assessment Forum (8601–D), 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone (202) 564–3361; facsimile (202) 565–0062; e-mail *forum.risk@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Development of the Framework to assess the risks of metals to humans or the environment was initiated by the Agency's Science Policy Council. An Agency Action Plan was previously reviewed by EPA's Science Advisory Board (SAB) in September 2002. The SAB emphasized the importance of focusing on the unique properties of metals as they relate to environmental chemistry, bioavailability, bioaccumulation, exposure, and toxicity. To inform these considerations, and to engage the external scientific community, the Agency commissioned external experts to lead the development of a series of issue papers. Drafts of these papers were made available for public comment in September 2003. Currently, the papers are being finalized. Publication of the issue papers is anticipated in Fall 2004. The peer consultation announced today continues to engage the external scientific community as part of the Agency preparation for SAB review. The interagency review and public comment period, which will be held concurrent to the SAB review, will continue to extend opportunities for stakeholder and public involvement.

The Framework is a science-based document that focuses on the special attributes and behaviors of metals and metal compounds affecting human health and ecological risk assessments. The framework document will not be a prescriptive guide on how any particular type of assessment should be conducted within a U.S. EPA program office. Rather, it is intended to make recommendations and foster the consistent application of methods and data to metals risk assessment in consideration of the unique properties of metals.

Dated: June 30, 2004.

**Peter W. Preuss,**

*Director, National Center for Environmental Assessment.*

[FR Doc. 04–15349 Filed 7–6–04; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2004–0127; FRL–7363–2]**

## Desmedipham and Phenmedipham; Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by the Bayer Cropscience, to voluntarily cancel certain pesticide registrations, containing Desmedipham and Phenmedipham

**DATES:** Unless a request is withdrawn by August 6, 2004, for EPA Registration Numbers: 264–628 and 264–629, orders will be issued canceling these registrations. The Agency will consider withdrawal requests postmarked no later than August 6, 2004.

**FOR FURTHER INFORMATION CONTACT:** Demson Fuller, Information Resources Services Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8062; e-mail address: *fuller.demson@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0127. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's

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

## II. What Action is the Agency Taking?

This notice announces receipt by the Agency of an application from the registrant to cancel two pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

| Registration Number | Product Name | Chemical Name |
|---|---|---|
| 264–628, previously 45639–155 | BETANEX 70 WP Herbicide | Desmedipham |
| 264–629, previously 45639–156 | BETAMIX 70 WP | Desmedipham and phenmedipham |

Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180– day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless (1) the registrants request a waiver of the comment period, or (2) the Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment. The registrants have requested that EPA waive the 180–day comment period. EPA is granting the registrants' request to waive the 180–day comment period. Therefore, EPA will provide a 30–day comment period on the proposed requests. EPA anticipates granting the cancellation request shortly after the end of the 30–day comment period for this notice.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 30–day period.

Table 2 of this unit includes the name and address of record for the registrant of the products in Table 1 of this unit.

TABLE 2.—REGISTRANT REQUESTING VOLUNTARY CANCELLATION

| EPA Company Number | Company Name and Address |
|---|---|
| 264 | Bayer CropScience<br>2 T.W. Alexander Drive<br>Research Triangle, NC 27709 |

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

## IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before August 6, 2004. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

## V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. For purposes of the cancellation order, the term "existing stocks" is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991), as those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. See the **Federal Register** of June 26, 1991 (56 FR 29362). The existing stocks provisions of the forthcoming cancellation order will be as follows:

*Distribution or sale.* It is unlawful for any person to distribute or sell existing stocks of any product identified in Table 1.

i. Registrants identified in Table 2 may sell and distribute existing stocks of their own products until 1–year from the effective date of the cancellation order.

ii. Any person may ship such existing stocks for the purpose of export consistent with FIFRA section 17 or for proper disposal in accordance with applicable law.

### List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 17, 2004.

**Debra Edwards,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 04–15350 Filed 7–6–04; 8:45 am]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2004–0043; FRL–7363–9]**

## Chlorpyrifos-methyl; Amendment to the Tolerance Reassessment and Risk Management Decision and Notice of Receipt of Request for Registration Cancellation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is modifying the terms of the voluntary cancellation notice published in the **Federal Register** on April 24, 2002 (FR 67 20118) (FRL–

6773–1), for three pesticide products containing the active ingredient chlorpyrifos-methyl based on data received from the registrants and comments and information received from the United States Department of Agriculture (USDA). EPA proposes to extend the effective cancellation for two products (Gustafson Reldan 4E Insecticide, registration number 7501–41; and Reldan 4E, registration number 62719–43) to December 31, 2004. The technical registration Reldan F Insecticidal, registration number 62719–42 will be maintained.

**DATES:** The cancellations are effective on December 31, 2004, unless the Agency receives a written withdrawal request on or before January 3, 2005. The Agency will consider withdrawal requests postmarked no later than January 3, 2005.

Users of these products who desire continued use should contact the applicable registrant on or before January 3, 2005.

**ADDRESSES:** Written withdrawal requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket identification (ID) number OPP–2004–0043 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Katie Hall, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0166; e-mail address: *hall.katie@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0043. 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.

## II. How Can I Respond to this Action?

### *A. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA

will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0043. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0043. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0043.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0043. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

## III. What Action is the Agency Taking?

This notice amends the notice of receipt that was published on April 24, 2002 (FR 67 20118) (FRL–6773–1), for three pesticide products containing chlorpyrifos-methyl based on comments and information received from USDA and stakeholders.

### *A. Background*

The Agency's 2001 Tolerace Reassessment and Risk Management Decision (TRED) on chlorpyrifos-methyl provided a phase-out of chlorpyrifos-methyl containing products. Under the phase-out schedule, the registrants could sell and distribute this product through December 31, 2003, and the last use date was expected to be December 31, 2004. The Agency recognized the importance of chlorpyrifos-methyl for grain storage, and allowed for a phase-out in order to transition to alternative means of pest control. As a condition of the phase-out, EPA required additional studies to better characterize risk associated with chlorpyrifos-methyl, and the registrants provided an acute delayed neurotoxicity study, and a 2–generation rat reproduction study.

The Agency has reconsidered the toxicity data gaps identified in the chlorpyrifos-methyl toxicology chapter of the TRED dated April 17, 2000. The Agency considered the use of data from a related chemical, chlorpyrifos-ethyl, to address data gaps for chlorpyrifos-methyl. EPA concluded that chlorpyrifos-methyl is likely to be less toxic than chlorpyrifos-ethyl based on a side-by-side comparison of cholinesterase inhibition levels in existing studies. EPA has also concluded that given the structural similarities between the two chemicals, toxicity data using chlorpyrifos-ethyl could be used to address data gaps for chlorpyrifos-methyl.

The Agency will extend the phase-out of chlorpyrifos-methyl containing end use products through December 2004. Accordingly, the last date for sales and distribution of chlorpyrifos-methyl containing end use products by registrants is December 31, 2004, and the last date for sales and distribution by distributors and dealers of chlorpyrifos-methyl containing end use products is December 31, 2005.

The amended registration cancellations are listed in Table 1 of this unit by registration number, product name/active ingredient, intended sales and distribution end date.

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO PRODUCT CANCELLATION DATES IN CERTAIN PESTICIDE REGISTRATIONS

| EPA Registration No. | Product Name | Active Ingredient | Intended Product Cancellation Date |
|---|---|---|---|
| 7501–41 | Gustafson Reldan 4E (43.2%) Insecticide | Chlorpyrifos-methyl | December 31, 2004 |
| 62719–42 | Reldan F Insecticidal (97.0%) | Chlorpyrifos-methyl | Not Applicable |
| 62719–43 | Reldan 4E (43.2%) | Chlorpyrifos-methyl | December 31, 2004 |

Users of these products who desire continued use should contact the applicable registrant before January 3, 2005, to discuss withdrawal of the application for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

| EPA Company No. | Company Name and Address |
|---|---|
| 7501 | Gustafson, LLC 1400 Preston Road, Suite 400, Plano, TX 75093 |
| 62719 | Dow Agrosciences, LLC 9330 Zionsville Road, Indianapolis, IN 46268 |

**IV. What is the Agency Authority for Taking this Action?**

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

**V. Procedures for Withdrawal of Request**

Registrants who choose to withdraw a request for use deletion must submit the withdrawal in writing to Katie Hall using the instructions listed under **FOR FURTHER INFORMATION CONTACT**. The Agency will consider written withdrawal requests postmarked no later than January 3, 2005.

**VI. Provisions for Disposition of Existing Stocks**

Existing stocks are those stocks of registered pesticide products which are currently labeled in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

The Agency intends to authorize the registrants to sell or distribute product under the previously approved labeling through December 31, 2004, after approval of the revision, unless other restrictions have been imposed, as in special review actions. Stocks in the hands of dealers and distributors other than the registrants could be sold or distributed until December 31, 2005. The Agency anticipates that use of the products proposed for cancellation will end December 31, 2006. Any future tolerance modifications would be calculated from the December 31, 2006, date. EPA will issue a **Federal Register** notice with the cancellation order and final existing stock provisions.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: June 18, 2004.

**Debra Edwards,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 04–15209 Filed 7–6–04; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0180; FRL–7364–8]

## Tribenuron Methyl; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket identification (ID) number OPP–2004–0180, must be received on or before August 6, 2004.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** James A. Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address: *tompkins.jim@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

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

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

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

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0180. 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 South Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket

facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

*C. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0180. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0180. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0180.

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 South Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0180. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

*D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. What Action is the Agency Taking?**

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on the pesticide petition.

**List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 22, 2004.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

**Summary of Petition**

The petitioner's summary of the pesticide petition (PP) is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

**E. I. du Pont de Nemours and Company**

*PP 0F6135*

EPA has received a pesticide petition (0F6135) from E. I. du Pont de Nemours and Company, DuPont Agricultural Products, Barley Mill Plaza, Wilmington, DE 19880–0038 proposing, pursuant to FFDCA section 408(d), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of tribenuron methyl (methyl 2-[[[[(4-methoxy-6-methyl-1,3,5- triazin-2-yl)methylamino] carbonyl]amino]sulfonyl]benzoate) in or on the raw agricultural commodity imazethapyr tolerant canola at 0.02 parts per million (ppm), cotton seed at 0.02 ppm, cotton gin trash at 0.02 ppm, and Crop Development Center (CDC) triffid flax at 0.02 ppm. EPA has determined that the pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on the pesticide petition.

*A. Residue Chemistry*

1. *Plant metabolism.* The qualitative nature of the residues of tribenuron methyl is adequately understood. Tribenuron methyl is rapidly metabolized in wheat plants with a half-life of less than 4 days. A major metabolic reaction was *N*-demethylation of tribenuron methyl to form metsulfuron methyl. Metsulfuron methyl was further metabolized, primarily through rapid hydroxylation of the phenyl ring, followed by conjugation with glucose. Hydrolysis of the sulfonylurea bridge of tribenuron methyl to release sulfonamide and triazine amine was also observed. The sulfonamide may be further metabolized to hydroxylated sulfonamide or cyclized to saccharin. The presence of α-hydroxy triazine amine, *N*-demethyl triazine amine, and *O*-demethyl *N*-demethyl triazine amine demonstrated that the released triazine moiety of tribenuron methyl was also extensively degraded in wheat. Metabolism studies were conducted with radioactive $^{14}$C-tribenuron methyl on wheat under field conditions. Wheat plants were treated with 72–75 gram (g) active ingredient (a.i.)/health advisory (ha) of $^{14}$C-phenyl and $^{14}$C-triazine labeled tribenuron methyl at the tillering stage. Samples were harvested 0, 4, 8, 14, 21, 28, and 63 days after treatment. Total $^{14}$C-residue levels in the foliage declined rapidly from 5.5 ppm at time of application to 0.55 ppm in the mature straw and 0.05 ppm in the grain ($^{14}$C-phenyl), and from 4.2 ppm to 0.37 ppm in the mature straw and 0.01 ppm in the grain ($^{14}$C-triazine). Analysis of the wheat foliage and straw extracts by high performance liquid chromotography (HPLC) and threshold level ceiling (TLC) revealed that tribenuron methyl was rapidly and extensively metabolized. Metabolites were identified based on chromatography with authentic standards. The major metabolites were the glucose conjugate of hydroxylated metsulfuron methyl, hydroxylated saccharin, the glucose conjugate of hydroxylated saccharin, saccharin, triazine amine, *O*-demethyl triazine amine, and *O*-hydroxy triazine amine.

A metabolism study was conducted with $^{14}$C-tribenuron methyl on acetolactate synthase (ALS)-tolerant canola. $^{14}$C-tribenuron methyl was applied at 25 g/ha as a topical spray treatment at 2 true leaf stage to bolting. Whole canola plants were harvested at 0, 2 days, 35 days, and at maturity, 78 days after treatment. Total reactive residue (TRR) in canola foliage, when expressed as tribenuron methyl equivalents, declined from, on average, 0.26 ppm at day 0 to 0.04 ppm at day 35. TRR in immature 35–day canola seed pods was not higher than 0.04 ppm, and was 0.02 ppm in 78–day seed samples. $^{14}$C-tribenuron methyl accounted for greater than 81% of the radioactive residue in the 0 to 2–day foliage samples. Other minor components were polar metabolites or conjugates, each less than 10% of the TRR. No single component in the polar metabolites exceeded 0.01 ppm. In the 35–day foliage samples, $^{14}$C-tribenuron methyl accounted for only about 11–25.5% of the TRR which is less than 0.01 ppm. The average half life for $^{14}$C-tribenuron methyl was 15 days. Several metabolic processes in the foliage are involved. They include a hydrolytic cleavage of tribenuron methyl as well as *N*-demethylation of tribenuron methyl. Other demethylation and hydroxylation processes continued up to final harvest. The results of the study suggest that the tribenuron methyl metabolic process in canola follows a typical plant metabolism pattern, and no accumulation of tribenuron methyl is anticipated in canola when it is used in accordance with the proposed labels.

A metabolism study was conducted to determine the nature and magnitude of the residues of tribenuron methyl in

cotton plants after treatment with 2-$^{14}$C-tribenuron methyl. Soil treatments were applied at 0.3 ounce a.i./acre as a direct spray in an aqueous suspension containing inert dry-flowable (DF) formulation ingredients. The application was performed immediately after planting to provide the data for the shortest anticipated time between application and planting. No terminal residues at or above 0.01 ppm were observed in any triazine-label treated fractions of mature cotton after treatment with tribenuron methyl. No detectable residues were found in the undelinted seed and very low residues of 0.028 ppm were observed in the gin trash after treatment. Tribenuron methyl and its known metabolites are not expected to be present in the terminal residues in gin trash or undelinted seed, when applied according to the proposed label.

A confined crop rotation study with $^{14}$C-phenyl tribenuron methyl was conducted using cabbage, red beets, sorghum, soybeans, and wheat planted in pots of sandy loam soil 30 and 120 days following a single application of $^{14}$C-phenyl-labeled tribenuron methyl. For the 30–day aging period, samples from both treated and control crops were taken at 28, 49, and 67 days after planting with additional samples taken from the sorghum and soybeans plantings at 90 and 115 days. At maturity, all remaining plants were harvested and subdivided into edible and nonedible portions. Harvest dates, in days after planting were: 90 days (cabbage), 115 days (beets and wheat), and 168 days (sorghum and soybeans). Samples from all crops from the 120–day aging study were taken at 28, 48, 69, and 90 days (maturity for beets, cabbage, and wheat,) and 120 days and 169 days (maturity for sorghum and soybeans). Tribenuron methyl dissipated rapidly in the soil with none of the intact material detected after the 30–day aging period. The major radiolabeled residue extracted from the soil was saccharin which remained in the soil at very low levels throughout the study. Some accumulation of total radioactive residues was apparent in the mature sorghum foliage, soybean, and wheat due to the dehydrated nature of samples harvested. The major residue in the plants was identified as saccharin.

A confined crop rotation study with $^{14}$C-triazine tribenuron methyl was conducted using cabbage, red beets, and sorghum. Sandy loam soil was treated at 32 g a.i./ha $^{14}$C-phenyl tribenuron methyl in the greenhouse. Rotational crops were sown 30 and 120 days post-treatment. Tribenuron methyl degraded rapidly in the soil with no detectable intact material present 30 days post-treatment. The major radiolabeled metabolite was the triazine amine. No significant accumulation (less than 0.01 ppm) of radiolabeled materials from the soil were observed in the mature crops of cabbage foliage. Some accumulation of the radioactivity was observed in the mature beet foliage in the 30–day study (0.029 ppm) and the 120–day study (0.011 ppm). Major metabolites were *N*-demethyl triazine amine and *O*-hydroxy triazine amine. Accumulation of radioactivity was observed in the mature sorghum straw due to the dehydrated nature of this plant tissue at harvest. Levels of radiolabeled materials detected were 0.108 and 0.057 ppm in the 30–day and 120–day studies. The major metabolites were highly polar materials. Tribenuron methyl rapidly decomposes in soil to the triazine amine, which is then degraded, not accumulated, in plants.

Based on the absence of detectable residue in food commodities (barley and oat grain) and on the expected low residue levels of individual substances in feed items (straw) under normal conditions, and the Residue Chemistry Test Guidelines (OPPTS 860.1300(c)(2)(D)(ii) which states that; one metabolism study will be required for each of the crop groups defined in 40 CFR 180.34(f) except for herbs and spices, a plant metabolism study in barley and oat was not required. Additionally, based on the results of three metabolism studies on dissimilar crops having similar metabolic routes (canola, cotton, and wheat), an additional metabolism study for flax is not required.

2. *Analytical method.* There is an analytical method for determination of residues of tribenuron methyl in barley, wheat grain, straw, and wheat grain forage samples. The method is based on extraction of tribenuron methyl from crops with acetonitrile, and cleanup on a silica cartridge. Final determination is by normal phase liquid chromatography using a photoconductivity detector. Recoveries for grain, straw, and green forage samples fortified between 0.01 and 0.10 ppm averaged 88% with a standard deviation of 14%. The lower level of quantitation (LOQ) for grain and green forage is 0.01 ppm and for straw it is 0.02 ppm.

Another analytical method for determination of tribenuron methyl in wheat grain and straw uses 2 HPLC with ultra-violet (UV) detection at 254 nanometer (nm). The method provides a means to quantitate tribenuron methyl in these matrices at levels as low as 0.05 ppm based on a 5–gram sample.

An analytical method to detect tribenuron methyl at a level of 0.02 ppm or above in grass seed, straw, and seed screenings consists of using gel permeation chromatography and solid-phase extraction. Purified column eluent is taken to dryness, dissolved in ethyl acetate, and analyzed by capillary gas chromatography using a mass spectral detector. In fortification recovery trials, an average recovery of 87.6% with a standard deviation of 21% was obtained for 18 grass seed samples over a fortification range of 0.02 to 0.06 ppm. Tribenuron methyl residues in canola and flax samples were determined by an analytical method based on the use of liquid chromatography with eluent and column switching with photometric detection at 258 nm at levels as low as 0.02 ppm LOQ using a 5–gram sample.

Residues in cotton seed and gin trash were determined based on the use of column-switching liquid chromatography with detection via positive ion electrospray mass spectroscopy. The LOQ was determined to be 20 nanograms (ng)/g and the LOD was estimated to be 6 ng/g, based on a 5–gram sample.

3. *Magnitude of residues*—i. *Wheat, barley, grain, and straw.* A study was conducted to determine the extent of residues of tribenuron methyl in wheat when applied at the maximum use rate (0.25 ounce a.i./acre) 40 days before maturity. Samples of mature wheat, grain, and straw were taken from treated and control plots at pre-harvest intervals (PHI) ranging from 25 to 40 days after the test substance was applied. A 2–step HPLC method was used to determine tribenuron methyl at levels as low as 0.0075 ppm in wheat grain based on a 20–gram sample, and 0.014 ppm in wheat straw based on a 10–gram sample. No grain or straw samples showed quantifiable or detectable residues of tribenuron methyl.

A study was conducted to determine the extent of residues of tribenuron methyl in barley when applied at the maximum use rate (0.25 ounce a.i./acre) 40 days before maturity. Samples of mature barley grain and straw were taken from each plot at PHI ranging from 24 to 43 days after the test substance was applied. A 2–step HPLC method was used to determine tribenuron methyl at levels as low as 0.0066 ppm in barley grain based on a 20–gram sample, and 0.013 ppm in barley straw based on a 10–gram sample. One grain sample showed a detectable residue (0.0064 ppm) of tribenuron methyl, which is below the established grain tolerance of 0.05 ppm. A straw sample from one of the sites

contained tribenuron methyl at 0.034 ppm, which is below the established straw tolerance of 0.10 ppm. The remaining grain and straw samples showed no detectable or quantifiable residues of tribenuron methyl.

The results of the analyses of grain and straw from wheat and barley show that no residues were found in either grain or straw from plants treated at or below the maximum recommended application rate (0.25 ounce a.i./acre). The PHI ranged from 42–140 days (0.020 ppm–0.050 ppm LOQ). A small percentage of plants treated at higher rates showed some residues in straw.

ii. *Forage, grass, and hay.* Established plots of bluegrass, tall fescue, and perennial ryegrass grown for production of grass seed were each treated with 0.25 ounce a. i./acre and 0.50 ounce a.i./acre of "express" herbicide (formulated as a 75 DF water-dispersible granule). A total of 4 test sites were included in the study—2 for bluegrass and 1 each for tall fescue and perennial ryegrass. Sampling PHI ranged from 56 to 85 days. Reliable detected residues of tribenuron methyl (0.016 ppm or above) were not found in any crop fraction from any test site, with one exception of a residue level of 0.004 ppm for the 0.25 ounce a.i./acre treatment, and 0.006 ppm for the 0.50 ounce a.i./acre treatment. An attempt to reconfirm this result by reextracting a second screening waste sample failed to confirm the presence of these tribenuron methyl residues.

iii. *Grain, oat, and straw.* A study was conducted to determine the extent of residues of tribenuron methyl in oats when applied at 1 to 2 times the maximum use rate approximately 40 days before harvest. Samples of mature oat grain and straw were taken from both treated and control plots at PHI ranging from 39 to 57 days after the application of the test substance. A 2–step HPLC method was used to detect tribenuron methyl residues in oat grain at levels as low as 0.0055 ppm based on a 20–gram sample and in oat straw at levels as low as 0.018 ppm based on a 10 gram sample. Residues of tribenuron methyl in oat grain from oats treated at 1x and 2x were below the quantitation level of 0.013 ppm and 0.01 ppm, respectively. The residues of tribenuron methyl in oat straw were below the quantitation level of 0.018 ppm and 0.04 ppm respectively and also below reported detection level of 0.009 ppm and 0.018 ppm, respectively, in oat straw from oats treated at 1x and 2x rates.

iv. *Canola and flax.* Magnitude of residue studies were conducted on seed fractions of canola varieties containing the Smart™ trait and CDC triffid flax. The post-emergent broadcast application of Refine Extra® herbicide at a use rate of 15 to 30 g a.i./ha (representing 5 to 10 g a.i./ha of tribenuron methyl) which represents 1 to 2 times the proposed use rate for Refine Extra® herbicide on these canola and flax varieties. The study included treatment of 15 sites for canola containing the Smart™ trait and 11 sites for CDC triffid flax. No tribenuron methyl residues were found above the LOQ of 0.02 ppm in any seed samples treated with the test substance at a use rate of 15 to 30 g a.i./ha Refine Extra® herbicide.

v. *Cotton seed and gin trash.* Magnitude of residue studies were also conducted to determine residues of tribenuron methyl in cotton seed and cotton gin trash at 9 test sites. The study consisted of 3 treatments:

- One broadcast application at 0.45 ounce a.i./acre, applied approximately 14 days prior to planting.
- One broadcast application at 0.45 ounce a.i./acre, applied pre-plant, on the day of planting.
- One broadcast application at 2.25 ounce a.i./acre, applied pre-plant, the day of planting.

The anticipated target PHI was approximately 120 days after the last application of the test substance; actual PHIs ranged from 123 to 196 days. The experimentally determined LOQ was 20 parts per billion (ppb) for both analytes. The LOD was estimated to be 6 ppb. No tribenuron methyl residues were found above the LOQ of 0.02 ppm in any cotton seed and cotton gin trash samples treated with the test substance.

*B. Toxicological Profile*

1. *Acute toxicity.* Based on EPA criteria, technical tribenuron methyl is in acute toxicity category IV for oral and inhalation routes of exposure, and for skin irritation. Tribenuron methyl is in acute toxicity category III for the dermal route of exposure, and for eye irritation. It is not a skin sensitizer.

| | |
|---|---|
| Acute oral toxicity in rats | Lethal dose $(LD)_{50}$ >5,000 milligrams/kilogram (mg/kg) |
| Acute dermal toxicity in rabbits | $LD_{50}$ >2,000 mg/kg |
| Acute inhalation toxicity in rats | Lethal concentration $(LC)_{50}$ >5.0 mg/Liter (L) |
| Primary eye irritation in rabbits | Moderate effects reversed within 3 days |
| Primary dermal irritation in rabbits | Slight skin irritant |
| Dermal sensitization | Non-sensitizer |

2. *Genotoxicity.* Technical tribenuron methyl has shown no genotoxic or mutagenic activity in the following *in vitro* and *in vivo* tests:

| | |
|---|---|
| *In vitro* mutagenicity Ames Assay | Negative |
| *In vitro* mutagenicity chinese hampster ovary/hypoxanthine guanine phophoribosyl transferase (CHO/HGPRT) Assay | Negative |
| *In vitro* unscheduled deoxyribonucleic acid (DNA) synthesis | Negative |
| *In vivo* Cytogenetic | Negative |
| *In vivo* micronuclei induction (mouse) | Negative |

Tribenuron methyl was negative for mutagenicity in an *in vitro* bacterial gene mutation assay using *Salmonella typhimurium* and in an *in vitro* mammalian cell gene mutation assay using chinese hampster ovary (CHO) cells. In cultured primary rat hepatocytes *in vitro*, thifensulfuron methyl was negative for the induction of unscheduled DNA synthesis.

In a test measuring clastogenic damage *in vivo*, tribenuron methyl was negative for the induction of chromosome aberrations in male and female rat bone marrow cells. A study measuring chromosome damage *in vivo* was conducted. The study included the evaluation of micronuclei in bone marrow polychromatic erythrocytes of male and female mice. The result was negative when exposures were conducted at 5,000 mg/kg body weight.

3. *Reproductive and developmental toxicity.* On long-term dietary administration, tribenuron methyl did not affect the reproduction or lactation performance of rats. Developmental studies in the rat and rabbit by gavage administration indicated that tribenuron methyl did not present a unique toxic risk to the fetus. Embryo-fetal and maternal NOAELs were equivalent in all cases.

There were no effects in reproduction or lactation in rats in a 1–generation reproduction study with rats fed for 90 days with diets that contained 0; 100; 1,750; or 5,000 ppm a.i. The no observed effect level (NOEL) was 100 ppm (7 mg/kg/day for males and 8 mg/

kg/day for females) based on lower mean dam and pup body weights for the intermediate and high dose groups.

There were no effects on fertility observed in a 2–generation reproduction study, in rats fed for at least 90 days with diets that contained 0, 25, 250, or 1,000 ppm a.i. The NOEL was 25 ppm based on lower body weights for the dams and offspring at 250 and 1,000 ppm. There were no differences attributed to administration of tribenuron methyl in the number of litters produced or other indices of reproductive performance. No compound-related effects on male fertility were noted. No effect on the number of pups born or pup survival were observed in any tribenuron methyl treated group.

In a study to evaluate developmental toxicity potential in rats, tribenuron methyl did not produce birth defects after administering via oral intubation to pregnant rats dosage levels of 0, 20, 125, and 500 mg/kg/day. The NOEL for this study was 20 mg/kg/day for both maternal and developmental toxicity. This was based on maternal effects at the 125 and 500 mg/kg/day. The effects included decreased body weight gain and food consumption and an increased incidence of excess salivation. Fetal effects included decreased body weights and increased number of resorptions (only at (hightest dose tested HDT)). In the rabbit developmental toxicity study, rabbits were fed dosage levels of 0, 5, 20, and 80 mg/kg/day. The NOEL for maternal and developmental toxicity was 20 mg/kg/day. This was based on maternal effects which included decreased feed consumption and an increased incidence of abortions (at the HDT). Fetal effects included slightly reduced body weights at 80 mg/kg/day.

4. *Subchronic toxicity.* The most sensitive species to subchronic exposure of tribenuron methyl was the rat. In the rat study, rats were fed dosage levels of 0; 100; 1,750; or 5,000 ppm tribenuron methyl for 90 days. The findings show that the NOEL for tribenuron methyl was 100 ppm for both male and female rats (90–day dietary). This concentration is equivalent to 7 and 9 mg/kg/day in male and female rats, respectively. The NOEL was based on the decreased body weight and decreased feed consumption noted in the 1,750 and 5,000 ppm groups. The NOEL for the 90–day mouse feeding study was 500 ppm (70 mg/kg/day for males and 90 mg/kg/day for females) based on liver and spleen effects at 1,250; 2,500; and 5,000 ppm at 4 weeks. An increase in liver weights at 2,500 ppm was noted with no histologic effects at any level. The NOEL for subchronic (90–day dietary) exposure in dogs was 500 ppm (15.1 mg/kg/day for male and 14.9 mg/kg/day for female dogs). This was based on lower mean body weights of male dogs fed the 2,500 ppm diet. A specific target organ was not identified in any of the species studied.

5. *Chronic toxicity.* The NOEL for chronic (18–month dietary) exposure in mice was 200 ppm (equivalent to 25 and 31 mg/kg/day in male and female mice, respectively). This was based on lower body weights for mice in the high-dose group (1,500 ppm). There were no neoplastic or other histopathological effects associated with this compound and no target organ was identified. Additionally, no evidence of tribenuron methyl induced oncogenicity was observed in the mouse.

The NOEL for chronic (2–year dietary) exposure in rats was 25 ppm (0.95 and 1.2 mg/kg/day for male and female rats, respectively). Lower body weights, which paralleled lower food consumption and organ weight effects, were observed in the 250 and 1,250 ppm groups. There were no clinical or histopathological effects associated with these organ weight effects. The incidence of mammary adenocarcinomas was greater than controls for female rats in the 1,250 ppm group. This effect was only observed in this high-dose group and under conditions of significant physiological stress (body weights for female rats were 42% lower than the controls).

In a 1–year feeding study in dogs, the NOEL was determined by DuPont to be 250 ppm (8.16 and 8.18 mg/kg/day for male and female dogs, respectively). This was based on slightly lower body weights and increased serum creatinine concentrations for dogs in the high-dose group (1,500 ppm). Upon review by EPA, the NOEL was set at 25 ppm (0.79 mg/kg/day). There were no neoplastic or other histopathological effects associated with compound administration.

6. *Animal metabolism.* Metabolism of tribenuron methyl was evaluated in rats using both phenyl and triazine labeling. Tribenuron methyl was extensively and rapidly converted to polar metabolites and primarily excreted in the urine and feces. Urinary excretion accounted for 2 to 4 times the amount of radiolabel excreted via feces in all groups. Essentially all of the tribenuron methyl and its metabolites were excreted in the urine and feces of the rat within 96 hours after dosing. Levels of radiolabeled residues in tissues were correspondingly higher in those groups with slower elimination kinetics, but no evidence of bioconcentration was seen. None of the dosed label was expired as carbon dioxide or volatile metabolites.

The average excretion half-life values for male and female rats in the low-dose group (20 mg/kg) were approximately the same (26–33 hours) and independent of dietary preconditioning. The average excretion half-lives for male and female rates in the high-dose groups (1,700; 1,800; and 2,000 mg/kg) were approximately 51–54 hours (males) and 68–96 hours (females). These results indicate that the metabolism of tribenuron methyl in male and female rats is qualitatively similar; however, female rats metabolize and excrete this product much slower than male rats at the high doses. The low residual radioactivity in the rat indicated that tribenuron methyl does not covalently bind to tissue macromolecules. Based on these data, the body burden of this compound is not expected to increase significantly upon repeated, long-term administration.

The major metabolites of tribenuron methyl are those expected from the enzymatic hydroxylation and dealkylation activities of the hepatic microsomal mixed function oxidase system. The major urinary metabolites were identified as metsulfuron methyl and saccharin (phenyl labeled groups) and metsulfuron methyl and *O*-demethyl triazine amine (triazine labeled groups); no evidence of glucuronide or sulfate conjugation was seen.

Results from a metabolism study with 2 radioactive forms of tribenuron methyl ($^{14}$C-triazine and $^{14}$C-phenyl) in lactating goats show that most of the dosed radioactivity was recovered in the urine (61–71%) and feces (15–20%). In the urine, intact tribenuron methyl and metsulfuron methyl accounted for 17–23% and 20–22% of the administered dose, respectively. The third major component in phenyl-dosed goat urine was saccharin (23.5% of the dose); the third major metabolite in the triazine-dosed goat urine was *O*-demethyl *N*-demethyl triazine amine (10.9%). The highest levels of residues observed in the milk were 0.09 ppm (tribenuron methyl equivalents) from the triazine-dosed goat, and 0.006 ppm from the phenyl-dosed goat. Recoveries of the administered dose were 82.2% for the goat given the triazine label, and 86.8% for the goat dosed with the phenyl label. Throughout the dosing phase, the goats did not display any signs of toxicity, and there was no effect on milk production.

There were no significant levels of unique plant metabolites of thifensulfuron methyl found in food or feed products at crop maturity. Hence,

toxicity testing of other degradation products of thifensulfuron methyl is not needed.

7. *Metabolite toxicology.* There is no evidence that the metabolites of tribenuron methyl as identified in either the plant or animal metabolism studies are of any toxicological significance.

8. *Endocrine disruption.* In a previous 2–year feeding study, female rats fed, 1,250 ppm tribenuron methyl had an approximately 3–fold increase in mammary adenocarcinoma incidence when compared to control. This concentration of tribenuron methyl exceeded the maximum tolerated dose, producing a 43% decrease in body weight. In contrast, an 18–month feeding study demonstrated that tribenuron methyl was not oncogenic in mice. Because tribenuron methyl is also negative in five short-term tests for genotoxicity, a non-genotoxic mechanism was investigated. A study was designed to investigate whether tribenuron methyl can alter the hormonal system of female rats, which would support a non-genotoxic mechanism for the tribenuron methyl-induced mammary adenocarcinoma. The integrity of the endocrine system was assessed by monitoring the estrous cycle, measuring serum hormone levels, characterizing the estrogen and progesterone receptors from the uterus and mammary gland, and weighing reproductive organs.

The data from this study indicate that the endocrine system may have been affected at a relatively high dose, 5,000 ppm. These data further suggest that the hormonal effects served to enhance the growth of preinitiated mammary cells in this susceptible rat strain. Such hormone-mediated effects are considered to have a threshold below which growth of mammary tissue will not be affected. Adequate margins of safety protect humans from these threshold effects.

*C. Aggregate Exposure*

1. *Dietary exposure.* The chronic reference dose (RfD) of 0.008 mg/kg/day is based on the NOEL of 0.79 mg/kg/day from a 1–year dog feeding study and a 100X safety factor (SF). The acute RfD of 0.20 mg/kg/day is based the NOEL of 20 mg/kg/day from the rabbit and rat developmental studies and a 100X safety factor.

i. *Food.* Chronic dietary exposure assessment. Chronic dietary exposure, resulting from the proposed use of tribenuron methyl on barley, canola, cotton, flax, grass, oats, and wheat, is well within the acceptable limits for all sectors of the population, as predicted by the chronic module of the Dietary Exposure Evaluation Model ((DEEM), Novigen Sciences, Inc., 1999 Version 6.74). The percentage or proportion of a crop that is treated can have a significant effect on the exposure profile. In this case, it was assumed for the crop that 100% was treated with tribenuron methyl. Based on a comparison with the use profile for most other herbicides, this is an extremely conservative estimate. The predicted chronic exposure for the U.S. population subgroup was 0.000094 mg/kg body weight/day (bwt/day). The population subgroup with the highest predicted level of chronic exposure was the children 1 to 6 years subgroup with an exposure of 0.000213 mg/kg bwt/day. Based on a chronic NOEL of 0.79 mg/kg bwt/day and a 100–fold (SF), the chronic RfD would be 0.008 mg/kg bwt/day. For the U.S. population, the predicted exposure is equivalent to 1.2% of the chronic RfD. For the population subgroup with the highest level of exposure (children 1 to 6 years), the exposure would be equivalent to 2.7% of the chronic RfD. Because the predicted exposures, expressed as percentages of the chronic RfD, are well below 100%, there is reasonable certainty that no chronic effects would result from dietary exposure to tribenuron methyl.

ii. *Acute dietary exposure.* The predicted acute exposure for the U.S. population subgroup was 0.000262 mg/kg bwt/day (95$^{th}$ percentile). The population subgroup with the highest predicted level of acute exposure was the children 1 to 6 years subgroup with an exposure of 0.000475 mg/kg bwt/day (95$^{th}$ percentile). Based on an acute NOEL of 20 mg/kg bwt/day and a 100–fold SF, the acute RfD would be 0.20 mg/kg bwt/day. For the U.S. population the predicted exposure (at the 95$^{th}$ percentile) is equivalent to 0.13% of the acute RfD. For the population subgroup with the highest level of exposure (children 1 to 6 years), the exposure (at the 95$^{th}$ percentile) would be 0.24% of the acute RfD. Because the predicted exposures, expressed as percentages of the acute RfD, are well below 100%, there is reasonable certainty that no acute effects would result from dietary exposure to tribenuron methyl.

iii. *Drinking water.* Surface water exposure was estimated using the Generic Expected Environmental Concentration (GENEEC) model. Ground water exposures were estimated using screening concentration in ground water (SCI-GROW).

EPA uses drinking water levels of comparisons (DWLOCs) as a surrogate measure to capture risk associated with exposure to pesticides in drinking water. A DWLOC is the concentration of a pesticide in drinking water that would be acceptable as an upper limit in light of total aggregate exposure to that pesticide from food, water, and residential uses. A DWLOC will vary depending on the residue level in foods, the toxicity endpoint and with drinking water consumption patterns and body weights for specific subpopulations.

The acute DWLOCs are 7 ppm for the U.S. population and 2 ppm for the subpopulation with the highest exposure (children 1 to 6 years). The estimated maximum concentration of tribenuron methyl in surface water 0.7 ppb are derived from GENEEC is much lower than the acute DWLOCs. Therefore, one can conclude with reasonable certainty that residues of tribenuron methyl in drinking water do not contribute significantly to the aggregate acute human health risk.

The chronic DWLOCs are 0.3 ppm for the U.S. population and 0.01 ppm for the subpopulation with the highest exposure (children 1 to 6 years). These DWLOC values are substantially higher than the GENEEC 56–day estimated environmental concentration of 0.3 ppb for tribenuron methyl in surface water. Therefore, one can conclude with reasonable certainty that residues of tribenuron methyl in drinking water do not contribute significantly to the aggregate chronic human health risk.

2. *Non-dietary exposure.* Tribenuron methyl is not registered for any use which could result in non-occupational or non-dietary exposure to the general population.

*D. Cumulative Effects*

Tribenuron methyl belongs to the sulfonylurea class of crop protection chemicals. Other structurally similar compounds in this class are registered herbicides. However, the herbicidal activity of sulfonylureas is due to the inhibition of ALS, an enzyme found only in plants. This enzyme is part of the biosynthesis pathway leading to the formation of branched chain amino acids. Animals lack ALS and this biosynthetic pathway. This lack of ALS contributes to the relatively low toxicity of sulfonylurea herbicides in animals. There is no reliable information that would indicate or suggest that thifensulfuron methyl has any toxic effects on mammals that would be cumulative with those of any other chemical.

*E. Safety Determination*

1. *U.S. population.* Tribenuron methyl is the active ingredient in two DuPont herbicides with new proposed uses on the following commercial crops:

Imazethapyr tolerant canola, cotton, and CDC triffid flax. There are no residential uses for any tribenuron methyl containing herbicides.

Based on data and information submitted by DuPont, EPA previously determined that the establishment of tolerances of tribenuron methyl on the following raw agricultural commodities would protect the public health, including the health of infants and children:

| Wheat | Barley | Grass | Oats |
|---|---|---|---|
| Grain | Grain | Forage | Grain |
| Straw | Straw | Hay | Straw |

Establishment of new tolerances for tribenuron methyl on imazethapyr tolerant canola seed at 0.02 ppm, cotton seed at 0.02 ppm, cotton gin trash at 0.02 ppm, and CDC triffid flax at 0.02 ppm, will not adversely impact public health.

Using the conservative exposure assumptions described in this unit, and based on the most sensitive chronic NOEL of 0.79 mg/kg/day and an RfD of 0.008 mg/kg/day, the aggregate dietary exposure will utilize 2.7% of the RfD for the U.S. population. Generally, exposure below 100% of the RfD are of no concern because the RfD represents the level at or below which daily dietary exposure over a lifetime will not pose risk to human health. We therefore conclude that there is reasonable certainty that no harm will result from aggregate exposure to tribenuron methyl residues.

2. *Infants and children.* Chronic dietary exposure of the most highly exposed subgroup in the population, children 1 to 6, is 0.000213 mg/kg/day or 2.7% of the chronic RfD. The acute dietary exposure of the most exposed subgroup, children 1 to 6, is 0.24% of the acute RfD (95$^{th}$ percentile). For non-nursing infants (<1–year), the acute dietary exposure is 0.15% acute RfD (95$^{th}$ percentile).

There are no residential uses of tribenuron methyl and contamination of drinking water is extremely unlikely. Based on the completeness and reliability of the toxicity data, the lack of toxicological endpoints of special concern, the lack of any indication of greater sensitivity of children, and the conservative exposure assessment, there is a reasonable certainty that no harm will result to infants and children from the aggregate exposure to residues of tribenuron methyl from all anticipated sources of dietary and non-occupational exposure. Accordingly, there is no need to apply an additional safety factor for infants and children.

*F. International Tolerances*

The maximum residue level (MRL) in Canada for tribenuron methyl on canola is 0.1 ppm. No Mexican or Codex MRLs exist for tribenuron methyl on canola. There are no Canadian, Mexican or Codex MRLs for tribenuron methyl on cotton and flax.

[FR Doc. 04–15208 Filed 7–6–04; 8:45 am]
BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2004–0132; FRL–7362–5]**

## Flonicamid; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket ID number OPP–2004–0132, must be received on or before August 6, 2004.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Ann Sibold, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6502; e-mail address: *sibold.ann@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you [grow brassica crops or mustard greens or consume them] Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Other vegetable (except potato) Farming (NAICS 111219)
- Farming (NAICS code 112 )
- Food manufacturing (NAICS 311)
- Fruit and vegetable preserving and specialty food manufacturing (NAICS code 3114)
- Pesticide manufacturing (NAICS code 32532)
- Entomological; services, agrecultural; insect control for crops (NAICS code 115112)
- Agricultural production or harvesting crews (NAICS code 115115)

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

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0132. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still

access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

*C. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0132. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2004–0132. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2004–0132.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2004–0132. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

*D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior

notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also, provide the name, date, and **Federal Register** citation.

**II. What Action is the Agency Taking?**

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

**List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 21, 2004.

**Lois Rossi,**

*Director, Registration Division, Office of PesticidePrograms.*

**Summary of Petition**

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by ISK Biosciences Corporation, and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

**ISK Biosciences Corporation**

*PP 4F6832P*

EPA has received a pesticide petition PP 4F6832 from ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, Ohio, 44077, proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing tolerances for the combined residues of the insecticide flonicamid (N-(cyanomethyl)-4-trifluoromethyl)-3-pridinecarboxamide (CA) or N-cyanomethyl-4-trifluoromethylnicotinamide (IUPAC) and its metabolites, TFNA [4-trifluoromethylnicotinic acid, TFNA-AM (4-trifluoromethylnicotinamide) and TFNG N-(4-trifluoromethylnicotinoyl)-glycine) in or on the raw agricultural commodities: Brassica, head and stem, subgroup 5-A, at 1.5 parts per million (ppm), and mustard greens at 11 ppm.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

*A. Residue Chemistry*

1. *Plant metabolism.* Wheat, potato and peach metabolism studies were conducted using $^{14}$C-pyridyl-flonicamid. The metabolic profile was similar for all three matrices. The major metabolites for the various crops were: TFNA in peach, TFNA and TFNG in potato and TFNG in wheat. The metabolism of flonicamid in plants shows the main pathway of metabolism involves hydrolysis of -CN and $CONH_2$ functional groups in the molecule. The metabolism of flonicamid in plants is well understood.

2. *Analytical method.* Analytical methodology has been developed to determine the residues of flonicamid and its three major plant metabolites, TFNA, TFNG, and TFNA-AM in various crops. The residue analytical method for the majority of crops includes an initial extraction with acetonitrile (ACN)/deionized (DI) water, followed by a liquid-liquid partition with ethyl acetate. The residue method for wheat straw is similar, except that a $C_{18}$ solid phase extraction (SPE) is added prior to the liquid-liquid partition. The final sample solution is quantitated using a liquid chromatograph (LC) equipped with a reverse phase column and a triple quadruple mass spectrometer (MS/MS).

3. *Magnitude of residues.* Residue data were collected on mustard greens and the Brassica leafy vegetables, head and stem subgroup during field trials. Maximum total residues for head and stem Brassica (total of 12 field trials) ranged from 0.590 ppm (broccoli) to 1.281 ppm (cabbage). Maximum total residues for mustard greens (total of 6 field trials) ranged from 2.115 ppm to 10.113 ppm.

*B. Toxicological Profile*

1. *Acute toxicity.* A battery of acute toxicity studies was conducted which placed flonicamid technical in Toxicity Category III for oral $LD_{50}$, Category IV for dermal $LD_{50}$, inhalation $LC_{50}$, dermal irritation, and eye irritation. Flonicamid technical is not a dermal sensitizer. In an acute neurotoxicity study, the no observed adverse effect levels (NOAELs) for neurotoxicity were 600 milligrams/kilogram (mg/kg) in males and 1,000 mg/kg in female highest doses tested (HDT). The systemic NOAELs were 600 mg/kg in males and 300 mg/kg in females.

2. *Genotoxicty.* Flonicamid technical did not cause mutations in the bacterial reverse mutation or mouse lymphoma tests with or without metabolic activation, chromosome damage in the mouse micronucleus or cytogenetics tests with and without metabolic activation, an increase in DNA damage in the comet assay or in an *in vivo* rat unscheduled DNA synthesis (UDS) study. Based on the weight of evidence, it is concluded, that flonicamid technical is not genotoxic.

3. *Reproductive and developmental toxicity* A developmental toxicity study in rats resulted in the maternal and developmental no observed effect levels (NOELs) of 100 mg/kg/day. The maternal lowest observed effect level (LOEL) was 500 mg/kg/day based on the treatment-related effects observed on the liver and kidney of the dams in the highest dose group. The developmental LOEL was 500 mg/kg/day based on the increases in placental weights and incidences of fetal skeletal variations seen only at maternally toxic doses of 500 mg/kg/day.

In the rabbit developmental toxicity study, the maternal and developmental NOELs were 7.5 mg/kg/day and 25 mg/kg/day HDT, respectively. The maternal LOEL was 25 mg/kg/day based on

decreased body weights and food consumption. No adverse effects on the fetuses were observed at the highest dose.

In the multigeneration rat reproduction study, the NOAEL was 300 ppm for both parental animals (13.5-32.8 and 16.3-67.0 mg/kg/day, respectively, for males and females) and their offspring. The effects at the highest dose of 1,800 ppm included the following: Increased kidney weights and gross and histopathological alterations in the kidney. Findings noted in the top dose females included delayed vaginal opening and increased liver, kidney and spleen weights in the F1 generation and reduced ovary and adrenal weights in the parental generation and decreased uterine weights in the F1 female weanlings. There was an increase in the follicle stimulating hormone (FSH) and luteinizing hormone (LH) levels in F1 females tested for these endpoints. These findings did not affect the reproductive performance or survival of offspring in the study.

4. *Subchronic toxicity.* The no observed adverse effect level (NOAEL) for flonicamid technical in the rat 28–day dermal toxicity study was 1,000 mg/kg/day, which was the highest dose tested.

In a 90–day rat feeding study the NOAEL was established at 200 ppm (12.11 mg/kg/day) for males and 1,000 ppm (72.3 mg/kg/day) for females. The NOAELs were based on effects on hematology, triglycerides, and pathology in the liver and kidney.

In a 13–week mouse study, the NOAEL was 100 ppm (15.25 mg/kg/day in males and 20.1 mg/kg/day in females). The LOAEL is 1,000 ppm (153.9 mg/kg/day in males and 191.5 mg/kg/day in females) based on hematology effects and changes in glucose, creatinine, bilirubin, sodium, chloride and potassium levels, increased liver and spleen weights and histopathology findings in the bone marrow. spleen and kidney.

In a subchronic toxicity study in dogs with capsule administration, the NOAEL was 20 mg/kg/day based on findings of severe toxicity at a dose exceeding the maximum tolerated dose; symptoms included collapse, prostration and convulsions leading to early sacrifice at the LOAEL of 50 mg/kg/day.

In a subchronic neurotoxicity study in rats, the NOAEL for dietary administration was 1,000 ppm (67 mg/kg/day in males and 81 mg/kg/ day in females) for systemic toxicity based on body weight and food consumption effects. The NOAEL for neurotoxicity was 10,000 ppm (625 and 722 mg/kg/day in males and females, respectively highest dose tested.

5. *Chronic toxicity.* In the chronic dog study with administration via using capsules, the NOEL was 8 mg/kg/day. The LOAEL was 20 mg/kg/day based on reduced body weights in females and effects on the circulating red blood cells.

In a rat 24–month combined chronic and oncogenicity study, flonicamid technical was not carcinogenic in rats. The NOAEL was 200 ppm (7.32 mg/kg/day) for males and 1,000 ppm (44.1 mg/kg/day) for females. The LOAEL was 1,000 ppm for males and 5,000 ppm for females based on histopathology in the kidney, hematology effects, hepatic effects including changes in biochemical parameters, increased organ weights, and histopathological changes. Atrophy of striated muscle fibers, cataract and retinal atrophy observed in the high dose females were considered to be due to acceleration of spontaneous age-related lesions.

In the 18–month mouse study, effects were observed in the lung, liver, spleen and bone marrow at 250 ppm or higher. Findings included centrilobular hepatocellular hypertrophy, extramedullary hematopoiesis and pigment deposition in the spleen and decreased cellularity (hypocellularity) in the bone marrow. There were statistically significant increases in the incidence of alveolar/bronchiolar adenomas in both sexes of treated groups with hyperplasia/hypertrophy of epithelial cells in terminal bronchioles. There was a statistically significant increase in the incidence of alveolar/bronchiolar carcinomas in males at 750 ppm and 2,250 ppm and in females at 2,250 ppm only. These effects in the lungs of mice were not life threatening as most of effects were observed at the terminal sacrifice and there was no effect of treatment on mortality in the study. A no observed adverse effect level (NOAEL) could not be determined from the dose levels administered. Mechanism-of-action studies have indicated that the lung effects are unique to the mouse and are not likely to translate to other species including the rat. A second 18–month mouse study was conducted in CD-1 mice at dose levels ranging from 10 to 250 ppm to establish a NOAEL for hyperplasia/hypertrophy of epithelial cells in terminal bronchioles and for the incidence of alveolar/bronchiolar adenomas and carcinomas in both sexes. There was a statistically significant increase in the incidence of alveolar/bronchiolar adenomas in males at 250 ppm. In females, there was no statistically significant increase in the incidence of pulmonary neoplastic lesions at any dose level. The incidence of hyperplasia/hypertrophy of epithelial cells lining the terminal bronchioles of the lungs was statistically increased at 250 ppm in both sexes. There were no treatment-related increases in neoplastic or non-neoplastic lesions at dose levels of 80 ppm or lower in either sex. The NOAEL was 80 ppm, equivalent to 10.0 and 11.8 mg/kg body weight/day for males and females, respectively. This study confirmed a threshold for these effects at 80 ppm, which had been indicated in studies on the mechanism. Mechanism-of-action studies have indicated that the lung effects are unique to the mouse and are not likely to translate to other species including the rat. Flonicamid technical was not carcinogenic in the rat.

6. *Animal metabolism.* Rat, goat and poultry metabolism studies were conducted using $^{14}C$-pyridyl-flonicamid. The majority of the dose was rapidly excreted. Flonicamid was a major component of rat urine 48 hours after dosing. TFNA-AM was the major metabolite found in rats (urine), goats (milk and tissues) and in laying hens (tissues and eggs). TFNG was found between 8%–24% of the total radioactive residue (TRR) in the livers of rats sacrificed at intervals between 0.5–6 hours after dosing. The liver samples at these time intervals had $^{14}C$-residues of 2.3%–4.6% of the dose. TFNA was not a major component in animal tissues. The metabolism of flonicamid in animals shows the main pathway of metabolism involves hydrolysis of -CN and -$CONH_2$ functional groups in the molecule, identical to plant metabolism. The main metabolic reactions were hydrolysis of cyano to the amide function and ring hydroxylation. In rats flonicamid was further metabolized by several routes, including nitrile hydrolysis, amide hydrolysis, N-oxidation, and hydroxylation of the pyridine ring, leading to multiple metabolites. The metabolism of flonicamid in animals is well understood.

7. *Metabolite toxicology.* The main metabolites of flonicamid were examined in acute oral toxicity studies in rats and bacterial reverse mutation tests. All the metabolites were less toxic than flonicamid and not mutagenic.

8. *Endocrine disruption.* No special studies investigating potential estrogenic or other endocrine effects of flonicamid have been conducted. Some suggestions of possible endocrine effects were reported at the highest dose tested (1,800 ppm) in the multi-generation reproduction study which showed increased FSH and LH levels, a delay in the time to vaginal opening in the F1

generation, and reduced ovary and adrenal weights in the parental generation. However, there were no effects on reproductive performance or survival of the offspring in the study. At levels that are expected to be found in the environment, flonicamid will not cause any endocrine-related effects.

*C. Aggregate Exposure*

1. *Dietary exposure.* Potential dietary exposures from food were estimated using the proposed tolerances for all crops using the Dietary Exposure Evaluation Model (DEEM-FCID™) and percent crop treated of 100%. The following raw agricultural commodities were included: Head and stem Brassica, mustard greens, leaf lettuce, head lettuce, celery, spinach, cotton, potatoes, fruiting vegetables, cucurbits, stone fruits, pome fruits and resulting secondary residues in meat, milk, poultry and eggs.

a. *Food.* Acute dietary exposure was compared to the acute population adjusted dose (aPAD) of 3.0 mg/kg/day based on the NOEL of 300 mg/kg from the acute neurotoxicity study in rats and a 100–fold uncertainty factor. The U.S. population exposure is 0.31% of the aPAD and the most highly exposed subpopulation is children 1–2 years of age with 0.93% of the aPAD 95$^{th}$ percentile.

Based on the available data, an appropriate chronic population adjusted dose (cPAD) is 0.073 mg/kg/day based on the NOEL of 7.32 mg/kg/day from the chronic toxicity study in rats and a 100–fold uncertainty factor. The U.S. population exposure is 3.6% of the cPAD and the most highly exposed subpopulation exposure is children 1–2 years of age with 12.2% of the cPAD.

b. *Drinking water.* A drinking water level of comparison (DWLOC) was calculated by subtracting the chronic/acute food exposures calculated using DEEM™ from the cPAD/aPAD to obtain the acceptable chronic/acute exposure to flonicamid in drinking water. The estimated average and maximum concentration of flonicamid in surface water is 1.07 parts per billion (ppb) and 7.33 ppb, respectively. These are both well below the lowest chronic (641 ppb) and acute (29,720 ppb) DWLOC values for flonicamid. Therefore, taking into account all proposed uses, it can be concluded, with reasonable certainty that residues of flonicamid in food and drinking water will not result in unacceptable levels of human health risk.

2. *Non-dietary exposure.* There are currently no residential uses of flonicamid registered or pending action that need to be added to the total risk from exposure.

*D. Cumulative Effects.*

In consideration of potential cumulative effects of flonicamid and other substances that may have a common mechanism of toxicity, to our knowledge there are currently no available data or other reliable information indicating that any toxic effects produced by flonicamid would be cumulative with those of other chemical compounds; thus, only the potential risks of flonicamid have been considered in this assessment of its aggregate exposure. If ISK Biosciences Corporation learns of any other compound with the same mechanism of toxicity they will submit information for the EPA to consider concerning potential cumulative effects of flonicamid consistent with the schedule established by EPA in the **Federal Register** of August 4, 1997 (62 FR 42020), and other EPA publications pursuant to the Food Quality Protection Act.

*E. Safety Determination*

1. *U.S. population.* Using conservative exposure assessment analyses, the acute dietary exposure estimates are well below the aPAD of 3 mg/kg bwt/day for all population subgroups. In addition, the chronic dietary exposure estimates for the various population groups are well below the cPAD of 0.073 mg/kg bwt/day. Based on this information, ISK Biosciences Corporation concludes, that there is reasonable certainty that no harm will result from acute or chronic exposure to flonicamid.

2. *Infants and children.* Based on the available developmental and reproductive data on flonicamid, ISK Biosciences Corporation concludes, that reliable data support use of the standard 100-fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children under the Food Quality Protection Act (FQPA). Although, the reproduction study indicated signs of toxicity to some reproductive organs/systems at the high dose of 1,800 ppm in the diet, other signs of toxicity such as effects on the kidney accompanied these; there were no effects observed at a dose level of 300 ppm. There were no effects on reproduction or survival at any dose level. Since acute and chronic aggregate exposure assessments are well below the aPAD and cPAD respectively, there is reasonable certainty that no harm will result to infants and children from aggregate exposure to flonicamid residues.

*F. International Tolerances*

There are no Canadian or Mexican residue limits or Codex MRLs for the insecticide flonicamid and its metabolites TFNA, TFNA-AM and TFNG.

[FR Doc. 04–15206 Filed 7–6–04; 8:45 am]
BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2004–0181; FRL–7364–7]**

## Thifensulfuron Methyl; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket ID number OPP–2004–0181, must be received on or before August 6, 2004.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** James A. Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address: *tompkins.jim@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

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

- Crop production (NAICS 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?*

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You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0181. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2004–0181. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in

WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2004–0181.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2004–0181. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

*D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. What Action is the Agency Taking?**

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

**List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 22, 2004.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

**Summary of Petition**

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by E. I. du Pont de Nemours and Company, and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

**E. I. du Pont de Nemours amd Company**

*PP 0F6152*

EPA has received a pesticide petition PP 0F6152 from E. I. du Pont de Nemours and Company, DuPont Agricultural Products, Barley Mill Plaza, Wilmington, DE 19880–0038 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing a tolerance for residues of thifensulfuron methyl: Methyl-3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino sulfonyl]-2-thiophenecarboxylate in or on the raw agricultural commodity imazethapyr tolerant canola seed at 0.02 parts per million (ppm), cotton seed at 0.02 ppm, cotton gin trash at 0.02 ppm and CDC triffid flax at 0.02 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

*A. Residue Chemistry*

1. *Plant metabolism.* The qualitative nature of the residues of thifensulfuron methyl is adequately understood. Plant metabolism studies on wheat, corn, and soybeans were conducted. No significant difference in metabolic profile was observed. The plant metabolism studies in wheat and in corn were conducted with $^{14}C$-labeled thiophene and triazine rings to follow the degradation pathway from the two most stable portions of thifensulfuron methyl. The metabolism in those plants shows similar patterns and involves cleavage of the urea bridge and metabolism of the methoxy group on the triazine ring and hydrolysis of the methyl ester group on the thiophene ring. The thiophene portion of thifensulfuron methyl in wheat degraded to 2-acid-3-sulfonamide and $^{14}C$-polar compounds that further broke down to $^{14}CO_2$. The triazine ring of thifensulfuron methyl metabolized to triazine urea and triazine amine. In corn, the thiophene portion of thifensulfuron methyl degraded to 2-acid-3-sulfonamide as well, and the triazine ring metabolized primarily to triazine urea and triazine amine. The primary thifensulfuron methyl metabolic pathways in soybean and wheat are the same. Minor differences in the formation and decline of the short-lived intermediate precursors to 2-acid-3 sulfonamide and O-demethyl triazine amine were found. These differences were not environmentally significant because of the very low levels of these intermediate metabolites in crops.

Metabolism studies conducted with radioactive $^{14}C$-thifensulfuron methyl

on wheat under field conditions showed no significant residues of thifensulfuron methyl or its degradation products (>0.01 ppm) in field wheat grain at maturity. Mature forage and straw total residues were 0.30 to 0.45 ppm for the thiophene and triazine-labeled tests respectively. No single metabolite was greater than 0.06 ppm in the mature wheat. Major metabolites in wheat straw were thifensulfuron methyl, thifensulfuron methyl acid, 2-acid-3-sulfonamide, O-demethyl thifensulfuron methyl, triazine urea, and triazine amine.

There were no detectable residues of thifensulfuron methyl or its transformation products in corn grain (<0.01 ppm) or foliage (<0.02 ppm) at maturity. Analysis of earlier foliar samples showed extensive metabolism of thifensulfuron methyl. Among the residues detected were thifensulfuron methyl, 2-acid-3-sulfonamide, triazine urea, triazine amine, O-demethyl triazine urea, and O- demethyl triazine amine, however no thifensulfuron methyl acid was detected.

Metabolism studies were conducted with soybeans under greenhouse conditions. There were no detectable residues (<0.01 ppm) in the bean or pods at either rate or label at final harvest. Analysis of earlier foliar samples showed extensive metabolism of thifensulfuron methyl. Among the residues detected were thifensulfuron methyl, thifensulfuron methyl acid, 2-ester-3-sulfonamide, 2-acid-3-sulfonamide, triazine amine, O-demethyl triazine amine.

Two different crop rotation scenarios were investigated, one involving a bare ground application, the other one with a cover crop. No significant difference in metabolic profile was observed.

A confined greenhouse crop rotation study (following application to bare soil) was conducted planting beets, peas, and sunflowers at either a 30–day or 120–day treatment-to-planting interval. The application rate used was 34.8–38 grams/active ingredient/acre (g a.i./acre). There were no substantial residues (0.001 to 0.005 ppm) in food items (beet root, peas, sunflower seeds) in crops planted 30 or 120 days following soil treatment. There were minor detectable residues (0.02 to 0.05 ppm) in animal feed items (beet foliage and sunflower foliage). Thifensulfuron methyl was the only component identified (0.002 ppm) in sunflower foliage 73 days after treating the soil. Thifensulfuron was the only major radiolabeled component observed in the treated soil at the 30–day crop planting interval.

A confined greenhouse crop rotation study following treated wheat was conducted using beet root, peas, pea pods, and sunflower as following crops. The study used an application rate of 14.6 g a.i./acre, and a 45 or 75 day treatment-to-planting interval. There were no substantial residues (less than 0.01 ppm) in food items (beet root, peas, pea pods, sunflower (seeds and heads)) in crops planted 45 or 75 days following treated wheat incorporation into the soil. There were minor detectable residues in animal feed items. Pea and sunflower foliage contained 0.053–0.040 ppm and 0.015–0.008 ppm for the 45 and 75 day planting, respectively. Small amounts of triazine amine (<0.032 ppm), triazine urea, and O-demethyl triazine amine were identified in these fractions. Triazine urea was the major soil degradate at the 45 and 75 days planting interval.

Given the uniform lability of thifensulfuron methyl in plants, and that no residues above the limit of quantitation were found in treated canola plants with the "Smart" trait, it is unlikely that there would be any significant accumulation of metabolites in the harvested portions of treated canola and CDC triffid flax. No significant difference in metabolite distribution is anticipated for cotton use either. This is due to the significant soil interception that occurs during either a preemergence or postemergence application when thifensulfuron methyl is applied to small weeds for effective weed control.

2. *Analytical method.* For wheat, barley, and soybeans, the analytical methods use liquid chromatography and a photoconductivity detector for thifensulfuron methyl. Coupled with extraction, cleanup and isolation procedures, these methods provide a means of determining thifensulfuron methyl in soybeans and in wheat and barley straw with a detection limit of 50 parts per billion (ppb) nanogram/gram (50 ng/g), based on a 5–gram sample (soybeans) or a 10–gram sample (wheat and barley).

For corn forage and whole ears, an analytical method uses liquid chromatography and a photoconductivity detector for thifensulfuron methyl. Coupled with extraction, cleanup and isolation procedures, this method provides a means of determining thifensulfuron methyl in kernels with a detection limit of 20 ppb (20 ng/g), based on a 25-gram sample, and 50 ppm (50 ng/g) based on a 10 gram sample for green forage and whole ears. For determination of thifensulfuron methyl residues in corn processed fractions (processed corn oil and processed corn meal), the method uses HPLC with UV detection at 254 nm. This method provides a means to determine thifensulfuron methyl at levels as low as 0.02 ppm, based on a 10 gram sample.

Thifensulfuron methyl residues in canola and flax samples were determined by an analytical method based on the use of liquid chromatography with eluent and column switching with photometric detection at 254 nm at levels as low as 0.02 ppm (limit of quantitation) using a 5 gram sample.

Residues in cotton seed and gin trash were determined based on the use of column-switching liquid chromatography with detection via positive ion electrospray mass spectroscopy. The limit of quantitation was determined to be 20 ng/g and the limit of detection was estimated to be 6 ng/g, based on a 5 gram sample.

3. *Magnitude of residues*—a. *Wheat and barley grain and straw.* Field tests were conducted on wheat and on barley at 20 representative sites in the United States. Residues of thifensulfuron methyl were determined in wheat and barley grain and straw after single postemergence applications of thifensulfuron methyl at rates of 0–0.28 kg a.i./hectare (a.i./ha) in wheat and 0-0.14 kg a.i./ha in barley. The pre-harvest interval (PHI) was 41–140 days for the wheat grain and straw samples, 49–116 days for barley grain, and 60–89 days for barley straw. No quantifiable residues (<0.02 ppm for grain, <0.05 ppm for straw) were found in any samples.

In separate studies, wheat was treated with thifensulfuron methyl at a rate of 0.50 oz. a.i./acre or higher, and harvested at PHIs ranging from 25–42 days. No thifensulfuron methyl residues were detected in wheat grain (<0.02 ppm) or straw (<0.05 ppm) in any of the trials. Barley was treated with thifensulfuron methyl at a rate of 0.50 oz a.i./acre. Samples of mature barley grain and straw were taken from the test plots at a PHI of approximately 40 days after the test substance was applied. All results were below the established tolerance of 0.05 ppm for grain, and 0.1 ppm for straw.

b. *Corn grain, forage and fodder.* Field tests were conducted in the U.S. at 15 sites representative of the major U.S. corn growing regions. Tests included two decline studies. Residues of thifensulfuron methyl were determined in corn grain, forage, and fodder after a single postemergent application of thifensulfuron methyl at rates from 0 to 0.070 kg a.i./ha. PHIs were 80–154 days for the grain sample, 0–97 days for forage, and 82–154 days for fodder. No

residues above the quantitation limit (<0.02 milligrams/kilogram (mg/kg) for grain, <0.05 mg/kg for forage/fodder) were found in any grain or fodder samples. Residues in forage declined very rapidly with time. Even with treatment, at several times the typical use rate, residues were below the limit of quantitation within 14 days after treatment. In another study, plots were treated with thifensulfuron methyl at rates of 0.5, 1.0, and 2.0 oz a.i./acre. No thifensulfuron methyl was detected (quantitation limit of 0.02 ppm) in grain from the 2.0 oz. sample. No residues of thifensulfuron methyl were detected in the processed fractions (corn oil and corn meal).

c. *Soybeans.* A study was conducted to evaluate the magnitude of residues of thifensulfuron methyl in soybeans at either 0.125 oz a.i./acre or 0.25 oz a.i./acre. All applications were made approximately 60 days before harvest and were postemergence foliar broadcast. All thifensulfuron methyl residues in treated soybeans were below the limit of quantitation of 0.050 ppm; the current tolerance for thifensulfuron methyl in soybeans is 0.1 ppm.

d. *Oat grain and straw.* In a study using either 0.45 oz. a.i./acre or 0.90 oz. a.i./acre thifensulfuron methyl on oats, samples of mature oat grain and straw were taken from plots at preharvest intervals ranging from 39–57 days after the application of the test substance. Results show that all residues for thifensulfuron methyl were below the limit of quantitation (0.0055 ppm for oat grain, and 0.018 ppm for oat straw).

e. *Canola and flax.* Magnitude of residue studies were conducted on a variety of canola containing the "Smart" trait at 15 test sites, and on CDC triffid flax at 11 test locations. All treatment plots received an application at a rate of 15 or 30 g a.i./ha as a broadcast foliar application. The canola variety containing the "Smart" trait ranged from cotyledon up to the 8 leaf stage at application. CDC triffid flax staging at application ranged from 5 to 20 cm in height. No thifensulfuron methyl residues were found above the limit of quantitation of 0.02 ppm in any seed samples treated with the test substance.

f. *Cotton seed and gin trash.* Magnitude of residue studies were also conducted to determine residues of thifensulfuron methyl in cotton seed and cotton gin trash at nine test sites. The study consisted of three treatments. Treatment 1: One broadcast application at 0.45 oz a.i./acre, applied approximately 14–days prior to planting. Treatment 2: One broadcast application at 0.45 oz a.i./acre, applied pre-plant, on the day of planting. Treatment 3: One broadcast application at 2.25 oz. a.i./acre, applied pre-plant, the day of planting. The anticipated target PHI was approximately 120–days after the last application of the test substance; actual PHIs ranged from 123–196 days. The experimentally determined limit of quantitation was 20 ppb for both analytes. The limit of detection was estimated to be 6 ppb. No thifensulfuron methyl residues were found above the limit of quantitation of 0.02 ppm in any cotton seed and cotton gin trash samples treated with the test substance.

*B. Toxicological Profile*

1. *Acute toxicity.* Based on EPA criteria, technical thifensulfuron methyl is in acute toxicity Category IV for oral and inhalation routes of exposure, and for eye irritation. Thifensulfuron methyl is in acute toxicity Category III for the dermal route of exposure and for dermal irritation. It is not a skin sensitizer.

| | |
|---|---|
| Acute oral toxicity in rats | $LD_{50}$ >5,000 mg/kg |
| Acute dermal toxicity in rabbits | $LD_{50}$ >2,000 mg/kg |
| Acute inhalation toxicity in rats | $LD_{50}$ >7.9 milligrams/Liter (mg/L) |
| Primary eye irritation in rabbits | Minimal effects reversed within 24 hours |
| Primary dermal irritation in rabbits | Effects reversed within 48 hours |
| Dermal sensitization in guinea pigs | Non-senitizer |

2. *Genotoxcity.* Technical thifensulfuron methyl has shown no genotoxic or mutagenic activity in the following *in vitro* and *in vivo* tests:

- *In vitro* Mutagenicity Ames Assay Negative
- *In vitro* mutagenicity Chinese hampster ovary/hypoxanthine guanine phophoribosyl transferase (CHO/HPRT) Assay Negative
- *In vitro* unscheduled DNA synthesis negative
- *In vivo* micronuclei induction (Rat) negative

Thifensulfuron methyl was not mutagenic with or without metabolic activation in an *in vitro* bacterial gene mutation assay using *Salmonella typhimurium.* Thifensulfuron methyl also was not mutagenic in the *in vitro* CHO/HPRT assay at concentrations up to 2,712 mg/L (in Chinese hamster ovary cells). In cultured primary rat hepatocytes, thifensulfuron methyl was negative for the induction of unscheduled DNA synthesis up to 2,712 mg/L.

An *in vivo* chromosome aberration study was conducted on rats. This included the assessment of chromosome aberrations by metaphase analysis in bone marrow of male and female rats. Thifensulfuron methyl did not induce cytogenic damage in bone marrow cells at a dose of 5,000 mg/kg.

3. *Reproductive and developmental toxicity.* The results of a series of studies indicated that there were no reproductive, developmental or teratogenic hazards associated with the use of thifensulfuron methyl. In a 1–generation reproduction study in rats, the suggested no observed effect level (NOEL) was 7,500 ppm (559 mg/kg/day males, 697 mg/kg/day females). In a rat multigeneration reproduction study, the NOEL for reproductive effects of thifensulfuron methyl in adult rats and their offspring was 2,500 ppm, the highest dietary level tested. This level was based on the absence of significant compound related effects observed in this study and is equivalent to 175–180 mg/kg/day in adult male rats and 212–244 mg/kg/day in adult female rats. There were no effects on fertility, lactation, litter size, or pup survival. Thifensulfuron methyl is not considered a reproductive toxin.

In studies conducted to evaluate developmental toxicity potential, thifensulfuron methyl was neither teratogenic nor uniquely toxic to the conceptus (i.e., not considered a developmental toxin). In the rat study, there was evidence of maternal toxicity (small decrease in body weight gain) and developmental toxicity (increase in sum of fetuses with developmental variations and variations due to retarded development) at a dose level of 800 mg/kg/day. No significant indications of maternal or fetal toxicity were evident at the other dose levels (0, 30, and 200 mg/kg/day). Therefore, the maternal and developmental no observed adverse effect level (NOAEL) for rats was considered to be 200 mg/kg/day. Upon review by the EPA, the NOEL was set at 159 mg/kg/day. In the rabbit developmental toxicity study, there was slight maternal toxicity (decreased body weight gain) at a dose of 650 mg/kg/day. No significant indications of maternal toxicity were evident at the lowest dose level (30 mg/kg/day). No compound-related effects on fetal weights or the incidences of malformations or variations were seen at any dose. The maternal NOEL was 200 mg/kg/day and the developmental NOEL was 650 mg/kg/day for rabbits dosed with thifensulfuron methyl by gavage on gestation days 7–19. Upon review by the

EPA, the maternal NOEL was set at 158 mg/kg/day and the developmental NOEL 511 mg/kg/day.

4. *Subchronic toxicity.* The most sensitive species to subchronic exposure of thifensulfuron methyl was the rat. The findings show that the NOEL for thifensulfuron methyl were 100 ppm for male and female rats (90–day dietary). These levels were based on the decreased body weight and food efficiency noted in the 2,500 and 7,500 parts per million (ppm) groups. This concentration is equivalent to 7 and 9 mg/kg/day in male and female rats, respectively. For mice, in both the 4–week range-finding and the 90–day studies, the NOEL for both male and female mice under the conditions of this study was 7,500 ppm; this was based on the lack of compound-related effects at the highest concentration. 7,500 ppm is equivalent to 1,427 mg/kg/day in male mice and 2,287 mg/kg/day in female mice. The NOEL for subchronic (90–day dietary) exposure in dogs was 1,500 and 7,500 ppm in male and female dogs, respectively. The NOELs were equivalent to 40.4 mg/kg/day in male dogs and 159.7 mg/kg/day in female dogs. These levels were based on lower body weight in males and a lack of adverse effects in females at 7,500 ppm, the highest concentration tested. In females, a compound-related decrease in body weight was observed at 7,500 ppm but was not considered adverse, based on the small magnitude of effect. Therefore, the NOEL in males and females was 1,500 ppm (26.1 mg/kg/day female, 40.4 mg/kg/day male). No compound-related pathologic lesions were observed and no target organ was identified in all of the above tests.

5. *Chronic toxicity.* The NOEL for chronic (18–month dietary) exposure in mice was 7,500 ppm (equivalent to 979 and 1,312 mg/kg/day in male and female mice, respectively). No biologically significant compound-related effects were seen in male or female mice at 7,500 ppm, the highest concentration tested. Thifensulfuron methyl was not an oncogen in mice.

The NOEL for chronic (2–year dietary) exposure in rats was 500 ppm (20 and 26 mg/kg/day in male and female rats, respectively). The NOEL was based on body weight effects in male and female rats at 2,500 ppm. The NOEL in female rats was 25 ppm (1.3 mg/kg/day) based on a non-adverse reduction in serum sodium concentration at 500 ppm. Thifensulfuron methyl was not an oncogen in rats.

In a 1–year feeding study in dogs, the NOEL of thifensulfuron methyl was 750 ppm in male and female beagle dogs (equivalent to 19.7 mg/kg/day males and 22.5 mg/kg/day females), based on decreased body weights, body weight gains, and food efficiency in females and increased liver with gall bladder weights in males, all at 7,500 ppm. The liver weight effects in males are not considered to be adverse effects; therefore, the lowest observed effect level (LOEL) was considered to be 7,500 ppm (195.3 mg/kg/day) in male dogs and 750 ppm (22.5 mg/kg/day) in female dogs.

6. *Animal metabolism.* The proposed major metabolic pathway for thifensulfuron methyl involved hydrolysis to 2-ester-3-sulfonamide (which may chemically condense to yield thiophene sulfonimide) or non-specific esterase activity to yield thifensulfuron methyl acid. The tissue data did not indicate potential retention or accumulation of thifensulfuron methyl or its metabolites.

Rats were dosed with two radioactive forms of thifensulfuron methyl ($14_C$-thiophene and $14_C$-triazine). In the thiophene study, the thifensulfuron methyl was primarily excreted unchanged by rats following low dose (20 mg/kg), low dose following 21–days dietary preconditioning 100 ppm, and high dose (2,000 mg/kg) routines. From 70% to 85% of the excreted radioactivity was thifensulfuron methyl. The urine was the primary excretion route and contained from 71% to 92% of the original dose from the low and low-dose preconditioned groups. Combined urinary and fecal elimination was rapid, with over 90% of excretion completed by 48 hours after dosing for both low-dose groups. The high-dose group peak elimination was delayed by approximately 24 hours compared to the other dose levels. Tissue radioactivity levels were low at sacrifice (96 hours after dosing) for all dosing groups with no enhanced retention of radioactivity by any organ or tissue. Mass spectral analysis confirmed thifensulfuron methyl as the primary radiolabeled excretion product. Structural confirmation was also obtained for the 2-ester-3-sulfonamide metabolite. In the triazine study, thifensulfuron methyl was excreted primarily unchanged in urine and feces by male and female rats after administration of approximately 2,000 mg/kg by oral gavage. Urine was the primary route of excretion, averaging 58.7% of the dose in males and 75.5% in females. Fecal excretion of the dose averaged 21.2% for the male rats and 15.8% for the females. Greater than 50% of the dose was excreted by 48 hours post-dosing. Essentially no elimination of the dose as radiolabeled $CO_2$ or volatile compounds occurred. These results are similar to those reported on the thiophene-labeled thifensulfuron methyl. Intact thifensulfuron methyl was identified by mass spectrometry as the principal radioactive compound in urine (>94%) and feces (>77%). Three minor metabolites, each less than 3% of the dose, were identified in urine and feces by chromatographic retention comparison; they were thifensulfuron methyl acid, O-Demethyl thifensulfuron methyl, and triazine amine.

Results from a metabolism study with two radioactive forms of thifensulfuron methyl ($14_C$-triazine and $14_C$-thiophene) in lactating goats show that most of the dosed radioactivity was rapidly excreted (primarily in the urine) and recovered as intact thifensulfuron methyl. Radioactivity in the milk (0.1-0.2 ppm) was comprised of mostly intact thifensulfuron methyl and a small amount of triazine amine and several very minor metabolites. Radioactivity did not accumulate in the tissues. After its absorption, the major metabolic pathway involved cleavage of the carboxyl ester linkage, resulting in the formation of thifensulfuron methyl acid. Oxidative O-demethylation occurred to a limited extent.

There were no significant levels of unique plant metabolites of thifensulfuron methyl found in food or feed products at crop maturity. Hence, toxicity testing of other degradation products of thifensulfuron methyl is not needed.

7. *Metabolite toxicology.* There is no evidence that the metabolites of thifensulfuron methyl as identified in either the plant or animal metabolism studies are of any toxicological significance.

8. *Endocrine disruption.* No special studies investigating potential estrogenic or other endocrine effects of thifensulfuron methyl have been conducted. However, the standard battery of required toxicology studies has been completed. These include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure to doses that far exceed likely human exposures. Based on these studies there is no evidence to suggest that thifensulfuron methyl has an adverse effect on the endocrine system.

*C. Aggregate Exposure*

1. *Dietary exposure.* The chronic reference dose (RfD) of 0.013 mg/kg/day is based on the NOEL of 1.25 mg/kg/day from a 2–year rat feeding study and a 100X safety factor. The acute RfD of 1.59 mg/kg/ day is based on the NOEL of 159

mg/kg/day from a rat developmental study and a 100X safety factor.

i. *Food*—a. Chronic dietary exposure assessment dietary exposure, resulting from the proposed use of thifensulfuron methyl on barley, canola, cotton, flax, field corn, oats, soybeans and wheat, is well within the acceptable limits for all sectors of the population, as predicted by both the Chronic and Acute Modules of the Dietary Exposure Evaluation Model (DEEM™, Novigen Sciences, Inc., 1999 Version 6.74). The percentage or proportion of a crop that is treated can have a significant effect on the exposure profile. In this case, it was assumed for the crop that 100% was treated with thifensulfuron methyl. Based on a comparison with the use profile for most other herbicides, this is an extremely conservative estimate.

The predicted chronic exposure for the U.S. population subgroup was 0.000140 milligrams/kilogram body weight/day (mg/kg bwt/day). The population subgroup with the highest predicted level of chronic exposure was the non-nursing infants subgroup with an exposure of 0.000382 mg/kg bwt/day. Based on a chronic NOEL of 1.25 mg/kg bwt/day and a 100–fold safety factor, the chronic reference dose (cRfD) would be 0.013 mg/kg bwt/day. For the U.S. population, the predicted exposure is equivalent to 1.1% of the cRfD. For the population subgroup with the highest level of exposure (non-nursing infants), the exposure would be equivalent to 2.9% of the cRfD. Because the predicted exposures, expressed as percentages of the cRfD, are well below 100%, there is reasonable certainty that no chronic effects would result from dietary exposure to thifensulfuron methyl.

b. *Acute dietary exposure.* The predicted acute exposure for the U.S. population subgroup was 0.000364 mg/kg bwt/day (95$^{th}$ percentile). The population subgroup with the highest predicted level of acute exposure was the non-nursing infants subgroup with an exposure of 0.000846 mg/kg bwt/day (95$^{th}$ percentile). Based on an acute NOEL of 159 mg/kg bwt/day and a 100–fold safety factor, the acute reference dose (aRfD) would be 1.59 mg/kg bwt/day. For the U.S. population the predicted exposure (at the 95$^{th}$ percentile) is equivalent to 0.02% of the aRfD. For the population subgroup with the highest level of exposure (non-nursing infants subgroup), the exposure (at the 95$_{th}$ percentile) would be equivalent to 0.05% of the aRfD. Because the predicted exposures, expressed as percentages of the aRfD, are well below 100%, there is reasonable certainty that no acute effects would result from dietary exposure to thifensulfuron methyl.

ii. *Drinking water.* Surface water exposure was estimated using the Generic Expected Environmental Concentration (GENEEC) model. Ground water exposures were estimated using Screening Concentration in Ground water (SCI-GROW).

EPA uses drinking water levels of comparison (DWLOCs) as a surrogate measure to capture risk associated with exposure to pesticides in drinking water. A DWLOC is the concentration of a pesticide in drinking water that would be acceptable as an upper limit in light of total aggregate exposure to that pesticide from food, water, and residential uses. A DWLOC will vary depending on the residue level in foods, the toxicity endpoint and with drinking water consumption patterns and body weights for specific subpopulations.

The acute DWLOCs are 56 ppm (parts per million) for the U.S. population and 16 ppm for the subpopulation with the highest exposure (non-nursing infants). The estimated maximum concentration of thifensulfuron methyl in surface water (1.2 ppb or parts per billion) derived from GENEEC is much lower than the acute DWLOCs. Therefore, one can conclude with reasonable certainty, that residues of thifensulfuron methyl in drinking water do not contribute significantly to the aggregate acute human health risk.

The chronic DWLOCs are 0.45 ppm for the U.S. population and 0.13 ppm for the subpopulation with the highest exposure (non-nursing infants). These DWLOC values are substantially higher than the GENEEC 56–day estimated environmental concentration of 0.65 ppb for thifensulfuron methyl in surface water. Therefore, one can conclude with reasonable certainty, that residues of thifensulfuron methyl in drinking water do not contribute significantly to the aggregate chronic human health risk.

2. *Non-dietary exposure.* Thifensulfuron methyl is not registered for any use which could result in non-occupational or non-dietary exposure to the general population.

*D. Cumulative Effects*

Thifensulfuron methyl belongs to the sulfonylurea class of crop protection chemicals. Other structurally similar compounds in this class are registered herbicides. However, the herbicidal activity of sulfonylureas is due to the inhibition of acetolactate synthase (ALS), an enzyme found only in plants. This enzyme is part of the biosynthesis pathway leading to the formation of branched chain amino acids. Animals lack ALS and this biosynthetic pathway. This lack of ALS contributes to the relatively low toxicity of sulfonylurea herbicides in animals. There is no reliable information that would indicate or suggest that thifensulfuron methyl has any toxic effects on mammals that would be cumulative with those of any other chemical.

*E. Safety Determination*

1. *U.S. population.* Thifensulfuron methyl is the active ingredient in two DuPont herbicides with new proposed uses on the following commercial crops: Imazethapyr tolerant canola, cotton and CDC triffid flax. There are no residential uses for any thifensulfuron methyl containing herbicides. Based on data and information submitted by DuPont, EPA previously determined that the establishment of tolerances of thifensulfuron methyl on the following raw agricultural commodities would protect the public health, including the health of infants and children:

- Barley: grain, straw
- Oats: grain, straw
- Wheat: grain, straw
- Field corn: grain, fodder
- Soybeans
- Forage

Establishment of new tolerances for thifensulfuron methyl on canola seed at 0.02 ppm, cotton seed at 0.02 ppm, cotton gin trash at 0.02 ppm, and flax at 0.02 ppm will not adversely impact public health.

Based on the completeness and reliability of the toxicology data base and using the conservative assumptions presented earlier, EPA has established an RfD of 0.013 mg/kg/day. This was based on the NOEL for the chronic rat study, females (1.25 mg/kg/day) and a 100–fold safety factor. It has been concluded, that the aggregate exposure was approximately 1.1% of the RfD. Generally, exposures below 100% of the RfD are of no concern because it represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risk to human health. Thus, there is reasonable certainty that no harm will result from aggregate exposures to thifensulfuron methyl residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of thifensulfuron methyl, data from the previously discussed developmental and, multigeneration reproductive toxicity studies were considered.

Developmental studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to

reproductive and other effects on adults and offspring from prenatal and postnatal exposures to the pesticide. The studies with thifensulfuron methyl demonstrated no evidence of developmental toxicity at exposures below those causing maternal toxicity. This indicates that developing animals are not more sensitive to the effects of thifensulfuron methyl administration than adults.

FFDCA section 408 provides that EPA may apply an additional uncertainty factor for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base. Based on current toxicological data requirements, the data base for thifensulfuron methyl relative to prenatal and postnatal effects for children is complete. In addition, the NOEL of 1.25 mg/kg/day in the chronic rat study (and upon which the RfD is based) is much lower than the NOELs defined in the reproduction and developmental toxicology studies. The sub-population with the highest level of exposure was non-nursing infants (<1 yr), where exposure was less than 1% of the RfD. Based on these conservative analyses, there is reasonable certainty that no harm will result to infants and children from aggregate exposures to thifensulfuron methyl.

*F. International Tolerances*

The MRL in Canada for thifensulfuron methyl on canola is 0.1 ppm. No Mexican or Codex MRLs exist for thifensulfuron methyl on canola. There are no Canadian, Mexican or codex MRLs for thifensulfuron methyl on cotton and flax.

[FR Doc. 04–15212 Filed 7–6–04; 8:45 am]
BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–2004–0102; FRL–7368–5]**

## Approval of Test Marketing Exemption for a Certain New Chemical

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–04–5. The test marketing conditions are described in the TME application and in this notice.

**DATES:** Approval of this TME is effective June 29, 2004.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), 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*: Adella Watson, CCD (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9364; e-mail address: *watson.adella@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed in particular to the chemical manufacturer and/or importer who submitted the TME to EPA. This action may, however, be of interest to the public in general. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2004–0102. 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. What is the Agency's Authority for Taking this Action?

Section 5(h)(1) of TSCA and 40 CFR 720.38 authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes, if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

### III. What Action is the Agency Taking?

EPA approves the above-referenced TME. EPA has determined that test marketing the new chemical substance, under the conditions set out in the TME application and in this notice, will not present any unreasonable risk of injury to health or the environment.

### IV. What Restrictions Apply to this TME?

The test market time period, production volume, number of customers, and use must not exceed specifications in the application and this notice. All other conditions and restrictions described in the application and in this notice must also be met.

**TME–04–05**

*Date of Receipt*: May 14, 2004.

*Notice of Receipt*: June 14, 2004 (69 FR 33015) (FRL–7365–3).

*Applicant*: CBI.

*Chemical*: (G) reaction products of fatty acids and hydroxy acids.

*Use*: (G) colored coatings and related vehicles

*Production Volume*: CBI.

*Number of Customers*: CBI.

*Test Marketing Period*: CBI.

The following additional restrictions apply to this TME. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11. of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

**V. What was EPA's Risk Assessment for this TME?**

EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

**VI. Can EPA Change Its Decision on this TME in the Future?**

Yes. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

**List of Subjects**

Environmental protection, Test marketing exemptions.

Dated: June 29, 2004.

**Anna Coutlakis,**

*Acting Chief, New Chemicals Prenotice Management Branch, Office of Pollution Prevention and Toxics.*

[FR Doc. 04–15351 Filed 7–6–04 8:45 am]

BILLING CODE 6560–50–S

## FARM CREDIT ADMINISTRATION

### Sunshine Act; Farm Credit Administration Board; Regular Meeting

**AGENCY:** Farm Credit Administration.

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

**DATE AND TIME:** The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 15, 2004, from 9 a.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

**Open Session**

*A. Approval of Minutes*

- June 10, 2004 (Open).

*B. Reports*

- Young, Beginning and Small (YBS) Farmers and Ranchers Results for 2003.

*C. New Business—Other*

- Amendments to the Articles of Incorporation for the Farm Credit Leasing Services Corporation.

**Closed Session***

*Reports*

- 2003 Audit of the FCS Building Association.
- FCS Building Association Personnel Matter.

*Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(2), (6), and (8).

Dated: July 2, 2004.

**Jeanette C. Brinkley,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 04–15565 Filed 7–2–04; 2:48 pm]

BILLING CODE 6705–01–P

## FEDERAL COMMUNICATIONS COMMISSION

**[WT Docket No. 01–309; FCC 03–168]**

### Exemption of Public Mobile Service Phones From the Hearing Aid Compatibility; Public Information Collection Approved by Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; approval of reporting requirement(s).

**SUMMARY:** The Federal Communications Commission has received Office of Management and Budget (OMB) approval for the revised public information collection, Exemption of Public Mobile Service Phones from the Hearing Aid Compatibility Act, WT Docket No. 01–309, OMB Control Number 3060–0999. Therefore, the Commission announces that the revised information collection, OMB Control No. 3060–0999, and the associated reporting requirement(s) pursuant to the authority of sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 303, 308, 309(j), 310, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 308, 309(j), 310 and 610 are effective July 7, 2004.

**DATES:** The reporting requirement(s) are effective July 7, 2004.

**SUPPLEMENTARY INFORMATION:** The Federal Communications Commission has received OMB approval for the revised information collection in Exemption of Public Mobile Service Phones from the Hearing Aid Compatibility Act, WT Docket No. 01–309, OMB Control Number 3060–0999. Through this document, the Commission announces that it received this approval on June 8, 2004; OMB Control No. 3060–0999. The effective date for this collection and associated reporting requirement(s), pursuant to the authority of sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 303, 308, 309(j), 310, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 308, 309(j), 310 and 610, is July 7, 2004.

Pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, an agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control number and expiration date should be directed to Judith Boley-Herman, Federal Communications Commission, (202) 418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04–15394 Filed 7–6–04; 8:45 am]

BILLING CODE 6712–01–P

**FEDERAL COMMUNICATIONS COMMISSION**

**Sunshine Act Meeting; Open Commission Meeting, Thursday, July 8, 2004**

July 1, 2004.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, July 8, 2004, which is scheduled to commence at in Room TW–C305, at 445 12th Street, SW., Washington, DC.

| Item No. | Bureau | Subject |
|---|---|---|
| 1 | Consumer & Governmental Affairs | The Consumer & Governmental Affairs Bureau will present a report on the Commission's Lands of Opportunity: Building Rural Connectivity" outreach initiative that is designed to ensure all Americans living in rural areas have access to affordable and quality telecommunications services. |
| 2 | Office of Engineering and Technology | *Title:* Modification of Parts 2 and 15 of the Commission's Rules for unlicensed devices and equipment approval (ET Docket No. 03–201).<br>*Summary:* The Commission will consider a Report and Order concerning changes to several technical rules for unlicensed radiofrequency devices contained in Parts 0, 2, and 15. |
| 3 | Wireless Telecommunications | *Title:* Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services (WT Docket No. 02–381); 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services (WT Docket No. 01–14); and Increasing Flexibility to Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and to Facilitate Capital Formation (WT Docket No. 03–202).<br>*Summary:* The Commission will consider a Report and Order and Further Notice of Proposed Rulemaking concerning deployment of wireless services in rural areas. |
| 4 | Wireless Telecommunications | *Title:* Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Deployment of Secondary Markets (WT Docket No. 00–230).<br>*Summary:* The Commission will consider a Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking concerning policies and procedures to promote the development of secondary markets in wireless radio spectrum usage rights. |
| 5 | Wireline Competition | *Title:* Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01–338).<br>*Summary:* The Commission will consider a Second Report and Order concerning the reinterpretation of section 252(i) of the Communications Act of 1934, as amended. |
| 6 | Wireless Telecommunications; Office of Engineering and Technology, | *Title:* Improving Public Safety Communications in the 800 MHz Band (WT Docket No. 02–55); Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels (WT Docket No. 02–55); Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems (ET Docket No. 00–258); Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service (RM–9498); Petition for Rule Making of UT Starcom, Inc., Concerning the Unlicensed Personal Communications Service (RM–10024); Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile Satellite Service (ET Docket No. 95–18). Related orders implement changes in other bands made necessary to facilitate 800 MHz band reconfiguration.<br>*Summary:* The Commission will consider a Report and Order, Fifth Report and Order, Memorandum Opinion and Order, and Order concerning reconfiguring the 800 MHz band to abate interference being encountered by public safety communications systems and other 800 MHz systems that do not employ cellular architecture. |

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events web page at *http://www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu.* Audio and video tapes of this meeting can be purchased from CACI Productions, 341 Victory Drive, Herndon, VA 20170, (703) 834–1470, Ext. 19; Fax (703) 834–0111.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Best Copy and Printing, Inc. may be reached by e-mail at *FCC@BCPIWEB.com.*

Federal Communications Commission.
**Marlene H. Dortch,**
*Secretary.*
[FR Doc. 04–15538 Filed 7–2–04; 1:10 pm]
**BILLING CODE 6712–01–P**

## FEDERAL HOUSING FINANCE BOARD

**[No. 2004–N–10]**

### Federal Home Loan Bank Members Selected for Community Support Review

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Notice.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2004–05 second quarter review cycle under the Finance Board's community support requirements regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to the Finance Board.

**DATES:** Bank members selected for the 2004–05 second quarter review cycle under the Finance Board's community support requirements regulation must submit completed Community Support Statements to the Finance Board on or before August 20, 2004.

**ADDRESSES:** Bank members selected for the 2004–05 second quarter review cycle under the Finance Board's community support requirements regulation must submit completed Community Support Statements to the Finance Board either by regular mail at the Federal Housing Finance Board, Office of Supervision, Community Investment and Affordable Housing, 1777 F Street, NW., Washington, DC 20006, or by electronic mail at *FITZGERALDE@FHFB.GOV*.

**FOR FURTHER INFORMATION CONTACT:** Emma J. Fitzgerald, Program Analyst, Office of Supervision; Community Investment and Affordable Housing, by telephone at 202/408–2874, by electronic mail at *FITZGERALDE@FHFB.GOV*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:**

#### I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.*, and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to section 10(g) of the Bank Act, the Finance Board has promulgated a community support requirements regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR part 944. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 944.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 944.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 944.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 944.2(a). The Finance Board will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the August 20, 2004 deadline prescribed in this notice. 12 CFR 944.2(b)(1)(ii) and (c). On or before July 23, 2004, each Bank will notify the members in its district that have been selected for the 2004–05 second quarter community support review cycle that they must complete and submit to the Finance Board by the deadline a Community Support Statement. 12 CFR 944.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form, which also is available on the Finance Board's web site: *WWW.FHFB.GOV*. Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

The Finance Board has selected the following members for the 2004–05 second quarter community support review cycle:

**Federal Home Loan Bank of Boston—District 1**

| | | |
|---|---|---|
| Superior Savings of New England, N.A. | Branford | Connecticut. |
| Enfield Federal Savings and Loan Association | Enfield | Connecticut. |
| Essex Savings Bank | Essex | Connecticut. |
| First City Bank | New Britain | Connecticut. |
| Citizens Bank | New London | Connecticut. |
| Auburn Savings & Loan Association | Auburn | Maine. |
| First National Bank of Bar Harbor | Bar Harbor | Maine. |
| First FS&LA of Bath | Bath | Maine. |
| Aroostook County FS&LA | Caribou | Maine. |
| Kennebunk Savings Bank | Kennebunk | Maine. |
| Portland Regional Federal Credit Union | Portland | Maine. |
| Skowhegan Savings Bank | Skowhegan | Maine. |
| Kennebec Federal Savings | Waterville | Maine. |
| North Middlesex Savings Bank | Ayer | Massachusetts. |
| Investors Bank & Trust Company | Boston | Massachusetts. |
| First Trade Union Bank | Boston | Massachusetts. |
| Boston Private Bank & Trust Company | Boston | Massachusetts. |
| First Federal Savings Bank of Boston | Boston | Massachusetts. |
| Peoples Federal Savings Bank | Brighton | Massachusetts. |
| East Cambridge Savings Bank | Cambridge | Massachusetts. |

| | | |
|---|---|---|
| Cambridge Savings Bank | Cambridge | Massachusetts. |
| Dedham Institution for Savings | Dedham | Massachusetts. |
| Eagle Bank | Everett | Massachusetts. |
| Citizens-Union Savings Bank | Fall River | Massachusetts. |
| Foxboro Federal Savings | Foxboro | Massachusetts. |
| Georgetown Savings Bank | Georgetown | Massachusetts. |
| Hyde Park Savings Bank | Hyde Park | Massachusetts. |
| Marblehead Savings Bank | Marblehead | Massachusetts. |
| Medford Co-operative Bank | Medford | Massachusetts. |
| Plymouth Savings Bank | Middleborough | Massachusetts. |
| Millbury Savings Bank | Millbury | Massachusetts. |
| Monson Savings Bank | Monson | Massachusetts. |
| Lawrence Savings Bank | North Andover | Massachusetts. |
| The Cooperative Bank | Roslindale | Massachusetts. |
| Saugusbank, a co-operative bank | Saugus | Massachusetts. |
| Scituate Federal Savings Bank | Scituate | Massachusetts. |
| Middlesex Federal Savings, F.A. | Somerville | Massachusetts. |
| Spencer Savings Bank | Spencer | Massachusetts. |
| Hampden Savings Bank | Springfield | Massachusetts. |
| Bristol County Savings Bank | Taunton | Massachusetts. |
| The Savings Bank | Wakefield | Massachusetts. |
| Federal Savings Bank | Dover | New Hampshire. |
| Franklin Savings Bank | Franklin | New Hampshire. |
| Meredith Village Savings Bank | Meredith | New Hampshire. |
| Salem Co-operative Bank | Salem | New Hampshire. |
| First Brandon National Bank | Brandon | Vermont. |
| Randolph National Bank | Randolph | Vermont. |

**Federal Home Loan Bank of New York—District 2**

| | | |
|---|---|---|
| Pamrapo Savings Bank | Bayonne | New Jersey. |
| Farmers & Mechanics Bank | Burlington | New Jersey. |
| Freehold Savings & Loan Association | Freehold | New Jersey. |
| Spencer Savings Bank, SLA | Garfield | New Jersey. |
| GSL Savings Bank | Guttenberg | New Jersey. |
| Oritani Savings Bank | Hackensack | New Jersey. |
| Investors Savings Bank | Millburn | New Jersey. |
| Millington Savings Bank | Millington | New Jersey. |
| Ocean City Home Bank | Ocean City | New Jersey. |
| Amboy National Bank | Old Bridge | New Jersey. |
| OceanFirst Bank | Tom Rivers | New Jersey. |
| First Savings Bank | Woodbridge | New Jersey. |
| Bath National Bank | Bath | New York. |
| Brooklyn Federal Savings Bank | Brooklyn | New York. |
| Canisteo Federal Savings and Loan Association | Canisteo | New York. |
| Elmira Savings & Loan, F.A. | Elmira | New York. |
| The National Bank of Geneva | Geneva | New York. |
| Glens Falls National Bank and Trust Company | Glens Falls | New York. |
| Maple City Savings, FSB | Hornell | New York. |
| Sunnyside FS&LA of Irvington | Irvington | New York. |
| The Lyons National Bank | Lyons | New York. |
| Maspeth Federal Savings and Loan Association | Maspeth | New York. |
| Massena Savings & Loan Association | Massena | New York. |
| Cross County Federal Savings Bank | Middle Village | New York. |
| Provident Bank | Montebello | New York. |
| The Berkshire Bank | New York | New York. |
| Carver Federal Savings | New York | New York. |
| The Upstate National Bank | Ogdensburg | New York. |
| First Tier Bank & Trust | Olean | New York. |
| Wilber National Bank | Oneonta | New York. |
| Union State Bank | Orangeburg | New York. |
| Saratoga National Bank & Trust Company | Saratoga Springs | New York. |
| The National Bank of Stamford | Stamford | New York. |

**Federal Home Loan Bank of Pittsburgh—District 3**

| | | |
|---|---|---|
| Delaware National Bank | Georgetown | Delaware. |
| Artisans' Bank | Wilmington | Delaware. |
| Laurel Savings Bank | Allison Park | Pennsylvania. |
| Investment Savings Bank | Altoona | Pennsylvania. |
| Reliance Savings Bank | Altoona | Pennsylvania. |
| Peoples Home Savings Bank | Beaver Falls | Pennsylvania. |
| Keystone Savings Bank | Bethlehem | Pennsylvania. |
| Columbia County Farmers National Bank | Bloomsburg | Pennsylvania. |

| | | |
|---|---|---|
| The Bryn Mawr Trust Company | Bryn Mawr | Pennsylvania. |
| Citizens National Bank of Evans City PA | Butler | Pennsylvania. |
| Commerce Bank/Harrisburg, N.A. | Camp Hill | Pennsylvania. |
| Community Bank, N.A. | Carmichaels | Pennsylvania. |
| Charleroi Federal Savings Bank | Charleroi | Pennsylvania. |
| FirsTrust Bank | Conshohocken | Pennsylvania. |
| Armstrong County Building & Loan Association | Ford City | Pennsylvania. |
| Greenville Savings Bank | Greenville | Pennsylvania. |
| Fulton Bank | Lancaster | Pennsylvania. |
| Citizens National Bank | Lansford | Pennsylvania. |
| Westmoreland FS&LA of Latrobe | Latrobe | Pennsylvania. |
| Mifflin County Savings Bank | Lewistown | Pennsylvania. |
| First Citizens National Bank | Mansfield | Pennsylvania. |
| The First National Bank of Mifflintown | Mifflintown | Pennsylvania. |
| First Federal Savings Bank | Monessen | Pennsylvania. |
| Parkvale Savings Bank | Monroeville | Pennsylvania. |
| Community State Bank of Orbisonia | Orbisonia | Pennsylvania. |
| Prudential Savings Bank | Philadelphia | Pennsylvania. |
| Beneficial Savings Bank | Philadelphia | Pennsylvania. |
| First Republic Bank | Philadelphia | Pennsylvania. |
| West View Savings Bank | Pittsburgh | Pennsylvania. |
| NorthSide Bank | Pittsburgh | Pennsylvania. |
| Liberty Savings Bank, F.S.B. | Pottsville | Pennsylvania. |
| Elk County Savings & Loan Association | Ridgway | Pennsylvania. |
| Sewickley Savings Bank | Sewickley | Pennsylvania. |
| Keystone State Savings Bank | Sharpsburg | Pennsylvania. |
| The First National Bank of Slippery Rock | Slippery Rock | Pennsylvania. |
| Union National Bank and Trust Company | Souderton | Pennsylvania. |
| East Stroudsburg Savings Association | Stroudsburg | Pennsylvania. |
| Washington Federal Savings Bank | Washington | Pennsylvania. |
| First FS&LA of Greene County | Waynesburg | Pennsylvania. |
| Citizens & Northern Bank | Wellsboro | Pennsylvania. |
| First Sentry Bank | Huntington | West Virginia. |
| Huntington Federal Savings Bank | Huntington | West Virginia. |
| Doolin Security Savings Bank FSB | New Martinsville | West Virginia. |
| United Bank, Inc. | Parkersburg | West Virginia. |
| First FS&LA of Ravenswood | Ravenswood | West Virginia. |
| First Federal Savings Bank | Sistersville | West Virginia. |
| Capon Valley Bank | Wardensville | West Virginia. |
| Williamstown National Bank | Williamstown | West Virginia. |

**Federal Home Loan Bank of Atlanta—District 4**

| | | |
|---|---|---|
| Brantley Bank and Trust Company | Brantley | Alabama. |
| Robertson Banking Company | Demopolis | Alabama. |
| The Citizens Bank | Greensboro | Alabama. |
| Security Federal Savings Bank | Jasper | Alabama. |
| Gulf Federal Bank, a FSB | Mobile | Alabama. |
| The Citizens Bank | Moulton | Alabama. |
| Phenix-Girard Bank | Phenix City | Alabama. |
| The Bank of Vernon | Vernon | Alabama. |
| Bank of Wedowee | Wedowee | Alabama. |
| Bank of Belle Glade | Belle Glade | Florida. |
| Community Bank of Manatee | Bradenton | Florida. |
| Florida Citizens Bank | Gainesville | Florida. |
| Peoples State Bank of Groveland | Groveland | Florida. |
| Florida Bank, N.A. | Jacksonville | Florida. |
| First State Bank of Florida Keys | Key West | Florida. |
| Peoples Community Bank | Malone | Florida. |
| Commercebank, N.A. | Miami | Florida. |
| International Finance Bank | Miami | Florida. |
| Charlotte State Bank | Port Charlotte | Florida. |
| Bank of St. Augustine | St. Augustine | Florida. |
| Cornerstone Bank | Atlanta | Georgia. |
| The Claxton Bank | Claxton | Georgia |
| Central Bank and Trust | Cordele | Georgia. |
| Chestatee State Bank | Dawsonville | Georgia. |
| Colony Bank Southeast | Douglas | Georgia. |
| Bank of Eastman | Eastman | Georgia. |
| Gilmer County Bank | Ellijay | Georgia. |
| Capital Bank | Fort Oglethorpe | Georgia. |
| Bank of Hiawassee | Hiawassee | Georgia. |
| Farmers State Bank | Lincolnton | Georgia. |
| Peoples Bank | Lyons | Georgia. |

| | | |
|---|---|---|
| Mount Vernon Bank | Mt. Vernon | Georgia. |
| The Citizens Bank | Nashville | Georgia. |
| Colony Bank Wilcox | Rochelle | Georgia. |
| Greater Rome Bank | Rome | Georgia. |
| Georgia Central Bank | Social Circle | Georgia. |
| Citizens Security Bank | Tifton | Georgia. |
| Community First Bank | Baltimore | Maryland. |
| Mercantile Safe Deposit and Trust Company | Baltimore | Maryland. |
| Easton Bank and Trust Company | Easton | Maryland. |
| Jarrettsville Federal S&L Association | Jarrettsville | Maryland. |
| Maryland Bank and Trust Company | Lexington Park | Maryland. |
| First National Bank of North East | North East | Maryland. |
| Colombo Bank | Rockville | Maryland. |
| United Community Bank | Brevard | North Carolina. |
| The East Carolina Bank | Engelhard | North Carolina. |
| Catawba Valley Bank | Hickory | North Carolina. |
| First Bank | Troy | North Carolina. |
| Sandhills Bank | Bethune | South Carolina. |
| The Peoples Bank | Iva | South Carolina. |
| The Palmetto Bank | Laurens | South Carolina. |
| Beach First National Bank | Myrtle Beach | South Carolina. |
| The Citizens Bank | Olanta | South Carolina. |
| First State Bank | Danville | Virginia. |
| Powell Valley National Bank | Jonesville | Virginia. |
| The Bank of Charlotte County | Phenix | Virginia. |
| Valley Bank | Roanoke | Virginia. |

**Federal Home Loan Bank of Cincinnati—District 5**

| | | |
|---|---|---|
| Bank of Edmonson County | Brownsville | Kentucky. |
| United Citizens Bank & Trust Company | Campbellsburg | Kentucky. |
| Citizens Bank & Trust Company | Campbellsville | Kentucky. |
| Farmers and Traders Bank of Campton | Campton | Kentucky. |
| Carrollton Federal Savings and Loan Association | Carrollton | Kentucky. |
| The First National Bank of Central City | Central City | Kentucky. |
| First Community Bank of Western Kentucky | Clinton | Kentucky. |
| Clinton Bank | Clinton | Kentucky. |
| The Farmers National Bank of Cynthiana | Cynthiana | Kentucky. |
| Central Kentucky Federal Savings and Loan Assn | Danville | Kentucky. |
| United Kentucky Bank of Pendleton County | Falmouth | Kentucky. |
| State Bank & Trust Company | Harrodsburg | Kentucky. |
| First Financial Bank | Harrodsburg | Kentucky. |
| First Federal Savings & Loan Association | Hazard | Kentucky. |
| The Citizens National Bank | Lebanon | Kentucky. |
| Home Federal Bank Corporation | Middlesboro | Kentucky. |
| Peoples Bank Mt. Washington | Mt. Washington | Kentucky. |
| First Bank and Trust Company | Princeton | Kentucky. |
| Liberty National Bank | Ada | Ohio. |
| Peoples Savings and Loan Company | Bucyrus | Ohio. |
| First Safety Bank | Cincinnati | Ohio. |
| The Provident Bank | Cincinnati | Ohio. |
| The Clifton Heights Loan and Building Company | Cincinnati | Ohio. |
| The Savings Bank | Circleville | Ohio. |
| The Peoples Bank Company | Coldwater | Ohio. |
| First City Bank | Columbus | Ohio. |
| The Cortland Savings and Banking Company | Cortland | Ohio. |
| Ohio Heritage Bank | Coshocton | Ohio. |
| Valley Savings Bank | Cuyahoga Falls | Ohio. |
| First Federal Bank of the Midwest | Defiance | Ohio. |
| Fidelity Federal Savings and Loan Association | Delaware | Ohio. |
| Heartland Bank | Gahanna | Ohio. |
| Home Building and Loan Company | Greenfield | Ohio. |
| Greenville Federal Savings and Loan Association | Greenville | Ohio. |
| Lawrence Federal Savings Bank | Ironton | Ohio. |
| Liberty Federal Savings and Loan Association | Ironton | Ohio. |
| Ohio River Bank | Ironton | Ohio. |
| The Home Savings and Loan Co. of Kenton, Ohio | Kenton | Ohio. |
| Kingston National Bank | Kingston | Ohio. |
| The Citizens Bank of Logan | Logan | Ohio. |
| The Mechanics Savings Bank | Mansfield | Ohio. |
| Peoples Bank, National Association | Marietta | Ohio. |
| The Middlefield Banking Company | Middlefield | Ohio. |
| The Nelsonville Home and Savings Association | Nelsonville | Ohio. |
| First FS&LA of Newark | Newark | Ohio. |

| | | |
|---|---|---|
| The National Bank of Oak Harbor | Oak Harbor | Ohio. |
| The Valley Central Savings Bank | Reading | Ohio. |
| The Citizens Banking Company | Sandusky | Ohio. |
| Peoples FS&LA of Sidney | Sidney | Ohio. |
| Commodore Bank | Somerset | Ohio. |
| Monroe Federal Savings and Loan Association | Tipp City | Ohio. |
| Van Wert Federal Savings Bank | Van Wert | Ohio. |
| Home Savings Bank | Wapakoneta | Ohio. |
| The Waterford Commercial and Savings Bank | Waterford | Ohio. |
| Adams County Building and Loan Company | West Union | Ohio. |
| Bank of Bartlett | Bartlett | Tennessee. |
| The Bank of Bolivar | Bolivar | Tennessee. |
| Farmers & Merchants Bank | Clarksville | Tennessee. |
| Farmers and Merchants Bank | Dyer | Tennessee. |
| First Citizens National Bank of Dyersburg | Dyersburg | Tennessee. |
| Elizabethton Federal Savings Bank | Elizabethton | Tennessee. |
| Progressive Savings Bank, F.S.B. | Jamestown | Tennessee. |
| Home Federal Bank of Tennessee | Knoxville | Tennessee. |
| Volunteer Federal Savings & Loan Association | Madisonville | Tennessee. |
| Jefferson Federal Savings and Loan Association | Morristown | Tennessee. |
| TNBANK | Oak Ridge | Tennessee. |
| Citizens Community Bank | Winchester | Tennessee |

**Federal Home Loan Bank of Indianapolis—District 6**

| | | |
|---|---|---|
| First Federal Savings Bank—Angola | Angola | Indiana. |
| Peoples FSB of Dekalb County | Auburn | Indiana. |
| Peoples Federal Savings Bank | Aurora | Indiana. |
| Farmers and Mechanics FS & LA | Bloomfield | Indiana. |
| The First State Bank | Bourbon | Indiana. |
| Home Federal Bank | Columbus | Indiana. |
| Community First Bank | Corydon | Indiana. |
| Old National Bank | Evansville | Indiana. |
| Farmers Bank | Frankfort | Indiana. |
| Newton County Loan & SA of Goodland | Goodland | Indiana. |
| First Federal Savings & Loan of Greensburg | Greensburg | Indiana. |
| Lake FS & LA of Hammond | Hammond | Indiana. |
| HFS Bank, FSB | Hobart | Indiana. |
| Security Federal Savings Bank | Logansport | Indiana. |
| City Savings Bank | Michigan City | Indiana. |
| The First National Bank of Monterey | Monterey | Indiana. |
| Mutual FSB | Muncie | Indiana. |
| First Merchants Bank, N.A. | Muncie | Indiana. |
| American Savings, FSB | Munster | Indiana. |
| Community Bank | Noblesville | Indiana. |
| The First National Bank of Odon | Odon | Indiana. |
| Lincoln Bank | Plainfield | Indiana. |
| Scottsburg Building & Loan Association | Scottsburg | Indiana. |
| Owen Community Bank, s.b. | Spencer | Indiana. |
| First Farmers State Bank | Sullivan | Indiana. |
| Peoples Community Bank | Tell City | Indiana. |
| First Financial Bank | Terre Haute | Indiana. |
| First FSB of Wabash | Wabash | Indiana. |
| First FS & LA | Washington | Indiana. |
| Peoples Bank | Washington | Indiana. |
| Bank of Wolcott | Wolcott | Indiana. |
| First Federal of Northern Michigan | Alpena | Michigan. |
| Bay Port State Bank | Bay Port | Michigan. |
| Farmers State Bank Breckenridge | Breckenridge | Michigan. |
| Eaton Federal Savings Bank | Charlotte | Michigan. |
| Huron Community Bank | East Tawas | Michigan. |
| Hastings City Bank | Hastings | Michigan. |
| Kalamazoo County State Bank | Schoolcraft | Michigan. |
| Franklin Bank | Southfield | Michigan. |
| First National Bank of St. Ignace | St. Ignace | Michigan. |
| Northwestern Bank | Traverse City | Michigan. |

**Federal Home Loan Bank of Chicago—District 7**

| | | |
|---|---|---|
| Cornerstone Bank & Trust, N.A. | Alton | Illinois. |
| First National Bank of Jonesboro | Anna | Illinois. |
| West Pointe Bank and Trust Company | Belleville | Illinois. |
| Belvidere National Bank and Trust Company | Belvidere | Illinois. |
| Citizens Savings Bank | Bloomington | Illinois. |

| | | |
|---|---|---|
| American Enterprise Bank | Buffalo Grove | Illinois. |
| Farmers State Bank of Camp Point | Camp Point | Illinois. |
| Central Illinois Bank | Champaign | Illinois. |
| First Federal Savings Bank of Champaign-Urbana | Champaign | Illinois. |
| Charleston Federal Savings & Loan Association | Charleston | Illinois. |
| Broadway Bank | Chicago | Illinois. |
| Lincoln Park Savings Bank | Chicago | Illinois. |
| Fidelity Federal Savings Bank | Chicago | Illinois |
| 1st Security Federal Savings Bank | Chicago | Illinois. |
| Mutual Federal Savings and Loan | Chicago | Illinois. |
| Central FS&LA of Chicago | Chicago | Illinois. |
| Liberty Bank for Savings | Chicago | Illinois. |
| Columbus Savings Bank | Chicago | Illinois. |
| Collinsville Building and Loan Association | Collinsville | Illinois. |
| Home Federal Savings & Loan Association | Collinsville | Illinois. |
| Hickory Point Bank & Trust, Fsb | Decatur | Illinois. |
| CoVest Banc, National Association | Des Plaines | Illinois. |
| First Federal Savings and Loan | Edwardsville | Illinois. |
| Forreston State Bank | Forreston | Illinois. |
| Central Bank Fulton | Fulton | Illinois. |
| Glenview State Bank | Glenview | Illinois. |
| Guardian Savings Bank FSB | Granite City | Illinois. |
| First National Bank of Grant Park | Grant Park | Illinois. |
| The Granville National Bank | Granville | Illinois. |
| The Bradford National Bank of Greenville | Greenville | Illinois. |
| The Havana National Bank | Havana | Illinois. |
| Herrin Security Bank | Herrin | Illinois. |
| CIB Bank | Hillside | Illinois. |
| South End Savings, s.b. | Homewood | Illinois. |
| Eureka Savings Bank | La Salle | Illinois. |
| First State Bank of Western Illinois | LaHarpe | Illinois. |
| First National Bank of Illinois | Lansing | Illinois. |
| Lisle Savings Bank | Lisle | Illinois. |
| First National Bank of Litchfield | Litchfield | Illinois. |
| West Suburban Bank | Lombard | Illinois. |
| First Security Bank | Mackinaw | Illinois. |
| First National Bank of Manhattan | Manhattan | Illinois. |
| Milford Building & Loan Association | Milford | Illinois. |
| Nashville Savings Bank | Nashville | Illinois. |
| Northview Bank & Trust | Northfield | Illinois. |
| Illini State Bank | Oglesby | Illinois. |
| The Poplar Grove State Bank | Poplar Grove | Illinois. |
| Citizens First National Bank | Princeton | Illinois. |
| First Robinson Savings Bank, NA | Robinson | Illinois. |
| Alpine Bank | Rockford | Illinois. |
| First FS&LA of Shelbyville, IL | Shelbyville | Illinois. |
| The First National Bank | Vandalia | Illinois. |
| International Bank of Amherst | Amherst | Wisconsin. |
| First National Bank of Bangor | Bangor | Wisconsin. |
| Bank of Brodhead | Brodhead | Wisconsin. |
| Bank of Deerfield | Deerfield | Wisconsin. |
| Fox Valley Savings | Fond du Lac | Wisconsin. |
| National Exchange Bank & Trust | Fond du Lac | Wisconsin. |
| Continental Savings Bank, S.A. | Greenfield | Wisconsin. |
| ISB Community Bank | Ionia | Wisconsin. |
| Ladysmith Federal Savings & Loan | Ladysmith | Wisconsin. |
| First Federal Capital Bank | La Crosse | Wisconsin. |
| Markesan State Bank | Markesan | Wisconsin. |
| Fidelity National Bank | Medford | Wisconsin. |
| Merrill Federal Savings and Loan Association | Merrill | Wisconsin. |
| Guaranty Bank, F.S.B. | Milwaukee | Wisconsin. |
| Bank of Elmwood | Racine | Wisconsin. |
| Heritage Bank | Spencer | Wisconsin. |
| First Bank of Tomah | Tomah | Wisconsin. |
| Farmers State Bank of Waupaca | Waupaca | Wisconsin. |
| Paper City Savings Association | Wisconsin Rapids | Wisconsin. |

**Federal Home Loan Bank of Des Moines—District 8**

| | | |
|---|---|---|
| Citizens Savings Bank | Anamosa | Iowa. |
| Community State Bank, N.A. | Ankeny | Iowa. |
| Ashton State Bank | Ashton | Iowa. |
| Atkins Savings Bank & Trust | Atkins | Iowa. |
| MidwestOne Bank | Burlington | Iowa. |

| | | |
|---|---|---|
| Iowa Trust and Savings Bank | Centerville | Iowa. |
| First Security Bank and Trust | Charles City | Iowa. |
| Page County Federal Savings Association | Clarinda | Iowa. |
| First Federal Savings Bank of Creston, F.S.B. | Creston | Iowa. |
| Principal Bank | Des Moines | Iowa. |
| Fidelity Bank & Trust | Dyersville | Iowa. |
| Community Savings Bank | Edgewood | Iowa. |
| First American Bank | Fort Dodge | Iowa. |
| Hampton State Bank | Hampton | Iowa. |
| Independence Federal Bank for Savings | Independence | Iowa. |
| Farmers & Merchants Savings Bank | Iowa City | Iowa. |
| First Community Bank | Keokuk | Iowa. |
| Keokuk Savings Bank & Trust Company | Keokuk | Iowa. |
| Keystone Savings Bank | Keystone | Iowa. |
| Iowa State Savings Bank | Knoxville | Iowa. |
| Cedar Valley Bank & Trust | La Porte City | Iowa. |
| United Community Bank | Milford | Iowa. |
| New Albin Savings Bank | New Albin | Iowa. |
| City State Bank | Norwalk | Iowa. |
| Northwestern State Bank of Orange City | Orange City | Iowa. |
| Clarke County State Bank | Osceola | Iowa. |
| Bank Iowa | Oskaloosa | Iowa. |
| First Trust and Savings Bank | Oxford | Iowa. |
| Citizens State Bank | Pocahontas | Iowa. |
| Citizens Bank | Sac City | Iowa. |
| American State Bank | Sioux Center | Iowa. |
| Solon State Bank | Solon | Iowa. |
| Northwest Federal Savings Bank | Spencer | Iowa. |
| First Federal Savings Bank of the Midwest | Storm Lake | Iowa. |
| Randall-Story State Bank | Story City | Iowa. |
| Waukee State Bank | Waukee | Iowa. |
| West Liberty State Bank | West Liberty | Iowa. |
| Viking Savings Association, F.A. | Alexandria | Minnesota. |
| Northern National Bank | Baxter | Minnesota. |
| First State Bank of Bigfork | Bigfork | Minnesota. |
| Brainerd Savings & Loan Association, A F.A. | Brainerd | Minnesota. |
| The Oakley National Bank of Buffalo | Buffalo | Minnesota. |
| State Bank in Eden Valley | Eden Valley | Minnesota. |
| Bank Midwest, MN, IA, N.A. | Fairmont | Minnesota. |
| The State Bank of Faribault | Faribault | Minnesota. |
| The First National Bank of Menahga | Menahga | Minnesota. |
| TCF National Bank | Minneapolis | Minnesota. |
| The First National Bank of Osakis | Osakis | Minnesota. |
| First National Bank | Plainview | Minnesota. |
| First Minnesota Bank, NA | Shorewood | Minnesota. |
| Citizens Independent Bank | St. Louis Park | Minnesota. |
| First National Bank of St. Peter | St. Peter | Minnesota. |
| Minnwest Bank South | Tracy | Minnesota. |
| Queen City Federal Savings Bank | Virginia | Minnesota. |
| Missouri Federal Savings Bank | Cameron | Missouri. |
| Southwest Missouri Bank | Carthage | Missouri. |
| North American Savings Bank, FSB | Grandview | Missouri. |
| MCM Savings Bank, F.S.B. | Hannibal | Missouri. |
| First Bank | Hazelwood | Missouri. |
| First Federal Bank, F.S.B. | Kansas City | Missouri. |
| Liberty Savings Bank, FSB | Liberty | Missouri. |
| Clay County Savings Bank | Liberty | Missouri. |
| First Home Savings Bank | Mountain Grove | Missouri. |
| Home S&LA of Norborne, F.A. | Norborne | Missouri. |
| Southern Missouri Bank & Trust Company | Poplar Bluff | Missouri. |
| Central Federal Savings and Loan Association | Rolla | Missouri. |
| Montgomery Bank | Sikeston | Missouri. |
| Guaranty Bank | Springfield | Missouri. |
| Midwest FS&LA of St. Joseph | St. Joseph | Missouri. |
| Bremen Bank and Trust Company | St. Louis | Missouri. |
| Southern Commercial Bank | St. Louis | Missouri. |
| Starion Financial | Bismarck | North Dakota. |
| The Ramsey NB&TC of Devils Lake | Devils Lake | North Dakota. |
| American State Bank & Trust of Dickinson | Dickinson | North Dakota. |
| Security State Bank | Dunseith | North Dakota. |
| Alerus Financial | Grand Forks | North Dakota. |
| The National Bank of Harvey | Harvey | North Dakota. |
| Dacotah Bank | Aberdeen | South Dakota. |
| First Federal Bank | Beresford | South Dakota. |

| | | |
|---|---|---|
| First Savings Bank | Beresford | South Dakota. |
| First National Bank in Brookings | Brookings | South Dakota. |
| Bryant State Bank | Bryant | South Dakota. |
| First Western Federal Savings Bank | Rapid City | South Dakota. |

**Federal Home Loan Bank of Dallas—District 9**

| | | |
|---|---|---|
| First National Banking Company | Ash Flat | Arkansas. |
| Arkansas National Bank | Bentonville | Arkansas. |
| Heartland Community Bank | Camden | Arkansas. |
| Corning Savings and Loan Association | Corning | Arkansas. |
| Arkansas Diamond Bank | Glenwood | Arkansas. |
| First Arkansas Bank & Trust | Jacksonville | Arkansas. |
| First Community Bank | Jonesboro | Arkansas. |
| Arkansas Bankers' Bank | Little Rock | Arkansas. |
| Diamond State Bank | Murfreesboro | Arkansas. |
| First National Bank | Paragould | Arkansas. |
| Bank of Rogers | Rogers | Arkansas. |
| The Bank of Star City | Star City | Arkansas. |
| Bank of Waldron | Waldron | Arkansas. |
| First National Bank USA | Boutte | Louisiana. |
| Citizens Progressive Bank | Columbia | Louisiana. |
| Beauregard Federal Savings Bank | DeRidder | Louisiana. |
| Home Bank | Lafayette | Louisiana. |
| First Federal Bank of Louisiana | Lake Charles | Louisiana. |
| Bank of New Orleans | Metairie | Louisiana. |
| Minden Building and Loan Association | Minden | Louisiana. |
| Dryades Savings Bank, FSB | New Orleans | Louisiana. |
| Fifth District Savings & Loan Association | New Orleans | Louisiana. |
| Union Savings and Loan Association | New Orleans | Louisiana. |
| Plaquemine Bank & Trust Company | Plaquemine | Louisiana. |
| Rayne Building and Loan Association | Rayne | Louisiana. |
| Citizens Bank and Trust Company | Springhill | Louisiana. |
| Statewide Bank | Terrytown | Louisiana. |
| First National Bank of Lucedale | Lucedale | Mississippi. |
| First National Bank | Pontotoc | Mississippi. |
| Central Bank For Savings | Winona | Mississippi. |
| Alamogordo Federal Savings & Loan Association | Alamogordo | New Mexico. |
| Charter Bank | Albuquerque | New Mexico. |
| First National Bank | Artesia | New Mexico. |
| The First National Bank of New Mexico | Clayton | New Mexico. |
| First National Bank in Las Vegas | Las Vegas | New Mexico. |
| First Federal Bank | Roswell | New Mexico. |
| Alamo Bank of Texas | Alamo | Texas. |
| Firstbank Southwest, National Association | Amarillo | Texas. |
| Southwest Securities Bank | Arlington | Texas. |
| Affiliated Bank, FSB | Bedford | Texas. |
| Brenham National Bank | Brenham | Texas. |
| Texas Bank | Brownwood | Texas. |
| The First State Bank | Celina | Texas. |
| The First National Bank of Chillicothe | Chillicothe | Texas. |
| First Bank of West Texas | Coahoma | Texas. |
| The First State Bank | Columbus | Texas. |
| First Bank of Conroe, N.A | Conroe | Texas. |
| First Commerce Bank | Corpus Christi | Texas. |
| Citizens National Bank | Crockett | Texas. |
| Cuero State Bank, s.s.b. | Cuero | Texas. |
| Dalhart Federal Savings and Loan Association | Dalhart | Texas. |
| Preston National Bank | Dallas | Texas. |
| Colonial Savings, F.A | Fort Worth | Texas. |
| Citizens National Bank | Fort Worth | Texas. |
| Guaranty National Bank Financial, N.A | Gainesville | Texas. |
| National Bank | Gatesville | Texas. |
| Houston Community Bank, N.A | Houston | Texas. |
| Justin State Bank | Justin | Texas. |
| City National Bank | Kilgore | Texas. |
| Farmers & Merchants State Bank | Krum | Texas. |
| Fayette Savings Bank, ssb | La Grange | Texas. |
| National Bank & Trust | La Grange | Texas. |
| Commerce Bank | Laredo | Texas. |
| Falcon National Bank | Laredo | Texas. |
| East Texas Professional Credit Union | Longview | Texas. |
| TX Bank & Trust Company | Longview | Texas. |
| First State Bank of Louise | Louise | Texas. |

| | | |
|---|---|---|
| First Bank & Trust Company | Lubbock | Texas. |
| Lubbock National Bank | Lubbock | Texas. |
| Gladewater National Bank | Mesquite | Texas. |
| First National Bank of Mount Vernon, Texas | Mount Vernon | Texas. |
| First National Bank in Munday | Munday | Texas. |
| The Morris County National Bank | Naples | Texas. |
| Peoples National Bank | Paris | Texas. |
| First Federal Community Bank | Paris | Texas. |
| Gulf Coast Educators FCU | Pasadena | Texas. |
| Point Bank, N.A. | Pilot Point | Texas. |
| Pilgrim Bank | Pittsburg | Texas. |
| Wood County National Bank | Quitman | Texas. |
| Robert Lee State Bank | Robert Lee | Texas. |
| Intercontinental National Bank | San Antonio | Texas. |
| Balcones Bank, SSB | San Marcos | Texas. |
| Citizens State Bank | Sealy | Texas. |
| Southern National Bank of Texas | Sugar Land | Texas. |
| American National Bank of Texas | Terrell | Texas. |
| Citizens 1st Bank | Tyler | Texas. |
| Hill Bank & Trust Company | Weimar | Texas. |
| American National Bank | Wichita Falls | Texas. |
| Wilson State Bank | Wilson | Texas. |

**Federal Home Loan Bank of Topeka—District 10**

| | | |
|---|---|---|
| San Luis Valley Federal Bank | Alamosa | Colorado. |
| Collegiate Peaks Bank | Buena Vista | Colorado. |
| Pikes Peak National Bank | Colorado Springs | Colorado. |
| Vectra Bank Colorado, N.A. | Denver | Colorado. |
| Rocky Mountain Bank and Trust | Florence | Colorado. |
| First National Bank | Fort Collins | Colorado. |
| Community Banks of Colorado | Greenwood Village | Colorado. |
| Gunnison Savings and Loan Association | Gunnison | Colorado. |
| Rio Grande Savings and Loan Association | Monte Vista | Colorado. |
| Montrose Bank | Montrose | Colorado. |
| Peoples National Bank Monument | Monument | Colorado. |
| The First National Bank of Ordway | Ordway | Colorado. |
| Paonia State Bank | Paonia | Colorado. |
| Community Banks of Southern Colorado | Rocky Ford | Colorado. |
| Century Savings & Loan Association | Trinidad | Colorado. |
| Park State Bank & Trust | Woodland Park | Colorado. |
| Prairie State Bank | Augusta | Kansas. |
| First National Bank in Cimarron | Cimarron | Kansas. |
| Girard National Bank | Girard | Kansas. |
| Farmers Bank & Trust, N.A. | Great Bend | Kansas. |
| Golden Belt Bank, FSA | Hays | Kansas. |
| Central National Bank | Junction City | Kansas. |
| Argentine Federal Savings | Kansas City | Kansas. |
| Citizens Bank of Kansas, N.A. | Kingman | Kansas. |
| University National Bank | Lawrence | Kansas. |
| Mutual Savings Association, FSA | Leavenworth | Kansas. |
| The Citizens State Bank of Liberal, Kansas | Liberal | Kansas. |
| The Citizens State Bank | Moundridge | Kansas. |
| Midland National Bank | Newton | Kansas. |
| Bank of Blue Valley | Overland Park | Kansas. |
| Peabody State Bank | Peabody | Kansas. |
| Plains State Bank | Plains | Kansas. |
| Peoples Bank | Pratt | Kansas. |
| First Bank Kansas | Salina | Kansas. |
| Security Savings Bank, FSB | Salina | Kansas. |
| Stockton National Bank | Stockton | Kansas. |
| First National Bank | Syracuse | Kansas. |
| The Bank of Tescott | Tescott | Kansas. |
| Capitol Federal Savings | Topeka | Kansas. |
| Silver Lake Bank | Topeka | Kansas. |
| Kendall State Bank | Valley Falls | Kansas. |
| The Bank of Commerce & Trust Company | Wellington | Kansas. |
| Commerce Bank, N.A. | Wichita | Kansas. |
| Garden Plain State Bank | Wichita | Kansas. |
| Western Heritage Credit Union | Alliance | Nebraska. |
| Farmers & Merchants National Bank | Ashland | Nebraska. |
| Clarkson Bank | Clarkson | Nebraska. |
| Nebraska Energy Federal Credit Union | Columbus | Nebraska. |
| American Interstate Bank | Elkhorn | Nebraska. |

| | | |
|---|---|---|
| Genoa National Bank | Genoa | Nebraska. |
| United Nebraska Bank | Grand Island | Nebraska. |
| TierOne Bank | Lincoln | Nebraska. |
| Platte Valley National Bank | Morrill | Nebraska. |
| Otoe County Bank & Trust Company | Nebraska City | Nebraska. |
| The Nehawka Bank | Nehawka | Nebraska. |
| Enterprise Bank, NA | Omaha | Nebraska. |
| Platte Valley National Bank | Scottsbluff | Nebraska. |
| First National Bank | Sidney | Nebraska. |
| Anadarko Bank and Trust Company | Anadarko | Oklahoma. |
| Community Bank | Bristow | Oklahoma. |
| Oklahoma Bank & Trust Company | Clinton | Oklahoma. |
| American Bank of Oklahoma | Collinsville | Oklahoma. |
| Citizens Bank of Edmond | Edmond | Oklahoma. |
| First National Bank & Trust | Elk City | Oklahoma. |
| Bank of the Panhandle | Guymon | Oklahoma. |
| Legacy Bank | Hinton | Oklahoma. |
| McCurtain County National Bank | Idabel | Oklahoma. |
| The First State Bank | Keyes | Oklahoma. |
| City National Bank & Trust Company | Lawton | Oklahoma. |
| First State Bank of Porter | Locust Grove | Oklahoma. |
| First National Bank in Marlow | Marlow | Oklahoma. |
| Community National Bank of Okarche | Okarche | Oklahoma. |
| First National Bank in Okeene | Okeene | Oklahoma. |
| BancFirst | Oklahoma City | Oklahoma. |
| NBanc—OKC | Oklahoma City | Oklahoma. |
| The Bankers Bank | Oklahoma City | Oklahoma. |
| Citizens Bank & Trust Company | Okmulgee | Oklahoma. |
| The Okmulgee Savings and Loan Association | Okmulgee | Oklahoma. |
| Bank of the Lakes, N.A. | Owasso | Oklahoma. |
| The Farmers State Bank of Quinton | Quinton | Oklahoma. |
| First National Bank & Trust Company | Shawnee | Oklahoma. |
| Triad Bank, N.A. | Tulsa | Oklahoma. |
| Valley National Bank | Tulsa | Oklahoma. |
| The First National Bank & TC of Vinita | Vinita | Oklahoma. |

**Federal Home Loan Bank of San Francisco—District 11**

| | | |
|---|---|---|
| Pacific Premier Bank | Costa Mesa | California. |
| Fullerton Community Bank | Fullerton | California. |
| Western Financial Bank | Irvine | California. |
| Silvergate Bank | La Jolla | California. |
| Borrego Springs Bank, N.A. | La Mesa | California. |
| Broadway Federal Bank, f.s.b. | Los Angeles | California. |
| Monterey County Bank | Monterey | California. |
| Standard Savings Bank, FSB | Monterey Park | California. |
| Metropolitan Bank | Oakland | California. |
| Community Bank | Pasadena | California. |
| IndyMac Bank | Pasadena | California. |
| El Dorado Savings Bank | Placerville | California. |
| Sincere Federal Savings Bank | San Francisco | California. |
| East West Bank | San Marino | California. |
| First FS&LA of San Rafael | San Rafael | California. |
| First Federal Bank of California | Santa Monica | California. |
| National Bank of the Redwoods | Santa Rosa | California. |
| Sunwest Bank | Tustin | California. |
| Desert Community Bank | Victorville | California. |
| Washington Mutual Bank | Seattle | Washington. |

**Federal Home Loan Bank of Seattle—District 12**

| | | |
|---|---|---|
| First National Bank Alaska | Anchorage | Alaska. |
| Mt. McKinley Bank | Fairbanks | Alaska. |
| Bank of Guam | Hagatna | Guam. |
| American Savings Bank | Honolulu | Hawaii. |
| Mountain West Bank | Coeur D'Alene | Idaho. |
| Big Sky Western Bank | Bozeman | Montana. |
| First Security Bank of Bozeman | Bozeman | Montana. |
| Ravalli County Bank | Hamilton | Montana. |
| American Federal Savings Bank | Helena | Montana. |
| Glacier Bank | Kalispell | Montana. |
| First Security Bank of Malta | Malta | Montana. |
| Manhattan State Bank | Manhattan | Montana. |
| Stockman Bank of Montana | Miles City | Montana. |

| | | |
|---|---|---|
| Glacier Bank of Whitefish | Whitefish | Montana. |
| Bank of Astoria | Astoria | Oregon. |
| Bank of Salem | Salem | Oregon. |
| Columbia River Bank | The Dalles | Oregon. |
| Wells Fargo Bank Northwest, N.A. | Salt Lake City | Utah. |
| Cascade Bank | Everett | Washington. |
| Raymond Federal Savings Bank | Raymond | Washington. |
| Evergreen Bank | Seattle | Washington. |
| Washington Federal Savings | Seattle | Washington. |
| Sterling Savings Bank | Spokane | Washington. |
| Buffalo Federal Savings Bank | Buffalo | Wyoming. |
| Hilltop National Bank | Casper | Wyoming. |
| Big Horn Federal Savings Bank | Greybull | Wyoming. |

**II. Public Comments**

To encourage the submission of public comments on the community support performance of Bank members, on or before July 23, 2004, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2004–05 second quarter review cycle. 12 CFR 944.2(b)(2)(ii). In reviewing a member for community support compliance, the Finance Board will consider any public comments it has received concerning the member. 12 CFR 944.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 2004–05 second quarter review cycle must be delivered to the Finance Board on or before the August 20, 2004 deadline for submission of Community Support Statements.

Dated: June 29, 2004.

**Mark J. Tenhundfeld,**

*General Counsel.*

[FR Doc. 04–15276 Filed 7–6–04; 8:45 am]

BILLING CODE 6725–01–P

## FEDERAL MARITIME COMMISSION

**[Docket No. 04–07]**

### Trans-Net, Inc., v. FESCO Management Limited; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed by Trans-Net, Inc. ("Trans-Net") against FESCO Ocean Management Limited ("Respondent"). Complainant contends that Respondent violated sections 5; 10(a)(1), (2) and (3); 10(b)(1), (2)(A), and (3); 10(d)(1); and 19(a) and (b) of the Shipping Act of 1984, 46 U.S.C. app sections 1704; 1709(a)(1), (2) and (3); (b)(1), (2)(A) and (3), and (d)(1); 1718(a) and (b); and 46 CFR 535.901 of the Commission's regulations. Specifically, Complainant alleges that Respondent operated under and failed to file with the Commission a connecting carrier agreement; misrepresented its carrier status and implemented unlawful agreements to obtain ocean transportation at unpublished rates that were less than would otherwise apply; failed to operate in accordance with the terms and conditions of a space charter agreement on file with the Commission; failed to provide service in accordance with the rates, charges, classifications, rules, and practices contained in its tariff; engaged in retaliatory actions against Trans Net; failed to establish and maintain reasonable regulations and practices in connection with receiving, handling, storing, or delivering property; and operated as a non-vessel-operating common carrier without an ocean transportation intermediary license or proof of financial responsibility. As a direct result of these allegations, Complainant claims that it has suffered and will continue to suffer substantial ongoing economic damages and injury. Complainant seeks an order finding Respondent to have violated the Shipping Act and the Commission's regulations; directing Respondent to cease and desist; awarding reparations, including interest, and attorney's fees, and any other and further relief as the Commission may determine to be warranted.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by July 1, 2005 and a final decision of the Commission shall be issued by October 31, 2005.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 04–15429 Filed 7–6–04; 8:45 am]

BILLING CODE 6730–01–U

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Privacy and Confidentiality.

*Time and Date:*

July 14, 2004 9:00 a.m.–5 p.m.

July 15, 2004 8:30 a.m.–4 p.m.

*Place:* Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue, SW, Washington, DC.

*Status:* Open.

*Background:* The National Committee on Vital and Health Statistics is the statutory public advisory body to the Secretary of Health and Human Services in the area of health data, statistics, and health information policy. Established by section 306(k) of the Public Health Service Act (42 U.S.C. 242k(k)), its mandate includes advising the Secretary on the implementation of the Administrative Simplification provisions (Social Security Act, title IX, part C, 42 U.S.C. 1320d to 1320d–8) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104–191.

The NCVHS Subcommittee on Privacy and Confidentiality monitors developments in health information privacy and confidentiality on behalf of the full

Committee and makes recommendations to the full Committee so that it can advise the Secretary on implementation of the health information privacy provisions of HIPAA.

*Purpose:* This meeting of the Subcommittee on Privacy and Confidentiality will receive information on the implementation of the regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164), promulgated under the Health Insurance Portability and Accountability Act of 1996.

The regulation and further information about it can be found on the Web site of the Office for Civil Rights, at *http://www.hhs.gov/ocr/hipaa/*. The regulation has been in effect since April 14, 2001. Most entities covered by the regulation were required to come into compliance by April 14, 2003.

The first day of the meeting will be conducted as a hearing, in which the Subcommittee will gather information about the impact of the regulation on the use and disclosure of personal health information for marketing, and about the impact of the regulation on the use and disclosure of personal health information in the course of fund-raising actitivies by health care entities.

The Subcommittee will invite representatives of affected groups to provide information about how the regulation has affected the level of privacy and confidentiality for protected health information, best practices for implementation of the regulation, and information that might help to identify and resolve barriers to compliance. The format will include one or more invited panels and time for questions and discussion. The Subcommittee will ask the invited witnesses for examples of the effect the regulation has had on individuals and on entities subject to the regulation. The first day will also include a time period during which members of the public may deliver brief (3 minutes or less) oral public comment about the implementation of the regulation. To be included on the agenda, please contact Marietta Squire (301) 458–4524, by e-mail at *mrawlinson@cdc.gov*. or postal address at 3311 Toledo Road, Room 2340, Hyattsville, MD 20782 by August 12, 2004.

The second day of the meeting will be conducted in two parts. The first part will be a hearing in which the Subcommittee will gather information about the impact of the regulation on disclosure of personal health information to the press, and about the interaction between the regulation and freedom of information statutes. The Subcommittee will invite representatives of affected groups to provide information about how the regulation has affected the level of privacy and confidentiality for protected health information, best practices for implementation of the regulation, and information that might help to identify and resolve barriers to compliance. The second part will consist of Subcommittee discussion of the testimony it has heard and deliberations about possible recommendations to the Secretary.

Persons wishing to submit written testimony only (which should not exceed five double-spaced typewritten pages) should endeavor to submit it by that date. Unfilled slots for oral testimony will also be filled on the days of the meeting as time permits. Please consult Ms. Squire for further information about these arrangements.

Additional information about the hearing will be provided on the NCVHS Web site *http://www.ncvhs.hhs.gov*. shortly before the hearing date.

*Contact Person For More Information:* Information about the content of the hearing and matters to be considered may be obtained from John P. Fanning, Lead Staff Person for the NCVHS Subcommittee on Privacy and Confidentiality, Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Health Services, 440D Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, telephone (202) 690–5896, e-mail *john.p.fanning@hhs.gov*, or from Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 2413, Presidential Building IV, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone (301)458–4245.

Information about the committee, including summaries of past meetings and a roster of committee members, is available on the Committee's Web site at *http://www.ncvhs.hhs.gov*.

Dated: June 24, 2004.

**James Scanlon,**

*Acting Deputy Assistant Secretary for Science and Data Policy, OASPE.*

[FR Doc. 04–15299 Filed 7–6–04; 8:45 am]

BILLING CODE 4151–05–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Delegation of Authority; Correction

In the **Federal Register** document, DOCID:21jn04–50, appearing in the issue of Monday, June 21, 2004 at 69 FR 34373–34374, the fifth paragraph should reas as follows:

"This delegation is effective on July 1, 2004."

Dated: June 30, 2004.

**Ann C. Agnew,**

*Executive Secretariat, Department of Health and Human Services.*

[FR Doc. 04–15298 Filed 7–6–04; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration on Aging

### 2005 White House Conference on Aging Policy

**AGENCY:** Administration on Aging, HHS.

**ACTION:** Notice of meeting of the 2005 White House Conference on Aging Policy Committee.

**SUMMARY:** Pursuant to section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C. appendix 2), notice is hereby given that the Secretary has established the date and time for the initial meeting of the Policy Committee, 2005 White House Conference on Aging. 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 inform the contact person listed below in advance of the meeting.

Any interested person may file written comments with the Policy Committee by forwarding the statement to the contact person listed on this notice. The statement should include name, address, telephone number, e-mail address, and when applicable, the business or professional affiliation of the interested person.

**DATES:** The meeting will be held Wednesday, July 14, 2004, from 9 a.m. to 5 p.m. Because of scheduling conflicts, notice of this meeting is being given under-15 days.

**ADDRESSES:** The meeting will be held at the Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001, telephone: (202) 628–2100 or (800) 321–3010.

**FOR FURTHER INFORMATION CONTACT:** Mame Templeton, White House Conference on Aging, Administration on Aging, Department of Health and Human Services, Washington, DC 20201, 202–357–3514, *Mame.Templeton@aoa.gov*.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Older Americans Act Amendments of 2000 (Pub. L. 106–501, November 2000), the Policy Committee will meet initially to organize efforts towards pursuing its duties in support of the White House Conference on Aging and to begin discussions on the conference agenda.

Dated: June 30, 2004.

**Josefina G. Carbonell,**

*Assistant Secretary for Aging.*

[FR Doc. 04–15286 Filed 7–6–04; 8:45 am]

BILLING CODE 4154–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–04–JL]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, or to send comments contact Sandi Gambescia, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

Intervention Development to Increase Cervical Cancer Screening Among Mexican Women: Phase 2—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

**Background**

Differences in incidence of invasive cervical cancer exist among some minority populations. Among women older than 29 years cervical cancer incidence for Hispanic women is approximately twice that for non-Hispanic women. Papanicolaou (Pap) tests can help detect cervical cancer. Nevertheless, recent studies suggest that Hispanic women in the United States and Puerto Rico under-use cervical cancer screening tests. Additionally, survey data have shown that Hispanic women in the international border region of the United States under-utilize these Pap tests compared to non-Hispanic women in the same region. The need exists to increase Pap test screening among Hispanic women living in the United States.

The purpose of this project is to develop and validate a multi-component behavioral intervention to increase cervical cancer screening among U.S. and foreign-born Mexican women. The proposed study will use focus groups and personal interviews. There will be no cost to respondents.

ANNUALIZED BURDEN TABLE

| Respondents | Number of respondents | Number of responses per respondent | Average burden per responses (in hours) | Total burden hours |
|---|---|---|---|---|
| Mexican women ages 40–64 | 240 | 1 | 1.5 | 360 |
| Total | 240 | | | 360 |

Dated: June 28, 2004.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 04–15384 Filed 7–6–04; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–04–JK]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects, to obtain a copy of the data collection plans and instruments, or to send comments, contact Sandi Gambescia, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

Cardiovascular Health Branch (CVHB), Management Information System (MIS)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC)

The Cardiovascular Health Branch Management Information System will collect in electronic format: (a) Data needed to measure progress by State Heart Disease and Stroke Prevention Programs toward, or achievement of, program performance measures, and (b) information on State Heart Disease and Stroke Prevention Programs that is currently being reported in hard copy.

In 1998, the U.S. Congress provided funding for the Centers for Disease Control and Prevention (CDC) to initiate a national, state-based heart disease and stroke prevention program. CDC's strategic plan is to implement a comprehensive national heart disease and stroke prevention program that supports state-based programs in all states and territories. In 2003 under Program Announcement 02045, CDC's Cardiovascular Health Branch funded 32 states and the District of Columbia to address heart disease and stroke

selected through a competitive peer review process, and managed as CDC cooperative agreements. Awards are made for five years and may be renewed through a continuation application. This program is authorized under sections 301(a) and 317b(k)(2) of the Public Health Service (PHS) Act, [42 U.S.C. sections 241(a) and 247b(k)(2)], as amended.

All funded programs are required to submit continuation applications and semi-annual progress reports consistent with federal requirements that all agencies, in response to the Government Performance and Results Act of 1993, prepare performance plans and collect program-specific performance measures.

An Internet-based management information system (MIS) will allow CDC to monitor, and report on state Heart Disease and Stroke Prevention Programs more efficiently. Data reported to CDC through the MIS will be used by CDC to identify training and technical assistance needs, monitor compliance with cooperative agreement requirements, evaluate progress made in achieving program-specific goals, and obtain information needed to respond to Congressional and other inquiries regarding program activities and effectiveness. There are no costs to respondents.

ANNUALIZED BURDEN TABLE:

| Respondents | Number of respondents | Number of responses per respondent | Average burden per respondent (in hours) | Total burden hours |
|---|---|---|---|---|
| States and Washington, DC | 33 | 2 | 6 | 396 |
| Totals | 33 | | | 396 |

Dated: June 29, 2004.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 04–15385 Filed 7–6–04; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement Number 04100]**

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Prevention Epicenter Program—Microbiology Errors Associated With Processing Blood and Sterile Body Site Cultures—The Impact of New Forms of Antimicrobial Use, Resistance, Laboratory Methods, and Infection Control Practices on the Incidence of Clostridium Difficile and Associated Patient Morbidity and Healthcare Costs

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting: Prevention Epicenter Program—Microbiology Errors Associated with Processing Blood and Sterile Body Site Cultures—The Impact of New Forms of Antimicrobial Use, Resistance, Laboratory Methods, and Infection Control Practices on the Incidence of Clostridium difficile and Associated Patient Morbidity and Healthcare Costs, Program Announcement Number 04100.

*Name:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP).

*Times and Dates:* 8 a.m.–8:30 a.m., July 27, 2004 (Open). 8:45 a.m.–3:30 p.m., July 27, 2004 (Closed).

*Place:* Marriott Airport Hotel, 4711 Best Road, College Park, GA 30337, Telephone number 404–766–7900.

*Status:* Portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Pub. L. 92–463.

*Matters To Be Discussed:* The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement Number 04100.

*For Further Information Contact:* Trudy Messmer, Ph.D., Scientific Review Administrator, National Center for Infectious Diseases, CDC, 1600 Clifton Road, NE., MS–C19, Atlanta, GA 30333, Telephone 404–639–2176.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 29, 2004.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 04–15386 Filed 7–6–04; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement Number 04094]**

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Applied Research on Antimicrobial Resistance (AR): Estimates of Economic Cost for Antimicrobial Resistant Human Pathogens of Public Health Importance

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

*Name:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Applied Research on Antimicrobial Resistance (AR): Estimates of Economic cost for Antimicrobial Resistant Human Pathogens of Public Health Importance, Program Announcement Number 04094.

*Times and Dates:* 8:30 a.m.–9 a.m., July 28, 2004 (Open). 9:15 a.m.–5:30 p.m., July 28, 2004 (Closed)

*Place:* Marriott Airport Hotel, 4711 Best Road, College Park, GA 30337, Telephone Number 404–766–7900.

*Status:* Portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Pub. L. 92–463.

*Matters To Be Discussed:* The meeting will include the review, discussion, and evaluation of applications received in response to: Applied Research on Antimicrobial Resistance (AR): Estimates of Economic cost for Antimicrobial Resistant Human Pathogens of Public Health

Importance, Program Announcement Number 04094.

*For Further Information Contact:*

Trudy Messmer, Ph.D., Scientific Review Administrator, Centers for Disease Control, National Center for Infectious Diseases, 1600 Clifton Road NE., Mailstop C19, Atlanta, GA 30333, Telephone 404–639–2176.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 29, 2004.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 04–15387 Filed 7–6–04; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket Nos. 2003E–0405 and 2003E–0452]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; NEUTERSOL

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for NEUTERSOL and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of two applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of two patents which claim that animal drug product.

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

**FOR FURTHER INFORMATION CONTACT:** Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For animal drug products, the testing phase begins on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(j)) became effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(4)(B).

FDA recently approved for marketing the animal drug product NEUTERSOL (zinc gluconate). NEUTERSOL is indicated for chemical sterilization in 3- to 10-month-old male puppies. Subsequent to this approval, the Patent and Trademark Office received two patent term restoration applications for NEUTERSOL (U.S. Patent Nos. 5,070,808 and 4,937,234) from Technology Transfer, Inc., and the Patent and Trademark Office requested FDA's assistance in determining these patents' eligibility for patent term restoration. In a letter dated November 18, 2003, FDA advised the Patent and Trademark Office that this animal drug product had undergone a regulatory review period and that the approval of NEUTERSOL represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for NEUTERSOL is 4,222 days. Of this time, 4,188 days occurred during the testing phase of the regulatory review period, and 34 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(j)) involving this animal drug product became effective*: August 27, 1991. The applicant claims November 14, 1991, as the date the investigational new animal drug application (INAD) became effective. The applicant relied on this date based on a letter sent to the applicant by the document room on November 14, 1991 which provided the INAD number to the applicant. However, this letter was not intended to serve as an official acknowledgment of the INAD filing. FDA records indicate that the filing of a notice of claimed investigational exemption was August 27, 1991, which is considered to be the effective date for the INAD.

2. *The date the application was initially submitted with respect to the animal drug product under section 512(b) of the act*: February 12, 2003. The applicant claims February 10, 2003, as the date the new animal drug application (NADA) for NEUTERSOL (NADA 141–217) was initially submitted. However, FDA records reveal that NADA 141–217 was submitted on February 12, 2003.

3. *The date the application was approved*: March 17, 2003. FDA has verified the applicant's claim that NADA 141–217 was approved on March 17, 2003.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by September 7, 2004. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 3, 2005. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets

Management. Three copies of any mailed information are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 21, 2004.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. 04–15301 Filed 7–6–04; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003E–0251]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; DAPTACEL

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for DAPTACEL and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

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

**FOR FURTHER INFORMATION CONTACT:** Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biological product DAPTACEL (diptheria and tetanus toxoids and acellular pertussis vaccine adsorbed). DAPTACEL is indicated for active immunization against diptheria, tetanus, and pertussis in infants and children 6 weeks through 6 years of age (prior to seventh birthday). Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for DAPTACEL (U.S. Patent No. 5,667,787) from Aventis Pasteur, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated November 18, 2003, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of DAPTACEL represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for DAPTACEL is 3,591 days. Of this time, 1,415 days occurred during the testing phase of the regulatory review period, while 2,176 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: July 16, 1992. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on July 16, 1992.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262)*: May 30, 1996. The applicant claims May 29, 1996, as the date the product license application (BLA) for DAPTACEL (BLA 103666/0) was initially submitted. However, FDA records indicate that BLA 103666/0 was submitted on May 30, 1996.

3. *The date the application was approved*: May 14, 2002. FDA has verified the applicant's claim that BLA 103666/0 was approved on May 14, 2002.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 242 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by September 7, 2004. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 3, 2005. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 21, 2004.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. 04–15274 Filed 7–6–04; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003E–0257]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; Neotame

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for neotame and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that food additive.

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

**FOR FURTHER INFORMATION CONTACT:** Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For food additives, the testing phase begins when a major health or environmental effects test involving the food additive begins and runs until the approval phase begins. The approval phase starts with the initial submission of a petition requesting the issuance of a regulation for use of the food additive and continues until FDA grants permission to market the food additive. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a food additive will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(2)(B).

FDA recently approved for marketing the food additive neotame. Neotame is a nonnutritive sweetener in food. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for neotame (U.S. Patent No. 5,480,668) from The NutraSweet Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 16, 2003, FDA advised the Patent and Trademark Office that this food additive had undergone a regulatory review period and that the approval of neotame represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for neotame is 3,143 days. Of this time, 1,503 days occurred during the testing phase of the regulatory review period, 1,640 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a major health or environmental effects test ("test") involving this food additive was begun*: December 2, 1993. FDA has verified the applicant's claim that the test was begun on December 2, 1993.

2. *The date the petition requesting the issuance of a regulation for use of the additive ("petition") was initially submitted with respect to the food additive under section 409 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 348)*: January 12, 1998. The applicant claims December 17, 1997, as the date the petition for neotame was initially submitted; however, FDA records indicate that the petition was submitted on January 12, 1998.

3. *The date the petition became effective*: July 9, 2002. FDA has verified the applicant's claim that the regulation for the additive became effective/commercial marketing was permitted on July 9, 2002.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 973 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by September 7, 2004. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 3, 2005. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 21, 2004.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. 04–15275 Filed 7–6–04; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Cooperative Agreement to Support the National Alliance for Hispanic Health; Notice of Intent to Accept and Consider a Single Source Application; Availability of Funds for Fiscal Year 2004

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) announces its

intent to accept and consider a single source application (RFA–FDA–OC–04–01) for the awarding of a Cooperative Agreement to the National Alliance for Hispanic Health (the Alliance). The purpose of the agreement is to empower consumers to improve their health by providing better consumer health information; ensure that health information available to consumers is clear, informative, and effective; leverage opportunities to eliminate health disparities in subpopulations; respond to the health promotion and disease prevention objectives of the Department of Health and Human Services (HHS) "Healthy People 2010" document; and improve health literacy for Hispanic Americans. FDA anticipates providing $65,000 (direct and indirect costs) in fiscal year (FY) 2004 in support of this project. Subject to the availability of funds and successful performance, 2 additional years of support up to $65,000 per year (direct and indirect) will be available.

**DATES:** Submit applications by August 6, 2004.

**ADDRESSES:** Submit completed applications to Sheila Gale, Division of Contracts and Grants Management (HFA–531), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7109, FAX: 301–827–7101, or e-mail: *sgale@oc.fda.gov*. If the application is hand-carried or commercially delivered, it should be addressed to 5630 Fishers Lane, rm. 2129, Rockville, MD 20857. Applications will be accepted during normal business hours, 8 a.m. to 4:30 p.m., Monday through Friday.

The application forms are also available either from Sheila Gale (see **ADDRESSES**) or via the Internet at *http://grants.nih.gov/grants/funding/phs398/phs398/html*. (FDA has verified the Web site address, but we are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.) Do not send the application to the Center for Scientific Research, National Institutes of Health (NIH). An application not received by FDA in time for orderly processing will be returned to the applicant without consideration. Please note that FDA is unable to receive applications electronically.

**FOR FURTHER INFORMATION CONTACT:**

*Regarding the administrative and financial management aspects of this notice*: Sheila Gale (see **ADDRESSES**).

*Regarding the programmatic aspects*: Mary C. Hitch, Office of External Relations (HF–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4406, or e-mail: *mhitch@oc.fda.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

FDA is announcing its intention to accept and consider a single source application from the Alliance for the support of a cooperative agreement to improve the health of the American Hispanic population by providing better consumer health information and ensuring the health information available to this consumer group is clear, informative, and effective. FDA authority to enter into grants and cooperative agreements is set out in section 1704 of the Public Health Service Act (42 U.S.C. 300u-3). This program is described in the Catalog of Federal Domestic Assistance No. 93.245. Before entering into cooperative agreements, FDA carefully considers the benefits such agreements will provide to the public. This application is not subject to review under Executive Order 12372, Intergovernmental Review of Federal Programs (45 CFR part 100).

FDA is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national effort to reduce morbidity and mortality and improve quality of life. Applicants may obtain a paper copy of the "Healthy People 2010" objectives, volumes I and II, for $70 ($87.50 foreign) S/N017–000–00550–9, by writing to the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Telephone orders can be placed to 202–512–2250. The document is also available in CD–ROM format, S/N/017–001–00549–5 for $19 ($23.50 foreign) as well as on the Internet at *http://www.healthypeople.gov* under "Publications."

## II. Background

The Alliance, a nonprofit entity as described in section 501(c)3 of the Internal Revenue Code of 1968, is the oldest and largest network of Hispanic health and human service providers for the target population. The Alliance is an umbrella organization that serves more than 400 national and community-based organizations and other health professionals who deliver quality health and human services to more than 12 million Hispanic health consumers every year. The Alliance is a recognized leader within Hispanic communities and works with foundations, corporations, government agencies, universities, and private industry in carrying out its mission with the objective of improving the health status of Hispanic and minority populations.

For 30 years, the Alliance has been an active partner with FDA and its efforts to meet the FDA's mission in Hispanic communities. The Alliance has been extensively involved in FDA programs by serving on FDA advisory committees as consumer and health professional representatives. The Alliance partnered with FDA in the development, translation, adaptation, and distribution of consumer educational campaign materials. These bilingual (Spanish and English) materials have included: Video and print materials on nutrition labeling such as *Para Vivir Bien*, video and print materials on medication safety such as *Las Medicinas y Usted*, and development of a bilingual (Spanish and English) section for Hispanic consumers on the FDA Web site.

The Alliance worked with FDA in support of HHS' Hispanic Agenda for Action. The Alliance also worked with FDA and other U.S. Public Health Service (PHS) agencies to coordinate and manage the largest Hispanic health conference—The 1997 Health and Human Services National Hispanic Health Symposium. The symposium brought together over 500 Hispanic leaders and community-based organizations to develop a framework to involve Hispanic Americans in HHS programs. The Alliance also worked with FDA to tailor outreach programs in coordination with Hispanic to disseminate health information to the Hispanic community.

The Alliance has shown the unique capacity to work with academic institutions and health agencies on common education, service, and research endeavors focused on disease prevention and health promotion for minority, disadvantaged, and limited English proficient populations.

## III. Delineation of Substantive Involvement

Inherent in the cooperative agreement award is substantive involvement by the awarding agency. Accordingly, FDA will have substantive involvement in the programmatic activities of the entire project funded by this cooperative agreement. Substantive involvement includes, but is not limited, to the following items:

1. FDA will appoint a project officer or coproject officer, who will actively monitor the FDA-supported program under this award.

2. FDA will provide guidance, direction and technical assistance in developing the approach and methods that may be used by the recipient.

3. FDA will participate with the recipient to determine the scope of: (1) Consumer health literacy educational

electronic media and Web campaigns; (2) the design and development of consumer health literacy publications; (3) the methodology, scope, and interpretation of focus groups pre- and post-test health literacy messages; and (4) the utility of current consumer health literacy education materials.

4. FDA will have final approval of the methodology for behavioral research studies on disparities in health for Hispanic Americans, including protocol design, data analysis, interpretation of findings, and coauthorship of publications.

**IV. Goals and Objectives**

Through this cooperative agreement FDA seeks to support initiatives that will reach millions of consumers within the targeted population with credible health information by conducting culturally and linguistically appropriate public education initiatives through print and electronic media, help lines, the Internet, libraries, publication of bilingual patient and consumer health information materials (English and Spanish) and networks of community-based organizations.

**V. Availability of Funds**

It is anticipated that FDA will fund this cooperative agreement at a level of $65,000 (direct and indirect costs) for the first year award.

**VI. Length of Support**

The length of support will be 1 year with the possibility of an additional 2 years of noncompetitive support. Continuation beyond the first year will be based upon satisfactory performance during the preceding year, receipt of a noncompeting continuation application, and the availability of Federal FY appropriations.

**VII. Reason for Single Source Selection**

FDA believes that there is compelling evidence that the Alliance is uniquely qualified to fulfill the objectives of the proposed cooperative agreement. The Alliance is an established and recognized authority on Hispanic American health, health disparities, and health literacy needs. The Alliance has shown a unique capacity to enhance health literacy. The Alliance has accomplished the following:

- Developed a nationally recognized center for health information for health professionals and Hispanic consumers. The center includes development and operation of a toll-free national bilingual (Spanish and English) telephone help line that provides health information to callers, drawing from a regularly updated resource of over 16,000 community health providers. The center also reviews bilingual health information materials for accuracy and timeliness;
- Provided valuable information and leadership through their trademark Provider Information Training and Technical Assistance Network program. This program trains health care professionals on how to work more effectively with minority, disadvantaged and limited English proficient populations;
- Established a capacity to deliver family-focused services to Hispanic communities, including the trademarked Strengthening Families bilingual family support and health education program;
- Developed a substantial portfolio of health promotion and disease prevention programs that deal extensively with Hispanic health issues within local communities. Through this initiative, the Alliance supports a network of local agencies that: Provide a foundation on which to develop, promote, and conduct community-based education; support health professional programs aimed at preventing and reducing unnecessary morbidity and health disparities among Hispanic populations. These initiatives support the HHS "Healthy People 2010" goals;
- Assessed and evaluated the current education, research, and disease prevention and health promotion programs for member organizations, affiliated groups and Hispanic subpopulations;
- Developed a critical knowledge base of essential disease prevention, health promotion, and research evaluation strategies that are necessary for any health intervention dealing with Hispanic Americans;
- Developed a national organization whose members have the collective capacity to conduct sponsored research;
- Reached millions of consumers within the targeted population with credible health information by conducting culturally and linguistically appropriate public education initiatives such as: (1) A national health information telephone help line; (2) an interactive health Web site that features Web broadcasts of Spanish language radio shows on Hispanic health topics; (3) an extensive bilingual consumer library; (4) publication of bilingual patient and consumer health information materials (English and Spanish); and (5) outreach through the Alliance Reporter (the official national newsletter) and a network of community media (television, radio, and print) and organizations;
- Supported health care providers in their efforts to deliver quality services by providing guidance on social service needs such as translation services, cultural proficiency education, and professional development on meeting the unique health needs of Hispanics;
- Supported a database of community-based organizations, health care providers and researchers with the capacity to reach and meet the needs of Hispanics in the United States; and
- Improved and promoted scientific research by collecting and upgrading proprietary health data.

**VIII. Submission Requirements**

The original and two copies of the completed grant application form PHS 398 (rev. 5/01) with copies of the appendices for each of the copies should be delivered to Sheila Gale (see **ADDRESSES**). The outside of the mailing package should be labeled "Response to RFA–FDA–OC–04–1". No supplemental or addendum material will be accepted after the receipt date. Information collection requirements requested on Form PHS 398 and the instruction have been submitted by the PHS to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925–001.

Data and information included in the application, if identified by the applicant as trade secret or confidential commercial information will be given treatment as such to the extent permitted by the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

**IX. Reporting Requirements**

An annual Standard Form (SF) 269, Financial Status Report (FSR), is required. An original and two copies of the Standard Form 269, Financial Status Report (FSR), must be submitted within 90 days after the end of the budget period. An original and two copies of the progress reports must be submitted on a quarterly basis no later than 30 days after each quarter. An annual progress report is also required. The noncompeting continuation application (PHS2590) will be considered the annual program progress report. A final program progress report, FSR, and invention statement must be submitted within 90 days after expiration of the project period of the cooperative agreement.

In addition, the principal investigator will be required to present the progress of the study at an annual FDA extramural research review workshop in Washington, DC. The application should specifically request travel costs

for this requirement in the budget section of the application.

**X. Review Procedures and Evaluation Criteria**

*A. Review Procedures*

The application submitted by the Alliance will initially be reviewed by grants management and program staff for responsiveness. To be considered, an application must meet the following requirements: (1) Be received by the specified due date; (2) be submitted in accordance with section VIII "Submission Requirements" of this document; (3) not exceed the $65,000 (direct and indirect) for each year requested; (4) address the specific program goals and objectives; and (5) bear the original signatures of both the principal investigator and the organization's authorized official. The application will be considered nonresponsive if it is not in compliance with this document. If the application is found to be nonresponsive, the application will be returned to the applicant without further consideration.

The application submitted by the Alliance will undergo a dual peer review. The application will be reviewed first for scientific and technical merit by an ad hoc panel of experts in areas associated with consumer health information and promotion and disease prevention. If the application is recommended for approval, it will then be presented to the National Advisory Environmental Health Sciences Council for their concurrence.

*B. Review Criteria*

The application will be reviewed and evaluated according to the following criteria:

Factor 1: Background (15 percent)

*Applicant*: (1) Demonstrated knowledge of the health literacy problem and health care needs in the Hispanic community; (2) documented outcomes of past efforts with the target population; and (3) proposed geographic locations to be served by the proposed program.

Factor 2: Approach (45 percent)

*Applicant*: (1) Describes an acceptable plan of action with details on how the proposed work will be performed, including a timeline, listing of other involved organizations, consultants and key individuals who will work on the project and a short description about their efforts or contributions to the proposed program; (2) identifies the results and benefits to be gained by the Hispanic community; (3) describes the expected program contributions from providing suitable health information toward improving health literacy and eliminating health disparities in the Hispanic community; and (4) describes how the proposed program meets the following proposed objectives:

- To empower consumers to improve their health by providing better health information; and
- To ensure that health information is clear, informative, effective, and accessible by the Hispanic community.

Factor 3: Management Plan (20 percent)

Applicant's demonstrated capability to manage the program as determined by the following: (1) Qualification and experience of proposed staff or requirements for "to be hired" staff, proposed staff effort, management experience of the organization related to the proposed program; (2) support and established network to conduct the proposed program; and (3) evaluate the program as determined by the thoroughness, feasibility and appropriateness of the proposed program evaluation design, and data collection and analysis procedures.

Factor 4: Budget and Budget Justification (20 Points)

*Applicant*: Proposed program costs are reasonable and based on activities to be carried out and the expected program outcomes.

**XI. Mechanism of Support**

Support for this project will be in the form of a cooperative agreement. This agreement will be subject to all policies and requirements that govern the research grant programs of the PHS, including the provisions of 42 CFR part 52, 45 CFR part 74, and PHS Grants Policy Statement. The regulations issued under Executive Order 12372 do not apply. The length of support will be up to 3 years. Cost sharing or matching is not a requirement of this program. The NIH modular grant program does not apply to this FDA program.

**XII. Dun and Bradstreet Number (DUNS) Requirement**

Beginning October 1, 2003, applicants are required to have a DUNS number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. To obtain a DUNS number, call 1–866–705–5711. Be certain to identify yourself as a Federal grant applicant when you contact Dun and Bradstreet.

**XIII. Legend**

Unless disclosure is required under the Freedom of Information Act as amended (5 U.S.C. 552) as determined by HHS freedom of information officials or by a court, data contained in the portions of this application that have been specifically identified by page number, paragraph, etc., by the applicant the applicant as containing restricted information, shall not be used or disclosed except for evaluation purposes.

Dated: June 28, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04–15427 Filed 7–6–04; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

*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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**Proposed Project: Division of Perinatal Systems and Women's Health—Forms for the Guidance for Application and Other Reports—NEW**

The *Application Guidance for grants within the Division of Perinatal Systems and Women's Health (DPSWH)* is used annually by all community based organizations and agencies applying for

funding (either continued or new) and in preparing the required annual report. The guidance provides guidelines to the organizations and agencies on how to apply for DPSWH funds. Included in the guidance are a number of data collection forms which are used annually by organizations that have applied for and/or are receiving DPSWH funding. It is proposed that additional data be collected and reported to provide increased program information. The completion of the new and existing forms by all applicants has an estimated overall burden of 500 hours, or approximately five (5) hours per respondent. The burden estimate for this activity is based upon information provided by current and past funded DPSWH projects, as well as previous experience in completing the current forms.

The estimated response burden is as follows:

| Application and annual report | Estimated number of respondents | Responses per respondent | Burden hours per response | Total burden hours |
|---|---|---|---|---|
| Community Based Organizations and Agencies | 100 | 1 | 5 | 500 |

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of notice.

Dated: June 30, 2004.

**Tina M. Cheatham,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 04–15428 Filed 7–6–04; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Office of Refugee Resettlement

### Services to Unaccompanied Alien Children

*Announcement Type:* Competitive Grant—Initial.

*Funding Opportunity Number:* HHS–2004–ACF–ORR–ZU–0007.

*CFDA Number:* 93.576.

*Due Dates for Applications:* August 6, 2004.

#### I. Funding Opportunity Description

*Legislative Authority:* This program is authorized by section 462(a) of the Homeland Security Act of 2002, (6 U.S.C. 279(a)), which transferred responsibility of the Unaccompanied Alien Children's Program (UAC) from the Commissioner of the Immigration and Naturalization Service (INS) to the Director of the Office of Refugee Resettlement (ORR) of the Department of Health and Human Services (HHS).

To implement the UAC program, the Director of ORR will utilize the refugee children foster care system established pursuant to section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)) for the placement of unaccompanied alien children. All programs must comply with the *Flores Settlement Agreement.*

*Purpose and Objectives:* One of the functions of the Division of Unaccompanied Children's Services (DUCS) within ORR is to provide temporary shelter care (shelter, staff secure and secure) and other related services to children in ORR custody (as defined in Section I under Provision of Care of this announcement). Shelter care services will be provided for the period beginning when DUCS accepts a child for placement and ending when the child is either released from custody or a final disposition of the child's immigration case results in removal of the child from the United States.

This announcement provides the opportunity to fund providers for shelter care services. In this announcement, providers selected by ORR are referred to as "Recipients."

The children, although placed in the physical custody of the Recipient, remain entirely in the legal custody of the Federal government (*i.e.,* ORR).

The population level of alien children is expected to fluctuate as arrivals and case dispositions occur. Program content must, therefore, reflect differential planning of services to children in various stages of personal adjustment and administrative processing. Although the population of children is projected to consist primarily of adolescents, Recipients are expected to be able to serve some children who are under 12 years old.

Recipients of these funds are to facilitate the provision of assistance and services for each alien child including, but not limited to: physical care and maintenance, access to routine and emergency medical/mental health care, dental services, legal services, comprehensive needs assessment, education, recreation, individual and group counseling by licensed clinicians, access to religious services and other social services.

Recipients may be required to provide other services if ORR determines in advance that a service is reasonable and necessary for a particular child.

Recipients are expected to develop and implement an appropriate individualized service plan for the care and maintenance of each child in accordance with his/her needs as determined in an intake assessment. In addition, Recipients are required to implement and administer a case management system which tracks and monitors children's progress on a regular basis to ensure that each child receives the full range of program services in an integrated and comprehensive manner.

Shelter care services shall be provided in accordance with applicable State child welfare statutes and generally accepted child welfare standards, practices, principles, and procedures. Services must be delivered in an open type of setting without a need for extraordinary security measures. Recipients are, however, required to design programs and strategies to discourage runaways and prevent the unauthorized absence of children in their care.

Service delivery is expected to be accomplished in a manner which is sensitive to the culture, native language and needs of these children.

*Client Population*

It is anticipated that the client population will generally consist of males and females, 12 to17 years of age. Males constitute the majority while females comprise less than 17 percent of the total population of alien children. These minors are primarily nationals of El Salvador, Honduras, Mexico, Nicaragua, Guatemala, People's Republic of China and India; however, Recipients can expect to provide services to significant numbers of children from other countries. Recipients must also be prepared to provide child-care services to a limited number of children 12 years of age and younger.

*Definition of Unaccompanied Alien Child*

An unaccompanied alien child is a child who:

(a) Has no lawful immigration status in the United States;
(b) Has not attained 18 years of age; and
(c) With respect to whom:
(i) There is no parent or legal guardian in the United States; or,
(ii) No parent or legal guardian in the United states available to provide care and physical custody. (6 U.S.C. 279(g)(2))

*Allowable Activities*

All programs will be required to meet the Minimum Standards for Licensed Programs (Exhibit 1 of the *Flores Statement Agreement*) which requires that all unaccompanied alien children be provided with the following services as stated in Section I of this announcement: maintenance, medical, assessment, education, recreation/leisure, mental health services, individual counseling and group counseling, acculturation, orientation, access to religious services, visitation, right to privacy, family reunification services, legal service orientation and access to legal services such as *pro bono* attorney information and referral.

*Geographic Locations*

Applications submitted pursuant to this announcement must plan for the delivery of services to a population of at least 12 to 18 beds with a licensed capacity for future expansion based on the needs of the funding agency. The care facility should be located within a 30-mile radius of the metropolitan areas identified below:

- One of the following cities: New York, NY; Newark, NJ; Philadelphia, PA; or Wilmington, DE (Shelter Care Program).
- Phoenix or Tucson, AZ (Secure Program).
- Los Angeles or San Diego, CA (Staff Secure Program).
- One of the following cities: San Francisco, Oakland or San Jose, CA (Shelter Care Program).
- Seattle or Tacoma, WA (Staff Secure Program).

The geographical location of the Recipient is not restricted to a selected area of service. However, the Recipients must be able to substantiate that their network of local affiliates or their subcontractor(s) or sub-recipient(s) will be able to deliver the required services effectively and appropriately and that local service provider organizations are licensed under applicable State law to provide shelter care and related services to dependent children.

The provision of services will include: A structured, safe and productive environment which meets or exceeds respective State guidelines and Minimum Standards for services designed to serve children under ORR care and custody.

*Provision of Care (Minimum Standards for Licensed Programs)*

Licensed programs shall comply with all applicable State child welfare laws and regulations and all State and local building, fire, health and safety codes and shall provide or arrange for the services listed below for each child in their care based on the respective States regulations and the Minimum Standards for Licensed Programs as stated in *Flores Settlement Agreements*. The applicants must set forth in detail the following service areas:

1. *Maintenance:* Proper physical care and maintenance, including suitable living accommodations, food, appropriate clothing, and personal grooming items.

2. *Medical:* Appropriate routine medical and dental care, family planning services, and emergency health care services, a complete medical examination (including screening for infectious disease) within 48 hours of admission, excluding weekends and holidays, unless the child was recently examined at another facility; appropriate immunization in accordance with the U.S. Public Health Service (PHS), Centers for Disease Control; administration of prescribed medication and special diets; appropriate mental health interventions when necessary.

3. *Assessment:* An individualized needs assessment which includes: (1) Initial intake and assessment forms; (2) essential data relating to the identification and history of the child and family; (3) identification of the child's mental health and medical special needs including any specific issues which appear to require immediate intervention; (4) an educational assessment and plan; (5) an assessment of family relationships and interaction with adults, peers and authority figures; (6) a statement of religious preference and practice; (7) an assessment of the child's personal goals, strengths and weaknesses; and (8) identifying information regarding immediate family members, other relatives, godparents or friends who may be residing in the United States and may be able to assist in family reunification.

4. *Education:* Educational services, Monday through Friday, appropriate to the child's level of development, and communication skills in a structured classroom setting which concentrates primarily on the development of basic academic competencies, and secondarily on English Language Training (ELT). The educational program shall include instruction, educational materials and other reading materials in such languages as needed. Basic academic areas should include Science, Social Studies, Mathematics, Reading, Writing and Physical Education. The Recipient shall provide children with appropriate reading materials in languages other than English for use during the children's leisure time.

5. *Recreation/Leisure:* Activities according to a recreation and leisure time plan that includes daily outdoor activities, weather permitting, at least one hour per day of large muscle activity and one hour per day of structured leisure time activities (this should not include time spent watching television). Activities should be increased to a total of three hours daily on days when school is not in session.

6. *Mental Health:* Referral to or provision of mental health services, such as crisis intervention, including protocols and standards for emergency mental health situations; on-site or outpatient therapy and counseling; psychiatric evaluation, treatment, and medication management; psychological evaluation and assessment; therapeutic residential treatment; in-patient psychiatric care and other clinical interventions identified as appropriate by ORR.

7. *Individual Counseling:* At least one individual counseling session per week conducted by a licensed clinician with the specific objectives of reviewing the child's progress, establishing new short-term objectives, and addressing both the developmental, immediate concerns and special needs of each child.

8. *Group Counseling:* Programs shall conduct group counseling sessions/community meetings at least twice a week. This is usually an informal process and takes place with all the children present. It is a time when new children are given the opportunity to get acquainted with the staff, other children, and the rules of the program. Community meeting shall be an open forum where everyone gets a chance to speak. Daily program management is discussed and decisions are made about recreational activities, etc. Social work staff shall have a curriculum for group therapy that may be altered depending on the needs of the population. Group goals should include: managing aggressive thoughts/behaviors, improving social skills (including

accepting feedback, disappointment, respect for authority, etc) and understanding the grieving stages and identifying grieving strategies.

9. *Acculturation:* Acculturation and adaptation services that include information regarding the development of social and inter-personal skills which contribute to the ability to live independently and responsibly.

10. *Orientation:* Upon admission, a comprehensive orientation regarding program intent, services, rules (written and verbal), expectations and the availability of legal assistance.

11. *Religious Access:* Whenever possible, access to religious services of the child's choice.

12. *Visitation:* Visitation and contact with family members (regardless of the family's immigration status) that is structured to encourage such visitation. The staff shall respect the child's privacy while reasonably preventing the unauthorized release of the child.

13. *Right to Privacy:* A reasonable right to privacy, which includes the right to: (1) Wear his or her own clothes, when available; (2) retain a private space in the residential facility, group or foster home for the storage of personal belongings; (3) talk privately on the phone, as permitted by the house rules and regulations; (4) visit privately with guests, as permitted by the house rules and regulations; and (5) receive and send uncensored mail unless there is a reasonable belief that the mail contains contraband.

14. *Family Reunification Services:* Family reunification services designed to identify relatives in the United States as well as in foreign countries and assistance in obtaining legal guardianship when necessary for the release of the child.

15. *Legal Services Orientation:* Legal services information regarding the availability and coordination of free legal assistance, the right to be represented by counsel at no expense to the government, the right to a removal hearing before an immigration judge, the right to apply for political asylum or to request voluntary departure in lieu of removal.

16. *Cultural Sensitivity:* Service delivery is to be accomplished in a manner which is sensitive to the age, culture, religion, dietary needs, native language and the complex needs of each child.

17. *Rules:* Program rules and discipline standards shall be formulated with consideration for the range of ages and maturity in the program and shall be culturally sensitive to the needs of alien children. Children shall not be subjected to corporal punishment, humiliation, mental abuse or punitive interference with the daily functions of living, such as eating or sleeping. Any sanctions employed shall not: (a) Adversely affect either a child's health, or physical or psychological well-being; or (b) deny a child regular meals, sufficient sleep, exercise, medical care, correspondence privileges, or legal assistance.

18. *Service Plan:* A comprehensive and realistic individual plan for the care of each child must be developed in accordance with the child's needs as determined by the individualized needs assessment. Individual plans shall be implemented and closely coordinated through an operative case management system.

19. *Language Capacity:* Programs shall hire and maintain staff that speaks the language of the children under their care.

20. *Record Keeping:* Programs shall develop, maintain and safeguard individual client case records. Agencies and organizations are required to develop a system of accountability which preserves the confidentiality of client information and protects the records from unauthorized use or disclosure. The records of clients served under this program are ORR's records.

21. *Reporting to ORR:* Programs shall maintain adequate program and financial records and make regular reports as required by ORR that permit ORR to monitor and enforce the *Flores Settlement Agreement* and other requirements and standards as ORR may determine are in the best interests of the children.

*Program Design*

The applicants must set forth in detail information concerning the following:

1. *Agency Qualifications:* A comprehensive overview of the applicant agency, agency qualifications and history, including philosophy, goals and history of experience with respect to the provision of child welfare or related services to children under 18 years of age from various cultural backgrounds and with various language capabilities.

2. *Management Plan:*

a. A plan for overall fiscal and program management and accountability.
b. A description of the organizational structure and lines of authority (organization chart).
c. A comprehensive program staffing plan and information regarding staff qualifications.
d. A comprehensive plan for coordination of activities between the various program components and coordination with other community and governmental agencies.
e. Staff supervisory model.
f. Provisions for staff training.
g. Proposed staff schedule(s).
h. A description of the role(s) and responsibility (ies) of the proposed consultants and the rationale for their use.
i. Listing of all federal, state, or local funded grants and/or contracts received.

3. *Individual Client Service Plans*—Applicants shall describe in detail:

a. The methodology regarding the development of individual client service plans;

b. The process to ensure that service plans will be periodically reviewed and updated; and,

c. The staff that will have responsibility for the development of updating of the plans.

4. *Case Management*—Describe in detail the case management system for tracking and monitoring client progress on a regular basis to ensure that each child receives the full range of program services in an integrated and comprehensive manner. Identify the staff positions responsible for coordinating the implantation and maintenance of the case management system.

5. *Structure and Accountability*—Applications must fully describe:

a. The plan for developing and maintaining internal structure, control and accountability through programmatic means.

b. Utilization of daily logs to track program activities.

c. Ability to produce statistical reports to track referral demographics and performance.

d. Ability to maintain a comprehensive children's database.

*Characteristics of Program Site*

*Residential/Office Facility.* Applicants are required to set forth in detail comprehensive information regarding:

1. A physical description of the proposed facility including the proposed allocation of office space (this shouldn't include new facility construction but to prove that applicants have facilities);

2. Diagrams, blueprints or drawings of the proposed facility;

3. Documentation that the facility meets all relevant zoning, licensing, fire, safety and health codes required to operate a residentially based social service program. Copies of relevant documents must be submitted at the time of application;

4. Facility ownership or leasing agreements must be fully explained and documented.

*Level of Care and Custody*

Levels of care are specific to geographic location as specified in Section I under Geographic Locations. All Minimum Standards apply. Applicants must apply based on their location and the corresponding level of care as reflected below (one application per location).

a. *Shelter Care:* Recipients shall provide shelter care, which could include group home care, and other related services to UACs. This shelter level of care will provide children with a structured, safe, and productive environment which meets or exceeds respective State guidelines and standards for similar care. The design of the shelter care program and facility should be in full compliance with the *Flores Settlement Agreement* including Minimum Standards for Licensed Programs..

*Areas where Shelter Care Programs are needed:* San Francisco, Oakland or San Jose, CA (one northern CA location only); Philadelphia, PA; New York, NY; Newark, NJ; or Wilmington, DE (only one in Mid Atlantic location)

b. *Staff Secure (Medium Secure) Care:* The staff secure facility should be designed for children who require close supervision but do not need placement in juvenile correctional facilities. This setting should significantly reduce/eliminate the use of physical restraints and facilitate a "safe-haven shelter" setting rather than a "juvenile detention" environment. The facility provides a heightened level of staff supervision, communication and services in a structured, licensed shelter care setting. Placements include children with adjudicated delinquency, chargeable offense (probable cause), conviction for a crime, or the subject of delinquency proceedings. Children with serious behavior issues in shelters, minor escape history/threats, or special supervision requirements, may be placed in staff secure facilities. Programs should be designed for children with minor offenses, isolated offenses not within a pattern or practice of criminal activity, offenses that do not involve serious violence against a person and petty/minor offenses. Examples of offender history could include: Shoplifting, joy riding, disturbing the peace, breaking and entering, vandalism, drug offenses, and driving under the influence (DUI). Program design should be consistent with the government's interest to ensure timely appearance before the immigration court and to protect the child's well-being and that of others.

Non-offender children must be separated from delinquent offenders. The program is required to maintain stricter security measures and higher staffing ratios than shelters in order to control problem behavior and discourage flight. Security and accountability are maintained through procedures, staffing patterns, and effective communication rather than bars, locks and restraints which are historically associated with juvenile detention. A staff secure facility must have a fence and security gate. There should be effective monitoring so that entry to and egress from the building can be controlled. Community trips are limited and controlled. The overall atmosphere should reflect a shelter rather than a detention center. There should be no lock-down procedures typically associated with traditional juvenile correctional (detention) facilities (*e.g.,* strip searches, use of mechanical restraints, cell-like sleeping rooms, lack of privacy, razor wire etc.). Each staff secure facility should have the capability to upgrade "line of sight" supervision to 100 percent constant "line of sight and sound" staff supervision for a specific child. For example, constant supervision would be implemented rather than simply a 15 minute or 30 minute bed check. The facility should not exceed the level of security permitted under State law for a licensed shelter care facility which is necessary for children placed in its care. Specialized services should also be available for children with drug and alcohol problems and other special mental health needs with access to bi-lingual clinical assessments. Case management services should include reunification efforts and the preparation of reunification packets (for procedures how to prepare reunification packets, please refer to ORR/DUCS Guidance Letter #FY04–9, April 26, 2004) when appropriate. The staff secure facility should focus special attention on the security and staffing requirements detailed in the "ORR Program Procedure Manual" (Draft Pending) (Exhibit 1) and the "*Flores Settlement Agreement*" (Exhibit 2). Staff secure facilities must be in the compliance with the *Flores Settlement Agreement,* including the Minimum Standards for Licensed Programs.

*Areas where Staff Secure Care Programs are needed:* Seattle or Tacoma, WA and Los Angeles or San Diego, CA.

c. *Non-traditional Secure Detention:* Secure detention is typically reserved for children who have exhibited serious violent or criminal behavior that endangers others, such as carrying weapons in support of violence, having serious escapes risk/history, committing serious sex offenses, being documented gang members/leaders, and demonstrating extremely disruptive behavior in shelter/staff secure facilities. This small facility should have no more than 12 beds with typically a population of fewer than 12 children. Rather than using traditional juvenile detention centers, ORR/DUCS is asking for the design of small non-traditional secure programs in several strategic locations.

In addition to meeting child welfare standards/services and the staff secure levels of care, this secure detention facility should have the capability to physically restrain a violent child during an emergency. However, this should be limited to emergencies and escape precautions during transport and not be part of routine practice. Additionally, soft restraint technology, rather than hard restraints should be utilized (metal hand-cuffs, metal shackles, metal "belly chains" are not authorized in the non-traditional secure facility). In accordance with state detention standards, the facility, rooms, and windows may be locked. The proposal should be responsive to the "Standards for Small Juvenile Detention Facilities" detailed by the American Correctional Association (ACA), 3rd ed. (1991) and published supplements to those standards (Exhibit 3). These standards provide detailed information regarding small detention requirements. Moreover, Recipients are required to meet the Minimum Standards as stated in Exhibit 1 of the *Flores Settlement Agreement.*

*Areas where Secure Care Programs are needed:* Phoenix or Tucson, Arizona.

## II. Award Information

*Funding Instrument Type:* Cooperative Agreements.

*Description of Federal Substantial Involvement with Cooperative Agreement:* ORR directs and supports grantees in the design and implementation of program activities, services and facilities; designing protocols or procedures; assisting in the selection of contractors (if applicable); key project staff; provide guidance in the collection and analysis of data and modification of project activities.

*Anticipated Total Program Funding Amount:* $5.4 million per budget period.

*Anticipated Number of Awards:* 5 per budget period.

*Ceiling on Amount of Individual Award:* $1 million per budget period, $1.2 million per budget period each for

California Locations. The award amount is for planning purposes only.

*Floor of Individual Amount Awards:* $800,000 per budget period.

*Average Anticipated Award Amount:* $900,000 per budget period.

*Budget Period for Awards:* 12 months.

*Project Period for Awards:* 60 months.

Awards will be for one-year budget periods. The Project Period will be September 30, 2004, to September 29, 2009. Applications for continuation grants funded under these awards beyond the one-year budget period may be entertained on a non-competitive basis, subject to availability of funds, satisfactory progress of the project, and a determination that continued funding is in the best interest of the government.

**III. Eligibility Information**

*III. 1. Eligible Applicants*

Non-profit organizations including faith-based organizations incorporated under State law which have demonstrated child welfare, social service or related experience and are appropriately licensed (at the time of submission of the application) for the provision of shelter care, foster care, group home care, and related services to dependent children are eligible to apply.

For-profit organizations incorporated under State law which have demonstrated child welfare, social services or related experience, and are appropriately licensed (at the time of submission of the application) for the provision of shelter care, foster care, group home care, and other related services to dependent children, and which can clearly demonstrate that only actual costs and not profit, fees, or other elements above cost have been budgeted, are also eligible to apply.

Additional Information on Eligibility:

- Only one application per agency will be accepted.
- No agency is guaranteed an award.
- No agency is guaranteed that the amount of an award made to it will be in the same amount as its request.

The Director of ORR reserves the right to award more or less funding to any individual applicant or in total for all applicants based on the quality of the applications and the best interest of the Government. In cases where ORR proposes to award an amount less than an agency's application request, the agency will be required to submit a revised budget and budget narrative showing how the agency proposes to spend the amount ORR is proposing to award to the agency. If an agency fails to submit a commensurate revised budget within the time requested, the agency will forfeit the award.

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) 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 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.

*III. 2. Cost-Sharing/Matching*

None.

*III. 3. Other (if Applicable)*

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 all Federal grant applicants to provide a Dunn and 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.*

Please see section V.1 Evaluation Criteria for further information on reasons why applications will be considered non-responsive and returned without review.

**IV. Application and Submission Information**

*IV. 1 Address To Request Application Package*

Please contact: Name: Tsegaye Wolde, Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services, 901 D Street, SW., 6th Floor East, Washington, DC 20447. Phone: 202–401–5144. E-mail: *twolde@acf.hhs.gov.*

URL to obtain application package: *http://www.Grants.Gov.*

*IV. 2 Content and Form of Application Submission*

The required application package will include the following:

Application Content

Each application must include the following components:

1. Table of Contents

a. *Abstract of the Proposed Project*—very brief, not to exceed one page (would be suitable to use in announcing the grant award, if selected) and which identifies the type of project, the target population, and the major elements of the work plan.

b. *Completed Standard Form 424*—signed by an official of the organization applying for the grant who has authority to legally obligate the organization.

c. *Standard Form 424A*—Budget Information-Non Construction Programs.

d. *Narrative Budget Justification*—for each object class category required under Section B, Standard Form 424A.

e. *Project Narrative*—A narrative that addresses issues described in the "Application

f. *Review Information* and the *Evaluation Criteria* sections of this announcement.

Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget.

Private non-profit organizations may voluntarily submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants" at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

2. Application Format

- Submit application materials on white 8½ x 11 inch paper only. Do not use colored, oversized or folded materials.
- Please do not include organizational brochures or other promotional materials, slides, films, clips, etc.

• The font size may be no smaller than 12 pitch and the margins must be at least one inch on all sides.

• Number all application pages sequentially throughout the package, beginning with the abstract of the proposed project as page number one.

• Please present application materials either in loose-leaf notebooks or in folders with page two-hole punched at the top center and fastened separately with a slide paper fastener.

3. Page Limitation

• Each application narrative should not exceed 20 pages double-spaced.

• Attachments and appendices should not exceed 20 pages and should be used only to provide supporting documentation such as administration charts, position descriptions, resumes, and letters of intent or partnership agreements.

• A table of contents and an executive summary should be included but will not count in the page limitations.

• Each page should be numbered sequentially, including the attachments and appendices.

• This limitation of 20 pages should be considered as a maximum, and not necessarily a goal.

• Application forms are not to be counted in the page limit. Any applications that exceed the page limit will not be scored.

• Please do not include books or videotapes as they are not easily reproduced and are therefore inaccessible to the reviewers. The review panel will not consider submitted material which exceeds the 20 page limit.

4. Required Standard Forms

• Applicants requesting financial assistance for a non-construction project must sign and return with their applications the Standard Form 424B (Assurances: Non-Construction Programs).

• Applications must provide a Certification Regarding Lobbying on Standard Form LLL. Prior to receiving an award in excess of $750,000.00, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their 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 a certification form.

• Applicants must make the appropriate certification of their compliance with the requirements of the Pro-Children Act of 1994 as outlined in the Certification Regarding Environmental Tobacco Smoke.

• The forms (Forms 424, 424 A–B; and Certifications including Certification Regarding Lobbying; and Environmental Tobacco Smoke) may be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm* under new announcements.

• 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 offline, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

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.

• 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 must 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 *http://www.Grants.gov.*

• You must search for the downloadable application package by the CFDA number.

Please *see* Section V. 1. Criteria, for instructions on preparing the project summary/abstract and the full project description.

*IV. 3 Submission Dates and Times*

The closing time and date for receipt of applications is 4:30 p.m. (eastern time zone) August 6, 2004. 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 U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, Attention: Sylvia M. Johnson, Grants Management Officer, 370 L'Enfant Promenade, SW., 4th floor, Washington, DC 20447. 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., e.s.t., at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants ACF Mailroom, 2nd Floor (near loading dock), Aerospace Center, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note "Attention: Sylvia M. Johnson, Grants Officer". Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

ACF cannot accommodate transmission of applications by fax.

*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.

*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."

REQUIRED FORMS

| What to submit | Required Content | Required form or format | When to submit |
|---|---|---|---|
| Table of Contents | As described in section IV.2. above. | Consistent with guidance in "Application Format" section of this announcement. | By application due date. |
| Abstract of Proposed Project | Brief abstract that identifies the type of project, the target population and the major elements of the proposed project. | Consistent with guidance in "Application Format" section of this announcement. | By application due date. |
| Completed Standard Form 424 | As described in section IV.2. above and per required form. | May be found on *http://www.acf.hhs.gov/programs.ofs/forms.htm.* | By application due date. |
| Completed Standard Form 424A | As described in section IV.2. above and per required form. | May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.* | By application due date. |
| Narrative Budget Justification | As described in section IV.2. above. | Consistent with guidance in "Application *http://www.acf.hhs.gov/programs/ofs/forms.htm.* | By application due date. |
| Project Narrative | A narrative that addresses issues described in the "Application Review Information" and the "Evaluation Criteria" sections of this announcement. | Consistent with guidance "Application Format" section of this announcement. | By application due date. |
| Reason for automatic Rejection | Lack of State Licensing | All recipients must demonstrate that facilities have been approved by local State licensing Authorities. | By application due date. |
| Certifications regarding lobbying and environmental tobacco smoke. | As described in section IV.2. above and per required form. | May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.* | By application due date. |

Additional Forms:

Private non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants" at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| Survey for Private, Non-Profit Grant Applications. | Per Required Form | *See http://www.acf.hhs.gov/programs/ofs/forms.htm.* | By application due date. |

*IV. 4 Intergovernmental Review*

State Single Point of Contact (SPOC)

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of October 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372: Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington and Wyoming.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a) (2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found on the following URL: *http://www.whitehouse.gov/omb/grants/spoc.html.*

*IV. 5 Funding Restrictions*

Pre-award costs are not allowable charges to this program grant.

*IV. 6 Other Submission Requirements*

*Electronic Address to Submit Applications: http://www.Grants.gov.*

Please *see* Section IV. 2. Content and Form of Application Submission of this application, for guidelines and

requirements when submitting applications electronically.

*Submission by Mail:* Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at: U.S. Department of Health and Human Services, Administration for Children and Families, Office of grants management, Division of Discretionary Grants, Attention: Sylvia M. Johnson, 370 L'Enfant Promenade, SW., Washington, DC 20447. 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.

*Hand Delivery:* 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., e.s.t., at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants management, Division of Discretionary Grants, ACF Mailroom, 2nd Floor (near loading dock), Aerospace Center, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note "Attention: Sylvia M. Johnson." Applicants are cautioned that express/overnight mail services do not always deliver as agreed. ACF cannot accommodate transmission of applications by fax or e-mail.

**V. Application Review Information**

*The Paperwork Reduction Act of 1995 (Public Law 104–13)*

Public reporting burden for this collection of information is estimated to average 25 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.

*V.1 Evaluation Criteria*

ORR will screen all applications submitted pursuant to this notice to determine whether an application is sufficiently complete to warrant consideration and review by the ORR Review Panel. Applications must be received by the closing date and meet all of the requirements contained in this notice. The awards are subject to the availability of funds. Applicants will be reviewed, evaluated, rated, and numerically ranked by an independent panel of experts on the basis of weighted criteria listed in this notice. All final funding decisions are at the discretion of the Director, Office of Refugee Resettlement.

An application may be rejected if:

a. The application is from an ineligible applicant;

b. The application is received after the closing date;

c. The application omits:

i. Documented written evidence of community support for the program;

ii. A comprehensive line-item budget with appropriate descriptive narrative, or;

iii. A copy of the latest financial audit of the applicant.

*General Instructions:* ACF is particularly interested in special factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetitive 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.

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, all information requested through each specific evaluation criteria should 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.

Introduction

Applicants required submitting a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expand and clarify more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less), with reference to the funding request.

Provision of Care

Describe in detail the required program services outlined in Section IV. Provision of Care.

Program Design

Describe in detail the required program services outlined in Section V. Program Design.

Characteristics of Program Site

Describe in detail the required program services outlined in Section VI. Characteristics of Program Site.

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 which 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 which 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 to be accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

Evaluation

Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of the results, state how you will determine the extent to which the project has achieved its stated objects 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.

Additional Information

Following is the additional information that should be placed in the appendix to the application.

Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Plan for Project Continuance

Provide a plan for securing resources and continuing project activities after Federal assistance has ceased.

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. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

Dissemination Plan

Provide a plan for distributing reports and other project outputs to colleagues and the public. Applicants must provide a description of the kind, volume and timing of distribution.

Third-Party Agreements

Include written 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 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. The detailed budget must 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.

*General*

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, "Federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

*Personnel*

*Description:* Costs of employee salaries and wage.

*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 percentage 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).

*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*

*Description:* "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000.

**(Note:** Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications,

attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

*Justification:* For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

*Supplies*

*Description:* Costs of all tangible personal property other than that included under the Equipment category.

*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 which belong under other categories such as equipment, supplies, construction, etc. 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, should be included under this category.

*Justification:* All procurement transactions shall 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 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). 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.

*Other*

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (no contractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

*Justification:* Provide computations, a narrative description and a justification for each cost under this category.

*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.

*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, it should immediately, upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in 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. It should be noted that 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. Indirect Costs may be reimbursed on an award only if the indirect cost rate agreement is in effect at the beginning of the project period/budget period and covers all or part of the period covered by the award.

*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 page in the application which contain this information.

Non-Federal Resources

*Description*

Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

*Justification*

The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Total Direct Charges, Total Indirect Charges, Total, Total Project Costs

Self explanatory.

*Evaluation Criteria:* Applications will be reviewed and evaluated according to the following weighted criteria:

*Evaluation Criterion I:* Management Plan (Maximum: 20 Points)

- The quality of the applicant's program management and staffing plans as demonstrated by:
- The adequacy of the plan for program management and the plan for coordination between the components of the program.
- The adequacy of the plan for coordination with community and governmental agencies.
- The adequacy of the qualifications if the applicant organization, and the extent to which this organization has a demonstrated record as a provider of child welfare and/or other social services.
- The extent to which the applicant has a demonstrated capacity for effective fiscal management and accountability.
- The extent to which sub recipient(s)/subcontractor(s) have a demonstrated capacity for effective fiscal and program, management and accountability.
- The adequacy of the plans for staff supervision and intra-program communication.
- The adequacy of the staffing plans in terms of the relationship between the proposed functions and responsibilities of the staff in the program, and the education and relevant experience required for the position.
- Clear organizational charts delineating organizational relationships and levels of authority, including the identification of the staff position accountable for the overall management, direction and performance of the program.

*Evaluation Criterion II:* Provision of Care (Program Services) (Maximum: 20 Points)

The applicant's response to the required program services, including a

description of program resources which demonstrates:

- The capacity of the program to offer comprehensive, integrated and differential services which meet the needs of the clients.
- Utilization of resources in a manner which enhances program control, structure and accountability.
- Provision of service in a manner which promotes and fosters cultural identification and mutual support.
- Ability to deal effectively with issues of culture, race, ethnicity and native language.

*Evaluation Criterion III:* Organizational Capacity (Maximum: 15 Points)

The degree to which the applicant provides effective strategies of programmatic control, predictability and accountability as evidenced by the structure and continuity inherent in the program design.

*Evaluation Criterion IV:* Program Design (Maximum: 15 Points)

The degree to which the entire proposed plan for developing, implementing and administering a state licensed program is clear, succinct, integrated, efficient, cost effective and likely to achieve program objectives. Program design includes overall physical location and description of the facility and its ability to best meet the objectives of the program and services offered. Key to program design is licensed capacity for future expansion.

*Evaluation Criterion V:* Case Management (Maximum: 10 Points)

The adequacy of the plans for:

a. Developing and updating individual client service plans; and,

b. The proposed system of case management.

c. Implementation and maintenance of a client computer database system.

*Evaluation Criterion VI:* Budget (Maximum: 10 Points)

The reasonableness of the proposed budget and budget narrative, in relation to proposed program activities.

*Evaluation Criterion VII:* External Factors (Maximum: 10 Points)

The degree to which the application has provided written documented evidence of community support and acceptance of the program.

*V.2 Review and Selection Process*

Review application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instructions in this announcement and (2) the applicant is eligible for funding. It is necessary that applicants state specifically which priority area they are applying for. Applications will be screened for priority area appropriateness. If applications are found to be inappropriate for the priority area in which they are submitted, applicants will be contracted for verbal approval of redirection to a more appropriate priority area.

Applications which pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of specific evaluation criteria. The results of these reviews will assist the Director and ORR program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decision, but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding because other factors are taken into consideration. These include, but are not limited to, the number of similar types of existing grants or projects funded with ORR funds in the last five years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; an applicant's progress in resolving any final audit disallowance on previous ORR or other Federal agency grants. The evaluation criteria were designed to assess the quality of a proposed project, and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to an application which is responsive to the evaluation criteria within the context of this program announcement.

Federal reviewers will be used for the review process.

## VI. Award Administration Information

*VI.1 Award Notices*

Successful applicants will receive the official notice of award, the Financial Assistance Award (FAA), which is signed by the Grants Management Office. The FAA is the authorizing document whether provided electronically or by mail. Unsuccessful applicants will receive a letter from the Grants Management Office declining their request for funding.

*VI.2 Administrative and National Policy Requirements*

45 CFR part 400 and 45 CFR parts 74 or 92.

*VI.3 Reporting Requirements*

*Programmatic Reports:* Quarterly Reports and a final report is due 90 days after the end of grant period.

*Financial Reports:* Semi-Annually and a final report is due 90 days after the end of a grant period.

*Statistical Reports:* As required by ORR.

Original reports and one copy should be mailed to the Grants Management Contact listed in section VII Agency Contacts.

Upon acceptance, grantees will receive formats and schedules for reporting on a quarterly basis for program activities and on a semi-annual basis for financial expenditure reports.

## VII. Agency Contacts

*Program Office Contact:* Name: Tsegaye Wolde, Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services, 901 D Street, SW., 6th Floor East, Washington, DC 20447. E-mail: *Twolde@acf.hhs.gov.* Phone: 202–401–5144.

*Grants Management Office Contact:* Name: Sylvia M. Johnson, Grants Officer, HHS, ACF, Office of Grants management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 4th Floor West, Washington, DC 20447. Phone: 202–401–4524. E-mail: *sjohnson@acf.hhs.gov.*

## VIII. Other Information

The Director reserves the right to award more or less than the funds described in this announcement. In the absence of worthy applications, the Director may decide not to make an award if deemed in the best interest of the Government. Funding for future years, under this announcement, is at the availability of appropriate funds. The Director may invite applications outside of the proposed closing date, if necessary, to respond to the needs of the Unaccompanied Alien Children.

Dated: June 30, 2004.

**Nguyen Van Hanh,**

*Director, Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services.*

[FR Doc. 04–15267 Filed 7–6–04; 8:45 am]

BILLING CODE 4184–01–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1520–DR]**

### Indiana; Amendment No. 4 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 Indiana (FEMA–1520–DR), dated June 3, 2004, and related determinations.

**EFFECTIVE DATE:** June 29, 2004.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 3, 2004:

Adams, Allen, Dearborn, Decatur, DeKalb, Franklin, Huntington, Jennings, Kosciusko, Noble, Ohio, Ripley, Switzerland, Wells, and Whitley Counties for Individual Assistance.

(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, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household 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. 04–15292 Filed 7–6–04; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1518–DR]**

### Iowa; Amendment No. 6 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 Iowa (FEMA–1518–DR), dated May 25, 2004, and related determinations.

**EFFECTIVE DATE:** June 29, 2004.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 25, 2004:

Calhoun, Page, and Sac Counties for Public Assistance (already designated for Individual Assistance.)

Ida County for Public Assistance.

(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, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household 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. 04–15288 Filed 7–6–04; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1518–DR]**

### Iowa; 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 for the State of Iowa (FEMA–1518–DR), dated May 25, 2004, and related determinations.

**EFFECTIVE DATE:** June 24, 2004.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective June 24, 2004.

(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, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household 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. 04–15289 Filed 7–6–04; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1519–DR]**

### Ohio; Amendment No. 3 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 Ohio (FEMA–1519–DR), dated June 3, 2004, and related determinations.

**EFFECTIVE DATE:** June 29, 2004.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Ohio is hereby amended to include Public Assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 3, 2004:

Columbiana, Cuyahoga, Hocking, Medina, Noble, Perry, Portage and Summit Counties for Public Assistance (already designated for Individual Assistance.)

Carrol, Guernsey, Harrison, Jefferson, and Knox Counties for Public Assistance.

(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, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household 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. 04–15290 Filed 7–6–04; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1519–DR]**

### Ohio; Amendment No. 4 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 Ohio (FEMA–1519–DR), dated June 3, 2004, and related determinations.

**EFFECTIVE DATE:** June 29, 2004.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Ohio is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 3, 2004:

Carroll, Crawford, Delaware, Geauga, Guernsey, Licking, Logan, Richland, Stark, and Tuscarawas Counties for Individual Assistance.

(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, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household 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. 04–15291 Filed 7–6–04; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1525–DR]**

### Virginia; Amendment No. 1 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 for the Commonwealth of Virginia (FEMA–1525–DR), dated June 15, 2004, and related determinations.

**EFFECTIVE DATE:** June 26, 2004.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective June 26, 2004.

(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, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household 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. 04–15293 Filed 7–6–04; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1525–DR]**

### Virginia; Amendment No. 2 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 Commonwealth of Virginia (FEMA–1525–DR), dated June 15, 2004, and related determinations.

**EFFECTIVE DATE:** June 29, 2004.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the Commonwealth of Virginia is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 15, 2004:

Buchanan County for Individual Assistance. Buchanan County in the Commonwealth of Virgi· ia is eligible to apply for assistance under the Hazard Mitigation Grant Program.

(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, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household 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. 04–15294 Filed 7–6–04; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4909–N–06]**

### Notice of Proposed Information Collection for Public Comment: Section 8 Random Digit Dialing Fair Market Rent Telephone Survey

**AGENCY:** Office of Policy Development and Research, 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:* September 7, 2004.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comment should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8228, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Marie Lihn, Economic and Market Analysis Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8222, Washington, DC 20410; e-mail *marie_l._lihn@hud.gov*; telephone (202) 708–0590. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Lihn.

**SUPPLEMENTARY INFORMATION:** The Department of Housing and Urban Development will submit the proposed information collection package 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 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 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:* Section 8 Random Digit Dialing Fair Market Rent Telephone Survey.

*OMB Control Number:* 2528–0142.

*Description of the need for the information and proposed use:* This Telephone Survey provides HUD with a fast, inexpensive way to estimate and update Section 8 Fair Market Rents (FMRs) in areas where FMRs are believed to be incorrect. Section 8(C)(1) of the United States Housing Act of 1937 requires the Secretary to publish Fair Market Rents (FMRs) annually to be effective on October 1 of each year. FMRs are used for the Section 8 Rental Certificate Program (including space rentals by owners of manufactured homes under that program); the Moderate Rehabilitation Single Room Occupancy program; housing assisted under the Loan Management and Property Disposition programs; payment standards for the Rental Voucher program; and any other programs whose regulations specify their use.

Random digit dialing (RDD) telephone surveys have been used for several years to adjust FMRs. These surveys are based on a sampling procedure that uses computers to select statistically random samples of telephone numbers to locate certain types of rental housing units for surveying. HUD will conduct RDD surveys of up to 90 individual FMR areas in a year to test the accuracy of their FMRs.

*Members of affected public:* Individuals or households living in areas surveyed.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:*

| | Number of phone calls made | Average minutes each | Minutes | Hours |
|---|---|---|---|---|
| Area Surveys: | | | | |
| Number who pick up phone but are screened out | 719,250 | 1.17 | 841,522 | 14,025 |
| Total interviewed (movers and stayers) | 15,750 | 4.20 | 66,150 | 1,103 |
| Annual total | 735,000 | | 907,672 | 15,128 |

*Status of the proposed information collection:* Pending OMB approval.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended; and section 8(C)(1) of the United States Housing Act of 1937.

Dated: June 29, 2004.

**Dennis C. Shea,**

*Assistant Secretary for Policy Development and Research.*

[FR Doc. 04–15264 Filed 7–6–04; 8:45 am]

BILLING CODE 4210–62–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4903–N–44]**

### Notice of Submission of Proposed Information Collection to OMB; Economic Opportunities for Low and Very Low Income Persons

**AGENCY:** Office of the Chief Information Officer.

**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.

HUD is requesting approval of revision to the information collection used to monitor compliance with Section 3 requirements to enhance the economic opportunities for lower income persons. An additional form will be used to collect "feedback" on the effectiveness of Section 3 implementation.

**DATES:** *Comments Due Date:* August 6, 2004.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2529–0043) 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*; telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a survey instrument to obtain information from faith based and community organizations on their likelihood and success at applying for various funding programs. 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:* Economic Opportunities for Low and Very Low Income Persons.

*OMB Approval Number:* 2529–0043.

*Form Numbers:* HUD–60002, HUD–60003, HUD–958, and HUD–1476–FHEO.

*Description of the Need for the Information and Its Proposed Use*

HUD is requesting approval of revision to the information collection used to monitor compliance with Section 3 requirements to enhance the economic opportunities for lower income persons. An additional form (HUD–60003) will be used to collect "feedback" on the effectiveness of Section 3 implementation.

*Frequency of Submission:* On occasion, Annually.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting burden | 58,743 | 1 | | 1.99 | | 117,303 |

*Total Estimated Burden Hours:* 117,303.

*Status:* Revision of currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 29, 2004.

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 04–15265 Filed 7–6–04; 8:45 am]

BILLING CODE 4210–72–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4903–N–45]**

## Notice of Submission of Proposed Information Collection to OMB; Consolidated Certification of Completion

**AGENCY:** Office of the Chief Information Officer.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request to continue to collect the information required for Public Housing Agencies (PHAs) to certify to HUD that contract requirements and standards have been satisfied in a project development and HUD may authorize payment of funds due the contractor/developer.

**DATES:** *Comments Due Date:* August 6, 2004.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Approval Number (2577–0021) 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*; telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a survey instrument to obtain information from faith based and community organizations on their likelihood and success at applying for various funding programs. 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:* Consolidated Certification of Completion.

*OMB Approval Number:* 2577–0021.

*Form Numbers:* None.

*Description of the Need for the Information and Its Proposed Use:* This is a request to continue to collect the information required for Public Housing Agencies (PHAs) to certify to HUD that contract requirements and standards have been satisfied in a project development and HUD may authorize payment of funds due the contractor/developer.

*Frequency of Submission:* On occasion.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting burden | 58 | 1 | | 1 | | 58 |

*Total Estimated Burden Hours:* 58.

*Status:* Extension of currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995; 44 U.S.C. 35, as amended.

Dated: June 29, 2004.

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 04–15266 Filed 7–6–04; 8:45 am]

**BILLING CODE 4210–72–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/or marine mammals.

**DATES:** Written data, comments or requests must be received by August 6, 2004.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone 703/358–2104.

**SUPPLEMENTARY INFORMATION:**

#### Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

*Applicant:* Molecular Anthropology Lab., Arizona State Univ., Tempe, AZ, PRT–090093.

The applicant requests a permit to import opportunistically collected biological samples from wild and captive bred chimpanzees (*Pan troglodytes*), bonobo (*Pan paniscus*), gorilla (*Gorilla gorilla*), and orangutan (Pongo pygmaeus), from various countries, for the purpose of scientific research. This application represents the reissuance of permit 013176 for the same activity, issued to the University of New Mexico, from which the principal investigator has transferred. This notification covers activities to be conducted by the applicant over a five-year period.

*Applicant:* Brandon E. Diego, Hilo, HI, PRT–089007.

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:* Michael A. Cooper, Omaha, NE, PRT–089451.

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:* Paul O. Lanier II, Sandy Hook, VA, PRT–089454.

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.

#### 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:* National Museum of the American Indian, Suitland, MD, PRT–088944.

The applicant requests a permit to import three Native American handicrafted items comprised, in part, of walrus (*Odobenus rosmarus*) from Nunavut, Canada, for the purpose of public display.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

*Applicant:* John J. Ottman, Jr., Missoula, MT, PRT–089050.

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 use.

*Applicant:* Edward B. Howlin, Jr., Davidsonville, MD, PRT–089129.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster sound polar bear population in Canada for personal use.

*Applicant:* Randy C. Brooks, Highland, UT, PRT–089464.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Gulf of Boothia polar bear population in Canada prior to February 18, 1997, for personal use.

Dated: June 25, 2004.

**Michael S. Moore,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 04–15324 Filed 7–6–04; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Issuance of Permits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance of permits for endangered species and/or marine mammals.

**SUMMARY:** The following permits were issued.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone 703/358–2104.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), and the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

**Endangered Species**

| Permit number | Applicant | Receipt of application **Federal Register** notice | Permit issuance date |
|---|---|---|---|
| 077300 | Grant R. Oliver | 69 FR 21858; April 22, 2004 | June 14, 2004. |
| 084042 | Silvio Arguello | 69 FR 16285; March 29, 2004 | June 14, 2004. |
| 085086 | Mark A. Schulz | 69 FR 21858; April 22, 2004 | June 14, 2004. |
| 085273 | Clifford J. Johnson | 69 FR 27947; May 17, 2004 | June 14, 2004. |
| 085481 | Everett C. Madson | 69 FR 21857; April 22, 2004 | June 14, 2004. |
| 085482 | Kurt R. Pettipiece | 69 FR 21857; April 22, 2004 | June 14, 2004. |
| 086250 | Jon S. Katada | 69 FR 27947; May 17, 2004 | June 16, 2004. |
| 086253 | Roy J. Durbin, Jr. | 69 FR 27947; May 17, 2004 | June 16, 2004. |

**Marine Mammals**

| Permit number | Applicant | Receipt of application **Federal Register** notice | Permit issuance date |
|---|---|---|---|
| 082583 | Erhardt F. Steinborn | 69 FR 7979; February 20, 2004 | June 7, 2004. |

Dated: June 25, 2004.

**Michael S. Moore,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 04–15325 Filed 7–6–04; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Menominee Nation Casino and Hotel Project, Kenosha, Wisconsin; Correction

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice; correction.

**SUMMARY:** The Bureau of Indian Affairs (BIA) gave public notice in the **Federal Register** of June 23, 2004 (69 FR 35058), of a notice of intent to gather information necessary for preparing an Environmental Impact Statement for a proposed casino and hotel project to be located in Kenosha, Wisconsin. The address for the public scoping meeting was in error. This action corrects that error.

**FOR FURTHER INFORMATION CONTACT:** Herb Nelson, (612) 713–4400, extension 1143.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** document published on June 23, 2004, there was an error in the address of the public scoping meeting. The BIA is correcting the document as follows.

In notice document (FR Doc. 04–14240) make the following correction:

On page 35058, in the second column, under the **ADDRESSES** section, second paragraph, 4 lines from the bottom of the column, the address for the public scoping meeting should read "3520 30th Avenue, Kenosha, Wisconsin."

Dated: June 24, 2004.

**Woodrow W. Hopper,**

*Deputy Assistant Secretary—Management.*

[FR Doc. 04–15382 Filed 7–6–04; 8:45 am]

BILLING CODE 4310–W7–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZ–956–04–1420–BJ]**

### Arizona, Notice of Filing of Plats of Survey

June 28, 2004.

1. The plats of survey of the following described land were officially filed in

the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 27, and a metes-and-bounds survey in section 27, Township 2 North, Range 7 East of the Gila and Salt River Meridian, Arizona, accepted April 8, 2004 and officially filed April 14, 2004.

This plat was prepared at the request of the Arizona Game & Fish Department.

A plat representing the dependent resurvey of the East, West and North Boundaries, the subdivisional lines, and a portion of the boundary of Management District Number 6, Hopi Indian Reservation, Township 30 North, Range 18 East of the Gila and Salt River Meridian, Arizona, accepted June 8, 2004 and officially filed June 18, 2004.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

A plat representing the dependent resurvey of the Sixth Standard Parallel North, (South Boundary) the survey of the East, West, and North Boundaries, and the subdivisional lines, Township 25 North, Range 23 East of the Gila and Salt River Meridian, Arizona, accepted March 30, 2004 and officially filed April 7, 2004.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the East, West, and North Boundaries, and the subdivisional lines, Township 26 North, Range 23 East of the Gila and Salt River Meridian, Arizona, accepted March 30, 2004 and officially filed April 7, 2004.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the East, West and North Boundaries and the subdivisional lines, Township 27 North, Range 23 East of the Gila and Salt River Meridian, Arizona, accepted May 27, 2004 and officially filed June 4, 2004.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the dependent resurvey of a portion of the Sixth Standard Parallel North, (South Boundary), Township 25 North, Range 29 East of the Gila and Salt River Meridian, Arizona, accepted April 12, 2004 and officially filed April 16, 2004.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the dependent resurvey of the South Boundary and a portion of the subdivisional lines and the survey of the East and West Boundaries and a portion of the subdivisional lines in Township 24 North, Range 30 East of the Gila and Salt River Meridian, Arizona, accepted May 18, 2004 and officially filed May 26, 2004.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the dependent resurvey of a portion of the Sixth Standard Parallel North, (South Boundary), Township 25 North, Range 30 East of the Gila and Salt River Meridian, Arizona, accepted April 12, 2004 and officially filed April 16, 2004.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

2. All inquiries related to these lands should be sent to the Arizona State Office, Bureau of Land Management, 222 N. Central Avenue, P.O. Box 1552, Phoenix, Arizona 85001–1552.

**Kenny D. Ravnikar,**

*Chief Cadastral Surveyor of Arizona.*

[FR Doc. 04–15280 Filed 7–6–04; 8:45 am]

BILLING CODE 4310–32–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NM–952–04–1420–BJ]**

### Notice of Filing of Plats of Survey; New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, (30) thirty calendar days from the date of this publication.

**SUPPLEMENTARY INFORMATION:**

**New Mexico Principal Meridian, New Mexico**

The plat representing the dependent resurvey and survey in Township 9 South, Range 15 East, of the Fort Stanton Military Reservation, accepted April 2, 2004, for Group 928 New Mexico.

The plat (in 2 sheets) representing the dependent resurvey of the Nambe Pueblo Grant, in Townships 19 and 20 North, Ranges 9 and 10 East, accepted April 6, 2004, for Group 974 New Mexico.

The plat representing the dependent resurvey and survey in sections 5 and 6, Township 8 North, Range 18 West, accepted February 10, 2004, for Group 985 New Mexico.

The plat, constituting the entire survey record, representing the dependent resurvey and survey in section 29, Township 20 South, Range 8 West, accepted May 17, 2004, for Group 990 New Mexico.

The plat representing the dependent resurvey and survey in sections 24 and 25, Township 19 North, Range 10 East, accepted February 23, 2004, for Group 991 New Mexico.

The plat representing the dependent resurvey and survey of the Isleta Tract and section 9, Township 8 North, Range 6 East, accepted February 10, 2004, for Group 996 New Mexico.

The plat (in 2 sheets), representing the dependent resurvey of the Sandia Pueblo Grant, in Township 11 North, Range 3 East, accepted May 7, 2004, for Group 1000 New Mexico.

The plat (in 4 sheets), representing the dependent resurvey and survey in sections 15, 23, 24, and 25, Township 13 North, Range 3 East, accepted June 4, 2004, for Group 1004 New Mexico.

The plat representing the dependent resurvey and survey in section 30, Township 13 North, Range 4 East, accepted June 4, 2004, for Group 1004 New Mexico.

The plat representing the dependent resurvey and survey of the Acoma Pueblo Grant, in Township 10 North, Range 7 West, accepted May 19, 2004, for Group 1009 New Mexico.

The plat, constituting the entire survey record, representing the dependent resurvey in section 31, Township 23 South, Range 1 West, accepted February 27, 2004, for Group 1014 New Mexico.

The plat representing the dependent resurvey and survey of the Isleta Pueblo Grant and section 6, Township 8 North, Range 3 East, accepted April 26, 2004, for Group 1016 New Mexico.

The plat representing the dependent resurvey and survey in section 6, Township 8 North, Range 3 West, accepted April 19, 2004, for Group 1017 New Mexico.

The plat representing the survey of the Boyd Ranch Tract within the Tierra Amarilla Grant, accepted May 19, 2004, for Group 1022 New Mexico.

**Indian Meridian, Oklahoma**

The plat representing the dependent resurvey and survey in section 4, Township 3 North, Range 8 East, accepted April 1, 2004, for Group 78 Oklahoma.

The plat representing the dependent resurvey and survey of the Chickasaw-Choctaw nation boundary and sections 22, 27, 28 and 34, Township 4 North, Range 8 East, accepted April 1, 2004, for Group 78 Oklahoma.

The plat representing the dependent resurvey and survey in section 7, Township 24 North, Range 5 East, accepted April 23, 2004, for Group 110 Oklahoma.

**Texas**

The plate, in 4 sheets, representing the dependent resurvey of the Crossbar Ranch, in Potter County, Texas, accepted May 6, 2004, for Group 7 Texas.

The plat, constituting the entire record, representing Section 78, Block 9, in Potter County, Texas, accepted June 8, 2004, for Group 8 Texas.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the New Mexico State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

**FOR FURTHER INFORMATION CONTACT:** These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico, 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: June 18, 2004.

**Robert Casias,**

*Chief Cadastral Surveyor for New Mexico.*

[FR Doc. 04–15281 Filed 7–6–04; 8:45 am]

BILLING CODE 4310–FB–M

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-day notice of information collection under review: Juvenile Residential Facility Census.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 63, on page 17240 on April 1, 2004, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 6, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Juvenile Residential Facility Census.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number:* CJ–15, The Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federal Government, State, Local or Tribal. Other: Not-for-profit institutions; Business or other for-profit. This collection will gather information necessary to routinely monitor the types of facilities into which the juvenile justice system places young persons and the services available in these facilities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 3,500 respondents will complete a 2-hour questionnaire.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total hour burden to complete the nominations is 7,000 the annual burden hours.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 30, 2004.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, Department of Justice.*

[FR Doc. 04–15300 Filed 7–6–04; 8:45 am]

BILLING CODE 4410–18–P

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day notice for the grants management system online application: notice of information collection under review.

The Department of Justice (DOJ), Office of Justice Programs (OJP), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until September 7, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mr. Roy Blocher, Branch Chief, Systems Development Branch, Office of the Chief Information Officer, Office of Justice Programs, 810 7th Street NW., Washington, DC 20531 or by facsimile at (202) 305–2463.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Overview of This Information Collection:**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Grant Management System Online Application

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. The Office of the Chief Information Officer, Office of Justice Programs, United States Department of Justice is sponsoring the collection.

(4) *Affected public who will be as or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government; Other: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, and Federal Government. The information is collected via the SF–424 as a means to determine the validity of a request for funding. The Grant Management System collects this information as respondents apply for funding from various solicitations posted by program offices in the agency.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The estimated number of respondents are 4,000. The average number of respondents is based on the awards made each year, and the number of applications received, approved, and reviewed per fiscal year. The estimated amount of time that a respondent spends completing the forms is approximately 4 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total estimated annual hour burden associated with this collection is 16,000 hours.

If additional information is required contact: Brenda E. Dyer, Clearance Officer, Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: June 30, 2004.

**Brenda E. Dyer,**

*Clearance Officer, Department of Justice.*

[FR Doc. 04–15392 Filed 7–6–04; 8:45 am]

BILLING CODE 4410–18–P

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

**[Exemption Application Nos. D–11008 through D–11012]**

### Withdrawal of Notice of Proposed Exemption Involving Comerica Bank and Its Affiliates (Collectively, Comerica); Located in Detroit, MI

In the **Federal Register** dated May 4, 2004 (69 FR 24671), the Department of Labor (the Department) published a notice of proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1986. The notice of proposed exemption, for which relief had been requested, concerned the acquisition, holding and disposition of Comerica Incorporated Stock by Index and Model-Driven Funds managed by Comerica.

By letter dated June 7, 2004, Comerica Bank informed the Department that it wished to withdraw the notice of proposed exemption.

Accordingly the notice of proposed exemption is hereby withdrawn.

Signed at Washington, DC, this 1st day of July, 2004.

**Ivan L. Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.*

[FR Doc. 04–15363 Filed 7–6–04; 8:45 am]

BILLING CODE 4510–29–M

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

**[Prohibited Transaction Exemption 2004–08; Exemption Application No. D–11079 et al.]**

### Grant of Individual Exemptions; Kinder Morgan, Inc.

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. app. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

**Statutory Findings**

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

**Kinder Morgan, Inc.**

[Prohibited Transaction Exemption 2004–08; Exemption Application Number D–11079]

*Exemption*

Section I. Transactions Involving Contributions In-Kind

The restrictions of sections 406(a)(1)(E), 407(a)(2), 406(b)(1), and 406(b)(2) of the Act shall not apply to: (1) The acquisition of publicly traded Employer Stock by the Trusts through the voluntary in-kind contribution (the Contribution) of such Stock by the Employer for the purpose of pre-funding welfare benefits provided by the Plans; and (2) the holding by the Trusts of Employer Stock acquired pursuant to a Contribution, provided that:

(a) Each Contribution is authorized pursuant to, and made in conformity with, all relevant provisions of each affected Plan;

(b) The Plans and/or Trusts do not pay any amount or type of consideration whether in cash or other property (including the diminution of any Employer obligation to fund a Plan) for Employer Stock contributed in-kind by the Employer;

(c) Each Contribution is voluntary and unrelated to any Employer obligation to fund a Plan;

(d) The Plans do not cede any right to receive a cash contribution from the Employer as a result of any Contribution made to any Plan;

(e) The Plans and/or Trusts do not pay any fees or commissions in connection with any Contribution; and

(f) Each condition set forth below in Section II is satisfied.

Section II. Conditions

The exemption is conditioned upon the adherence by the Employer to the material facts and representations described herein and in the notice of proposed exemption, and upon the satisfaction of the following requirements:

(a) Only Employer Stock that constitutes "qualifying employer securities" (QES), as such term is set forth in section 407(d)(5) of the Act, will be transferred by the Employer to a Trust pursuant to a Contribution; [1]

(b) Employer Stock transferred by the Employer on behalf of a Plan will thereafter be held by the Trust (or Trusts) for the purpose of funding welfare benefits for the participants and beneficiaries of such Plan;

(c) Employer Stock contributed to, or otherwise acquired by, a Trust will be held in a separate account (an Account) under such Trust;

(d) The appropriate fair market value of any Employer Stock contributed by the Employer to a Trust will be established by an Independent Fiduciary, as such term is defined in section III(c) of this exemption;

(e) The Independent Fiduciary will represent the interests of the Plans for all purposes related to each Contribution for the duration of the Trust's holding of such Employer Stock, and will authorize the trustee of each Trust to accept Employer Stock pursuant to a Contribution only after such Independent Fiduciary determines, at the time of the transaction, that such transaction is feasible, in the interest of the affected Plans, and protective of the participants and beneficiaries of such Plans;

(f) The Independent Fiduciary will: (1) Verify that the price of Employer Stock contributed by the Employer is appropriate and, thereafter, monitor the Employer Stock and have sole responsibility for the ongoing management of the Accounts; and (2) take whatever action is necessary to protect the rights of the Plans funded by the Trusts, including, but not limited to, the making of all decisions regarding the acceptance and acquisition of Employer Stock contributed by the Employer, the retention and any disposition of such Stock, and the exercise of any voting rights associated with such Stock;

(g) With certain exceptions described in paragraphs (h) and (i) below, the total amount of: (1) Employer Stock; (2) qualifying employer real property (QERP), as defined by section 407(d)(4) of the Act; and (3) QES other than the Employer Stock (collectively, the Limited Assets) held by each Plan shall not comprise more than twenty-five percent (25%) of the fair market value of the assets held by such Plan as determined on the date of each such transaction;

(h) For purposes of calculating the percentage limitation described in paragraph (g) of this section, and to the extent the conditions of Prohibited Transaction Exemption (PTE) 91–38 have been met,[2] Employer Stock will not constitute a "Limited Asset" to the extent that such Employer Stock:

(1) Is held by an unrelated common or collective trust fund maintained by an independent bank in which any of the Plans through the Trusts may invest; and

(2) Has a total fair market value that does not exceed five percent (5%) of the fair market value of each such common or collective trust fund;

(i) Notwithstanding the requirement set forth in paragraph (g) above, the amount of Limited Assets held by a Plan may only exceed 25% of the total assets held by such Plan where:

(1) The Limited Assets appreciate in value at a rate that is greater than the rate attributable to the Plan's non-Limited Assets, and such difference in rates causes the value of the Limited Assets to exceed 25% of the Plan's total asset value; or

(2) The non-Limited Assets have declined in value at a rate that is greater than the rate attributable to the Plan's Limited Assets, and such difference in rates causes the value of the Limited Assets to exceed 25% of the Plan's total asset value; and

(j) At no time will any of the assets of the Trusts revert to the use or benefit of the Employer.

Section III. Definitions

(a) The term "Employer" means Kinder Morgan, Inc., any successor to Kinder Morgan, Inc., and/or any affiliates of Kinder Morgan, Inc.;

(b) The term "Employer Stock" means shares of publicly traded common stock of the Employer and includes any replacement publicly traded shares of such stock;

(c) The term "Independent Fiduciary" means W.H. Reaves & Company Investment Management only to the extent that W.H. Reaves & Company Investment Management: (1) Is an investment manager; (2) is independent of and unrelated to the Employer; and (3) acts solely on behalf of the Plans with respect to each Contribution. For purposes of this exemption, W.H. Reaves & Company Investment

[1] Section 407(d)(5) of the Act provides that the term "qualifying employer security" means an employer security that is stock or a marketable obligation (as defined in subsection (e)). After December 17, 1987, in the case of a plan other than an individual account plan, stock is considered a "qualifying employer security" only if such stock satisfies the requirements of subsection 407(f)(1) of the Act. Section 407(f)(1) of the Act provides that stock satisfies such requirement if, immediately following the acquisition of such stock—(A) no more than 25 percent of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by the plan, and (B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer.

[2] PTE 91–38 (56 FR 31966 (July 12, 1991)) requires, among other things, that the interests of a plan in an unrelated common or collective trust fund may not exceed ten percent (10%) of the total of all assets in such common or collective trust fund.

Management will not be deemed to be independent of and unrelated to the Employer if (i) W.H. Reaves & Company Investment Management directly or indirectly controls, is controlled by or is under common control with the Employer; or (ii) the Employer pays W.H. Reaves & Company Investment Management an amount of income during the fiduciary's current tax year that exceeds one percent (1%) of such fiduciary's gross income (for federal income tax purposes) over its prior tax year;

(d) The term "Plan" means an employee welfare benefit plan maintained by the Employer; and

(e) The term "Trust" means a trust which is qualified under Section 501(c)(9) of the Code, and established for the purpose of funding life, sickness, accident, and other welfare benefits for the participants and beneficiaries of the Plans.

Written Comments

Subsequent to the publication of the notice of proposed exemption (the Notice), Kinder Morgan, Inc. (hereinafter, either Kinder Morgan or the Applicant) notified the Department that it selected W.H. Reaves & Company Investment Management to act as the Independent Fiduciary.

The Department received two written comments in response to the Notice. The first written comment inquired: (1) Does the contribution of stock by Kinder Morgan limit Kinder Morgan's liability to fund the Plan; (2) What purpose does the proposed exemption serve; (3) Are the transactions described in the proposed exemption just a "scheme;" (4) Has the Securities and Exchange Commission (the SEC) reviewed the proposed transactions; and (5) Does Kinder Morgan have to contribute more shares if the value of the previously contributed shares significantly decreases?

The Applicant responded to (1) above as follows: Kinder Morgan is not required to pre-fund the Plans except for required contributions made as part of certain rate agreements with the Federal Energy Regulatory Commission.[3] Kinder Morgan is required to make contributions to the Plans only as benefit payments become due. The contribution of Employer Stock increases the assets in the Plan. This increases Kinder Morgan's ability to make benefit payments in the future. These contributions do not limit Kinder Morgan's liability to fund the Plan.

The Applicant responded to (2) above as follows: Kinder Morgan desires to pre-fund the Plans in order to provide both current and future eligible participants (and their beneficiaries) with greater assurance that funds will be available in future years to make benefit payments. This desire to pre-fund (rather than utilizing a "pay-as-you-go" approach) should be perceived very positively by eligible participants. Pre-funding eliminates the risk associated with having company general asset funds available in future years to make benefit payments.

With respect to (3) above, Kinder Morgan represents that there is no "scheme" involved with its prohibited transaction exemption request. According to the Applicant, contributions of Employer Stock will enable the Plans to more securely fund benefit payments in the future. In response to (4) above, Kinder Morgan states that the requested exemption does not affect the SEC's jurisdiction. With respect to (5) above, Kinder Morgan represents that the purpose of the prohibited transaction exemption request is to increase the amount of assets that would otherwise be contributed to the Plans by pre-funding the Plans with additional contributions of Employer Stock; but since any contributions of Employer Stock into the Plans are voluntary Kinder Morgan contributions, no additional contributions are required if previously contributed Employer Stock shares decrease in value.

The other written comment expressed general concern regarding the transactions described in the proposed exemption. In response to this comment, Kinder Morgan states that the contributions of Employer Stock described in the proposed exemption are voluntary. Once made, all Employer Stock contributed in-kind will be subject to the control of an Independent Fiduciary who will represent the interests of the Plans for all purposes with respect to the Employer Stock for the duration of the Trusts' holding of any of such Employer Stock as Plan assets. Kinder Morgan represents that no assets of any of the Trusts may be used except for the exclusive purpose of providing life, sickness, accident, and other benefits covered under the Code to Kinder Morgan employees, retirees, and their dependents and beneficiaries and for reasonable expenses.

In addition, the Applicant represents that the Independent Fiduciary is reputable and qualified as an investment manager. The Applicant states that: (1) The Independent Fiduciary is and will remain independent of, and unrelated to, Kinder Morgan; and (2) the Independent Fiduciary's income from Kinder Morgan will not represent a significant percentage (*i.e.*, not more than one percent) of its total income. The Applicant further represents that the requested transactions are structured so that: (1) The Plans will not give up any rights to cash or other property in connection with the acceptance of the Employer Stock contributions; (2) no consideration will be paid for Employer Stock contributed in-kind; (3) no obligation to pre-fund welfare benefits will be satisfied by the contribution of Employer Stock; (4) the Independent Fiduciary will be authorized to sell the Employer Stock at any time; (5) the Plans will pay no commissions in connection with the acquisition of the Employer Stock; (6) acceptance of the Employer Stock will be consistent with the guidelines and asset allocation policies applicable to the Trusts; and (7) the Employer Stock will be subject to no restrictions on marketability and fully transferable.

Accordingly, after full consideration and review of the entire record, including the written comments, the Department has determined to grant the exemption, as modified herein. The comments submitted by the commentators to the Department and the Applicant's response thereto has been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published on June 24, 2003 (68 FR 37534).

**FOR FURTHER INFORMATION CONTACT:** Christopher Motta of the Department, telephone (202) 693–8544. (This is not a toll-free number.)

[3] As stated in the proposed exemption, Kinder Morgan is currently subject to two rate agreements (the Rate Agreements) that require the Employer to make annual cash contributions of specified amounts to a Trust for an indefinite period of time. The Applicant states that all of the contributions made by Kinder Morgan to satisfy the funding requirements under the Rate Agreements will be accounted for separately.

**Landerholm, Memovich, Lansverk & Whitesides, P.S. 401(k) Profit Sharing Plan (the Plan) Located in Vancouver, WA**

[Prohibited Transaction Exemption 2004–09; Exemption Application No. D–11132]

*Exemption*

Section I. Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code [4] shall not apply, effective January 1, 1998, to the past acquisition by the Plan, through its real estate contract fund (the Fund), of real estate mortgage contracts (the Contracts) from American Equities, Inc. (AE), a party in interest with respect to the Plan.

In addition, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the (1) future acquisition by the Plan, through the Fund, of additional Contracts from AE; (2) the sale by the Plan of any of the Contracts to AE; and (3) the exchange by the Plan of certain Contracts with AE for other AE contracts and/or cash.

Section II. General Conditions

This exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following general conditions:

(a) Any acquisition, sale or exchange is approved in advance by the Plan's Trustees (the Trustees), who are independent of AE and the borrowers. Furthermore, the terms of each transaction between the Plan and AE involving the Contracts is not less favorable to the Plan than those terms generally available in an arm's length transaction between unrelated parties.

(b) The transactions are not a part of an agreement, arrangement or understanding designed to benefit AE.

(c) For purposes of an acquisition, sale or exchange, the cost of a Contract does not exceed its fair market value, as determined by the Plan's Trustees, using an objective appraisal methodology, and the yield on all Contracts purchased, sold or exchanged exceeds the average yield of comparable mortgage contract loans by not less then 1%.

(d) The aggregate fees paid to AE for its activities as loan servicing agent for the Plan at all times do not exceed "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(e) No investment management, advisory, underwriting fees or sales commissions are paid by the Plan to AE or any of its affiliates with regard to the Plan's purchase, sale or exchange of a Contract.

(f) All Contracts acquired by the Plan satisfy the Trustees' selection criteria. In this regard, at the time of the transaction:

(1) The loan to value ratio is 75% or less;

(2) The "Total Return" on the Contract is at least 1.00% above the prevailing 30 year home mortgage rate;

(3) The purchaser of the property provides a clean payment history and a personal credit report of at least 12 months' duration;

(4) The property is in good condition with no defects discovered upon inspection;

(5) A clean title report is required; and

(6) A first position lien is obtained on the property.

(g) For prospective purchases or exchanges of Contracts by or between the Plan and AE,

(1) The Trustees engage an independent and unrelated consultant (the Independent Consultant), trained and experienced in real estate financing, to perform a written annual review of the Plan's Contract selection process to assure that—

(i) The selection process produces a yield to the Plan consistent with comparable market returns for first mortgage investments by direct federally insured lenders in the Trustees' market area;

(ii) The selection process permits only the purchase of Contracts which are not subordinated to other indebtedness; and

(iii) The selection process incorporates standards for loan to value ratio and borrower credit worthiness appropriate for qualified retirement plan investments; and

(2) No Contracts are purchased or exchanged in any year until the Independent Consultant's review has been issued, and the Independent Consultant has the authority to require that the Plan modify or replace the Selection Criteria utilized by the Plan as a condition to issuance of its review.

(h) The Trustees maintain for a period of six years, in a manner that is accessible for audit and examination, the records necessary to enable the persons, as described in (i) to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Trustees, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest, other than the Trustees, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (h).

(i) Except as provided in (i)(1)–(2) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (h) above shall be unconditionally available at their customary location for examination during normal business hours by—

(1) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission;

(2) Any fiduciary of the Plan who has authority to acquire or dispose of any assets of the Plan, or any duly authorized employee or representative of such fiduciary; and

(3) Any participant or beneficiary of the Plan or duly authorized employee or representative of such participant or beneficiary.

**EFFECTIVE DATE:** This exemption is effective as of January 1, 1998 with respect to the Plan's past acquisition of the Contracts and effective as of the date of publication of the final exemption in the **Federal Register** for further acquisitions, sales or exchanges of additional Contracts by the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 24, 2004 at 69 FR 13884.

Written Comments

During the comment period, the Department received two written comments. The first comment letter was submitted by a former employee of Landerholm, Memovich, Lansverk & Whitesides (Landerholm), the Plan sponsor. The second comment letter was submitted by Landerholm. Discussed below are the comments, including the responses made by Landerholm to the first commenter and the Department's responses to Landerholm's comment.

Former Employee's Comments

1. *Arm's Length Transaction.* The former employee's first comment concerned whether "the Fund [would]

[4] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to corresponding provisions of the Code.

maintain an arm's length Plan." Landerholm notes that although the Plan has always functioned on an arm's length basis with respect to transactions with AE, all discretion to purchase either administrative services or Contracts from AE has resided with the Trustees, who are wholly independent of AE. Landerholm also points out that the exemption would add an Independent Consultant to review the decision-making parameters employed by the Trustees in selecting investment Contracts. In Landerholm's view, the addition of the Independent Consultant would not compromise the arm's length nature of the transactions.

In addition, Landerholm wishes to remind the commenter that the changes resulting from the exemption relate only to the Fund, which is an investment option offered to participants under the Plan. Should the commenter have concerns about the arm's length nature of transactions involving the Fund, Landerholm suggests that the commenter could pursue other investment alternatives offered under the Plan.

2. *AE's Ownership Interests.* The commenter's second comment concerned the ownership status of AE and whether any Landerholm attorneys own interests in AE. Landerholm states that AE is a wholly independent company owned by Mr. Ross Niles and Ms. Maureen Wile. Landerholm also explains that none of its attorneys, nor their relatives or related entities, have any ownership interest in AE.

3. *Impact of Contract Default on Plan.* The commenter's third comment concerned the impact of a Contract failure upon her retirement benefits. Landerholm explains that there would be no adverse effect on the commenter's retirement benefits since the commenter has not invested any of her account balance in the Fund. On a more generic basis, Landerholm notes that any investments in mortgages, deeds of trust or other real estate financing instruments may involve some degree of risk of default for delayed performance by the borrower. However, Landerholm states that the Trustees have worked diligently to minimize this risk by the application of stringent underwriting standards to evaluate the borrower, the Contracts being purchased, and the incidences of default. In addition, Landerholm asserts that the Plan has intentionally diversified its investment in the Fund among a large number of Contracts to minimize the risk that default on any one Contract would seriously harm the Fund or its cash flow. Landerholm explains that historically, Contracts have either been refinanced or foreclosed upon. Although these processes may temporarily delay cash flow on a particular Contract, Landerholm indicates that the diversification of Contracts and their maturities is intended to minimize or eliminate the impact on Plan distributions to participants. Finally, Landerholm believes that after implementing the exemptive safeguards, the Plan's processes for selecting, holding and monitoring the Contracts provides a high degree of protection for those participants choosing to invest in the Fund.

Landerholm's Comments

1. *Current Plan Trustees.* On page 13885 of the proposed exemption, the fourth sentence of Representation 1 states "The present Trustees of the Plan are Irwin C. Landerholm, T. Randall Grove, and Philip Janney, all of whom are current Landerholm shareholders." Landerholm wishes to note that Mr. Landerholm is retired and is no longer a shareholder. Landerholm suggests rewording the sentence to read as follows: "The present Trustees of the Plan are Irwin C. Landerholm, T. Randall Grove, and Philip Janney. Mr. Grove and Mr. Janney are current Landerholm shareholders, and Mr. Landerholm is a former Landerholm shareholder. The Department notes this clarification to the proposed exemption.

2. *Fund's Ownership Interest in the Contracts.* On page 13885 of the proposal, the third sentence of Representation 2 states "All of the Contracts are "whole" Contracts that are held in the name of the Fund." Landerholm wishes to clarify that all Contracts, whether "whole" Contracts or partial interests in Contracts are held in the name of the Fund, are secured by a first mortgage, deed of trust, or equivalent first security, and provide the Plan with the right to proceed with foreclosure in the event of a default by the borrower. In this regard, Landerholm states that there are two types of co-ownerships involved in the Contracts. For instance, the Plan may hold either a stream of a fixed number of payments (the Stream) or an undivided interest in a Contract. Where a Stream is involved, Landerholm explains that the Plan receives the first of (x) number of Contract payments. Any remaining payments will be made to the seller of the Plan, *i.e.*, AE. Currently, Landerholm indicates the Plan holds thirteen Contracts which break down as follows: 6 entire Contracts, 1 undivided interest in a Contract, 4 entire Streams, and 2 undivided interests in a Stream.

Landerholm further explains that in all of the co-ownership situations, the Plan's interest in the Contracts is secured by a first real estate mortgage or deed of trust. Upon default by the borrower on the underlying Contract, Landerholm indicates that the Contract documents provide the Plan (together with any undivided co-owner) the right to foreclose on the underlying property. If the Plan's interest is in a Stream, the Plan must give thirty (30) days notice to AE, as seller and holder of any residue interest after the Stream. Up until there is a foreclosure of the property, Landerholm states that AE can pay the Plan an amount equal to the entire Stream (including accrued interest), together with all costs and expenses incurred by the Plan, and thereby protect its residuary interest. If such a payoff occurs, Landerholm represents that the Plan is made whole. However, if AE does not pay off the entire Stream, then the Plan will complete the foreclosure process, sell the underlying property and retain the entire net foreclosure proceeds as a Plan asset. Thus, in the case of an undivided interest, Landerholm states that the Plan (acting in concert with the joint owner) has the same right it would if the Plan were the sole owner of the Contract with first security position. In the case of a Stream, other than AE's ability to pay off the Plan to protect AE's residuary interest, Landerholm explains that the Plan has the same first lien position and foreclosure rights that it would have if it were the whole Contract holder with first security position.

Landerholm further notes that as a technical matter, all of the Streams involve AE, a party in interest, since AE retains a residuary interest after all of the payments of the Stream have been made. Other than AE's residuary interest, Landerholm points out that only two active Contracts have a party in interest, Mr. Irwin Landerholm, a co-trustee of the Plan, as a co-owner. Landerholm explains that at the time the Plan purchased its interests in these Contracts, the Fund lacked sufficient free cash to purchase full Contracts. Therefore, Mr. Landerholm agreed to purchase a fifty percent undivided interest in one undivided Contract and one undivided Stream to facilitate the Plan's investment of the cash it did have available in the other fifty percent interest.

Landerholm further states that Mr. Landerholm's 50% co-ownership interest in the Contracts is identical to the Plan's 50% interest. In this respect, Landerholm indicates that Mr. Landerholm does not receive payment or distribution preferences. Until the

time the Contracts are paid, or Mr. Landerholm sells or otherwise transfers his interest to a third party, all payments under the Contracts are allocated equally between the Plan and Mr. Landerholm. Landerholm further represents that in the event of a Contract foreclosure the Plan and Mr. Landerholm have a joint first security interest, and either party can instigate the foreclosure proceeding. In this regard, Landerholm notes that Mr. Landerholm would not receive distribution or payment preferences of any kind.

Landerholm further represents that with respect to Mr. Landerholm's current fiduciary status, whether as Trustee, Real Estate Committee member, or otherwise, Mr. Landerholm will recuse himself from any and all decision making by the relevant fiduciary body with respect to matters involving any payment default and/or foreclosure on either of the Contracts in which Mr. Landerholm is co-owner. In addition, Landerholm notes that one of the Contracts in which Mr. Landerholm is co-owner will be fully paid off in a matter of a few months.

Landerholm explains that both it and Mr. Landerholm desire to complete Mr. Landerholm's retirement from his remaining Plan functions (principally as a Trustee and Real Estate Committee member) shortly after this exemption is granted. Upon that severance, Landerholm states that Mr. Landerholm will no longer be a fiduciary, and thus, he will have no discretionary authority over any Plan decision, including whether to proceed with a Contract foreclosure. The Department acknowledges the foregoing clarification to the proposal.[5]

3. *Federally-Insured Mortgage Lenders.* On page 13885 of the proposed exemption, the fourth sentence of Representation 2 states "The loans do not represent loans from direct, federally-insured lenders, and as a result, they normally trade at a discount to the current federally-insured lending rates." Landerholm explains that while it agrees with this statement, it would like to emphasize that the Contracts must provide a premium return over current rates due to the fact that they are not federally insured. Landerholm proposes that the sentence be reworded to read "The loans do not represent loans from direct, federally-insured lenders, and as a result, the Contracts must normally provide a return which is superior to the current federally-insured lending rates." The Department notes this clarification to the proposed exemption.

4. *Contract Purchase Price.* On page 13885 of the proposed exemption, the second sentence of Representation 4 reads "AE acquires Contracts at a discount and sells them at less than the federally-insured lending rate on the secondary market." Landerholm proposes the sentence be reworded to read "AE sells the Contracts at a discount to reflect the fact that the return must be at a premium to the federally-insured lending rate." The Department acknowledges this clarification to the proposal.

5. *Prospective Contract Disclosure to Plan.* On page 13885 of the proposed exemption, the fifth sentence of Representation 4 reads "Each package prepared by AE included relevant documentation and performance history, as well as an independent appraisal by a knowledgeable realtor in the property's locale, of the underlying real estate securing the loans." Landerholm states that under Washington law special licensure is required to provide an "appraisal" and a realtor is not normally licensed to provide "appraisals". As a result, Landerholm proposes the sentence be reworded to read "Each package prepared by AE included relevant documentation and performance history, as well as an independent market evaluation by a knowledgeable realtor in the property's locale, of the underlying real estate securing the loans." The Department notes the foregoing clarification to the proposal.

6. *Contract Yield.* On page 13886 of the proposed exemption, the third bullet point of Representation 9 reads "The cost of a Contract must not exceed its fair market value, as determined by the Trustees using an objective appraisal methodology, and the yield on all Contracts purchased must exceed the average yield of comparable mortgage contract loans by no less than 1%." Landerholm notes that the Trustees focus on each Contract and the determination of yield at the time of acquisition. Therefore, Landerholm proposes the bullet language be modified to read "* * *and the yield on each Contract, determined at the time of acquisition, must exceed the average yield of comparable mortgage contract loans at that time by no less than 1%." The Department notes this clarification to the proposal.

Accordingly, after giving full consideration to the entire record, including the two comment letters, the Department has determined to grant the exemption. For further information regarding the comments and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11132) the Department is maintaining in this case. The complete application file, as well as the comments and all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Ms. Silvia M. Quezada of the Department, telephone (202) 693–8553. (This is not a toll-free number.)

**DuPont Capital Management Corporation (DCMC)**

[Prohibited Transaction Exemption 2004–10; Exemption Application Nos. D–11157—D–11159]

*Exemption*

Section I. Covered Transactions

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the in kind transfer of certain debt securities (the Debt Securities) that are held in the DuPont and Related Companies Defined Contribution Plan Master Trust (the Master Trust), in which the assets of the E.I. du Pont de Nemours and Company Savings and Investment Plan (the DuPont Savings and Investment Plan), the DuPont Specialty Grains Savings Plan, and the Thrift Plan for Employees of Sentinel Transportation Company (collectively, the DuPont Plans) invest, in exchange for units in a newly-established group trust (the Group Trust), where DCMC, a wholly owned subsidiary of E.I. du Pont de Nemours and Company (DuPont), one of the sponsors of the DuPont Plans, acts as both a fiduciary for the Master Trust and the Group Trust.

[5] The Department notes that Mr. Landerholm will recuse himself from all decisions regarding payment default and/or foreclosure on either of the Contracts in which he is a co-owner with the Plan. Although this issue may become moot due to Mr. Landerholm's contemplated retirement and resignation as Trustee and Real Estate Committee member, the Department wishes to point out that where a plan fiduciary removes himself from all consideration by the plan of whether or not to engage in a transaction, and by not otherwise exercising, with respect to the transaction, any of the authority, control or responsibility which makes such person a fiduciary, and absent any arrangement, agreement or understanding with respect to who will render the decision concerning the propriety of the transaction, the fiduciary may avoid engaging in an act described in section 406(b)(1) and (b)(2) of the Act. (See ERISA Advisory Opinion 97–72A, October 10, 1979.)

**Section II. Specific Conditions**

This exemption is subject to the following conditions:

(a) A fiduciary (the Independent Fiduciary), who is acting on behalf of the DuPont Plans, who is independent of and unrelated to DuPont and its subsidiaries, as defined in paragraph (e) of Section IV below, has the opportunity to review the in kind transfer of the Debt Securities that are held in the Master Trust, to the Group Trust, in exchange for units in the Group Trust, and receives, in advance of the investment by the Master Trust in the Group Trust, full written disclosures concerning the Group Trust, which include, but are not limited to the following:

(1) A private offering memorandum describing the transaction;

(2) A table listing management fees, as negotiated under the applicable investment management agreements, and projected costs;

(3) A chart showing the effect of such fees and costs on an investment in the Group Trust for different amounts of Debt Securities managed in the Group Trust;

(4) A statement of the reasons why DCMC may consider such investment to be appropriate for the DuPont Plans;

(5) A statement on whether there are any limitations applicable to DCMC with respect to which assets of a DuPont Plan may be invested in the Group Trust and the nature of such limitations; and

(6) Copies of the proposed and final exemption.

(b) On the basis of the foregoing information, the Independent Fiduciary authorizes, in writing, the in kind transfer of the Debt Securities that are held on behalf of the DuPont Plans in the Master Trust to a series of subtrusts under the Group Trust, in exchange for units in the Group Trust. Such authorization is to be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act. Specifically, the Independent Fiduciary, before authorizing the transfer of assets by the DuPont Plans from the Master Trust to the Group Trust, determines that:

(1) The terms of the in kind transfer transaction, are fair to the participants in the DuPont Plans, and are comparable to, and no less favorable than, terms obtainable at arm's length between unaffiliated parties; and

(2) The in kind transfer transaction is in the best interest of the DuPont Plans and their participants and beneficiaries.

(c) No sales commissions, fees or other costs are paid by the DuPont Plans in connection with the in kind transfer transaction. Furthermore, no additional management fees are charged to the DuPont Plans by DCMC in the Group Trust.

(d) The in kind transfer transaction is a one-time transaction for the DuPont Plans, the transferred assets constitute a *pro rata* portion of all of the assets of the DuPont Plans that are held in the total return tier portion of the DuPont Stable Value Fund (the Fund) within the Master Trust prior to the transfer.

(e) The per unit value of the units representing interests in the subtrusts created under the Group Trust that are issued to each DuPont Plan have an aggregate value that is equal to the value of the Debt Securities transferred to the Group Trust on the date of the transfer, as determined in a single valuation performed in the same manner and at the close of business on the same day in accordance with Securities Exchange Commission Rule 17a–7 under the Investment Company Act of 1940 (the 1940 Act), as amended (Rule 17a–7), (using sources independent of DCMC), and the procedures established by the Master Trust to Rule 17a–7.

(f) Fair market value of the Debt Securities for which a current market price can be obtained is determined by reference to the last sale price for transactions reported in the consolidated transaction reporting system (the Consolidated System), a recognized securities exchange, or the National Association of Securities Dealers Automated Quotation System (the NASDAQ System). If there are no reported transactions or if the Debt Securities are not quoted in the NASDAQ System, fair market value is determined based on the evaluated mean price provided by a pricing service that is independent of DCMC, or, in the absence of an evaluated mean price from an independent pricing service, based on the average of the highest current independent bid and lowest current independent offer, as of the close of business on the day of the transaction determined on the basis of reasonable inquiry from at least two market makers as shall be provided to the trustee and custodian of the stable value fund of the Master Trust. All commercial pricing sources and dealers are pre-approved by the Master Trust's investment managers. The fair market value of any illiquid Debt Securities is provided to the Independent Fiduciary by DCMC for review and approval of the objective methodology and the application of such methodology in valuing such Debt Securities.

(g) DCMC provides, within 30 days after the completion of the transaction, a confirmation statement to the Independent Fiduciary containing the following information:

(1) The identity of each Debt Security that DCMC deemed suitable for transfer from the Master Trust to the Group Trust;

(2) The current market price of each Debt Security for purposes of the transfer, as determined on the date of such in kind transfer;

(3) The identity of each Debt Security that does not fall into at least one of the following categories: (i) a reported security; (ii) a security principally traded on an exchange; or (iii) a security quoted on the NASDAQ System;

(4) The identity of each pricing service or market maker consulted in determining the fair market value of the Debt Securities, and

(5) The aggregate dollar value of the Debt Securities that were held on behalf of the DuPont Plans in the Master Trust immediately before the in kind transfer, and the number of Group Trust units held by the Master Trust for the DuPont Plans immediately after the transfer (the related per unit value and the aggregate value).

(h) After the transfer of Debt Securities from the Master Trust to the Group Trust, the Independent Fiduciary performs a review verifying the pricing information supplied by the investment managers and the Group Trustee.

(i) The Debt Securities that are transferred from the Master Trust to the Group Trust are valued using the same methodology currently used by the Master Trust to value such securities. Similarly, the Group Trust uses the same valuation methodology.

(j) DCMC does not execute the in kind transfer transaction unless the Independent Fiduciary for the DuPont Plans consents to such in kind transfer in writing.

(k) DCMC does not execute the in kind transfer transaction unless the wrap contracts issued by certain unrelated banks and insurance companies to the Master Trust agree in advance to maintain the then-current book value for accounting purposes with respect to the assets transferred to the Group Trust. In addition, DCMC absorbs all costs associated with the commitments.

(l) Each of the DuPont Plan's dealings with the Master Trust, the Group Trust and DCMC is on a basis that is no less favorable to such Plan than dealings between the Group Trust and other holders of Group Trust units.

Section III. General Conditions

This exemption is subject to the following general conditions:

(a) DCMC maintains for a period of six years the records necessary to enable the persons described below in paragraph (b) of this Section III to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of DCMC, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than DCMC shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) of this Section III, and notwithstanding any provisions of sections 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) The Independent Fiduciary described in paragraph (e) of Section IV; or

(iii) Any participant or beneficiary of the DuPont Plans or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (b)(1)(ii) and (iii) of this Section III shall be authorized to examine trade secrets of DCMC, or commercial or financial information which is privileged or confidential.

Section IV. Definitions

For the purposes of this exemption,

(a) The term "DCMC" means DuPont Capital Management Corporation and any affiliate of DCMC, as defined below in Section IV(b).

(b) An "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "relative" means a "relative," as that term is defined in section 3(15) of the Act, (or a "member of the family," as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(e) The term "Independent Fiduciary" means a fiduciary who is: (1) Independent of and unrelated to DCMC and its affiliates, and (2) appointed to act on behalf of the Plan for all purposes related to, but not limited to, (A) the in kind transfer of the Debt Securities by the Master Trust to the Group Trust, (B) the Group Trust, in turn, transferring units equal in value to the assets of the Master Trust held in certain stable value funds. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to DCMC if: (1) Such fiduciary directly or indirectly controls, is controlled by or is under common control with DCMC; (2) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption, except that an Independent Fiduciary may receive compensation for acting as an Independent Fiduciary from DCMC in connection with the transaction contemplated herein if the amount of payment of such compensation is not contingent upon or in any way affected by the Independent Fiduciary's ultimate decision; and (3) the annual gross revenue received by such fiduciary from DCMC and its affiliates during any year of its engagement, exceeds 5 percent (5%) of the Independent Fiduciary's annual gross revenue from all sources for its prior tax year.

(f) The term "transferable securities" means securities (1) for which market quotations are readily available (as determined under Rule 17a–7 of the 1940 Act) and (2) which are not: (i) Securities which, if distributed, would require registration under the Securities Exchange Act of 1933; (ii) securities issued by entities in countries which (a) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Mutual Funds, or (b) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; (iii) certain portfolio positions (such as forward foreign currency contracts, futures, and options contracts, swap transactions, certificates of deposit and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counter-party to the transaction to effect a change in beneficial ownership; (iv) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements) which are not readily distributable; (v) other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable); and (vi) securities subject to "stop transfer" instructions or similar contractual restrictions on transfer. Notwithstanding the above, the term "transferable securities" also includes securities that are considered private placements intended for large institutional investors, pursuant to Rule 144A under the 1933 Act, which are valued by the unrelated investments managers for the DuPont Stable Value Fund, or if applicable, by the Independent Fiduciary, which will confirm and approve all such valuations.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 24, 2004 at 69 FR 13888.

Written Comments

During the comment period, the Department received two written comments and no requests for public hearing. The first comment letter was submitted by a DuPont Plan participant, who is a retired employee. The second comment letter, which was submitted by DCMC, is intended to clarify the proposal. Discussed below are both comments, including responses made by DCMC and the Department.

Retired Employee's Comments

1. *DCMC's Seeking Financial Relief.* The former employee's first comment concerns whether DCMC is looking for some type of financial relief. However, as discussed at some length in the exemption application, and as confirmed by the Independent Fiduciary, DCMC states that it is in no way seeking "financial relief." Rather, DCMC states that it receives no compensation (other than the reimbursement of direct expenses) for managing assets attributable to the DuPont Plans, and it anticipates that the Group Trust structure will ultimately result in lower costs for all Participating Plans.

2. *Recent Mutual Fund Scandals.* The commenter's second comment concerns his general opposition to DCMC's exemption request due to recent mutual fund activities and events occurring within the DuPont Savings and Investment Plan which he believes were not in the best interests of the Plan's participants. DCMC explains that the commenter never specifies the activities

to which he is referring, and therefore DCMC is unable to respond to the commenter's concerns in a constructive manner. DCMC indicates that it is well aware of its fiduciary responsibilities. However DCMC explains it is not aware of any recent "events" that might not be considered to be in the best interests of participants in the DuPont Plans.

3. *Divestment Activities.* The commenter's third comment expresses concern over "activities in divestment-associated businesses [sic] units (*i.e.*, Invista to Koch Industries) that are not identified in the notice." DCMC believes that the commenter's concerns on divestment issues relate solely to DuPont corporate matters and do not relate to plan administration or to the proposed exemption.

DCMC's Comments

1. *Correction of Name of DCMC.* On page 13888 of the proposed exemption, DCMC requests that the Department make a correction to its listed name. DCMC states that its proper name is "DuPont Capital Management Corporation."

Accordingly, in response to this comment, the Department has revised DCMC's listed name to reflect the correct name for this entity.

2. *Valuation of Debt Securities Held in the Master Trust.* On page 13888 of the proposal, Section II(f) specifies how valuations are to be determined for Debt Securities for which a current market price can be obtained, as well as for Debt Securities for where no current market price is available. Section II(f) requires, in relevant part, that the fair market value of Debt Securities for which a current market price is unavailable be determined by taking the average of the highest current independent bid and lowest current independent ask prices as of the close of business as provided to the Master Trust's investment managers and the trustee of the Group Trust by three independent third party commercial pricing sources.

DCMC represents that it has been informed by the custodian for the DuPont Stable Value Fund of the Master Trust that current industry practice for valuing such securities involves reliance on values provided by independent pricing services. DCMC states that the pricing service used by the custodian develops prices using proprietary vendor models in conjunction with quoted values received from in house trading desks where available. In this connection, DCMC notes that the Department has acknowledged reliance on a pricing service as appropriate and consistent with standard industry practice in Prohibited Transaction Exemption (PTE) 2002–21, an individual exemption issued to the Pacific Investment Management Company (67 FR 14988, March 28, 2002 and 67 FR 36037, May 22, 2002). Accordingly, DCMC requests that the Department modify the second sentence of Section II(f) of the proposal to read as follows:

> * * * If there are no reported transactions or if the Debt Securities are not quoted in the NASDAQ System, fair market value is determined based on the evaluated mean price provided by a pricing service that is independent of DCMC, or, in the absence of an evaluated mean price from an independent pricing service, based on the average of the highest current independent bid and lowest current independent offer, as of the close of business on the day of the transaction determined on the basis of reasonable inquiry from at least two market makers as shall be provided to the trustee and custodian of the stable value fund of the Master Trust * * *

In response to this comment, the Department has revised Section II(f) of the final exemption.[6]

3. *Former DuPont Affiliate Plans.* On page 13890 of the proposed exemption, Representation 5 identifies a defined contribution plan whose sponsoring employer was formerly affiliated with DuPont. DCMC requests that the proposed exemption be modified to refer to the sponsor as the "Former DuPont Affiliate" but not by its actual name. Furthermore, DCMC requests that the Department refer to the sponsor's respective plan as the "Former DuPont Affiliate Plan."

In response to this comment, the Department acknowledges these clarifications to the proposal.

4. *State Street Bank and Trust (SSB) as an Issuer of Wrap Contracts.* On page 13890 of the proposed exemption, Footnote 16 states, in part, that SSB, the directed trustee of the Group Trust, has not issued wrap contracts to the DuPont Plans nor is it anticipated that SSB will be issuing wrap contracts to Plans that invest in the Group Trust. However, DCMC wishes to clarify that in the past, SSB has issued wrap contracts to the DuPont Plans that may invest in the Group Trust and may continue to do so in the future. DCMC believes that as a directed trustee of the Group Trust, SSB would have no investment discretion over Plan assets. Since SSB would not use any of the authority, control or responsibility that makes it a fiduciary to cause a DuPont Plan to purchase wrap contracts from SSB, therefore, DCMC believes such a purchase would not violate section 406(b) of the Act. However, DCMC explains that SSB would be a party in interest to the Plans participating in the Group Trust, including the DuPont Plans, by reason of its provision of services to such Group Trust. Therefore, DCMC explains that any purchase of a wrap contract by SSB on behalf of these participating Plans would need to comply with the requirements of one or more prohibited transaction exemptions, for example, class PTE 84–14 (49 FR 9494, March 13, 1984) and/or class PTE 96–23 (61 FR 15975, April 10, 1996).

In response to this comment, the Department notes this clarification to the proposal.

5. *Reference to "Board of Trustees."* On page 13893 of the proposed exemption, Representation 15 describes the qualifications, duties and written determinations made by U.S. Trust Company, N.A. (U.S. Trust), the Independent Fiduciary for the DuPont Plans with respect to the proposed in kind transfer transaction. Paragraph (b) of Representation 15, which pertains to conclusions reached by U.S. Trust in a December 17, 2003 written report, indicates that the Debt Securities associated with the proposed transaction will be valued in accordance with pricing procedures "established by the Master Trust's Board of Trustees." DCMC explains that this reference should be to the "custodian of the Stable Value Fund of the Master Trust."

In response to this comment, the Department notes this clarification to the proposal.

6. *Cost Savings.* On page 13893 of the proposed exemption, the second paragraph of Representation 15 refers to how U.S. Trust will conclude that the proposed exemption transaction is in the interest of the participants and beneficiaries of the DuPont Plans since the anticipated costs savings are likely to be material. DCMC states that there is no need to modify this description of U.S. Trust's conclusion. However, DCMC would like to emphasize that the anticipated cost savings are expected to be realized over a period of time rather than immediately.

In response to this comment, the Department acknowledges this clarification to the proposed exemption.

Accordingly, after giving full consideration to the entire record, including the comment letters, the Department has determined to grant the exemption. For further information regarding the comments and other matters discussed herein, interested

[6] The Department notes that, consistent with the fiduciary responsibility provisions of section 404 of the Act, it is ultimately the responsibility of the fiduciaries for the DuPont Plans to determine whether the Debt Securities are appropriately valued.

persons are encouraged to obtain copies of the exemption application file (Exemption Application Nos. D–11157 through D–11159) the Department is maintaining in this case. The complete application file, as well as the comments and all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Mr. Arjumand A. Ansari of the Department at (202) 693–8566. (This is not a toll-free number.)

**Pan-American Life Insurance Corporation (Pan-American) Located in New Orleans, LA**

[Prohibited Transaction Exemption 2004–11; Exemption Application No. D–11202]

*Exemption*

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the cash sale, on November 17, 2003, by certain defined contribution plans (the Plans), which invest in Separate Account V (the Account), a pooled separate account, whose assets are invested in units of the Dreyfus-Certus Stable Value Fund (the Fund), of Fund units, to Pan-American, the Account's investment manager and a fiduciary with respect to such Account.

This exemption is subject to the following conditions:

(a) Prior to the transaction (the Transaction), a fiduciary (the Independent Fiduciary), acting on behalf of the Plans, who was independent of and unrelated to Pan-American and its subsidiaries, determined that the subject Transaction (1) was fair to the participants in the Plans investing in the Account; (2) was comparable to, and no less favorable than, terms obtainable at arm's length between unaffiliated parties; and (3) was in the best interest of the Plans investing in the Account and their participants and beneficiaries.

(b) The Independent Fiduciary monitored the Transaction on behalf of the Plans investing in the Account.

(c) Subsequent to the closing of the Transaction, the Independent Fiduciary performed a post-Transaction review, which included, among other things, a determination that the fair market value of the Plan's interests in the Account as of November 14, 2003, as determined by the Fund trustee, was accurate and consistent with the Fund's valuation method.

(d) No sales commissions, fees or other costs were paid by the Plans in connection with the Transaction.

(e) The sale was a one-time transaction for cash.

(f) The fair market value of the units was determined in good faith by The Dreyfus Trust Company, an unrelated party, at the time of the Transaction.

**EFFECTIVE DATE:** This exemption is effective as of November 17, 2003.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 24, 2004 at 69 FR 13900.

**FOR FURTHER INFORMATION CONTACT:** Mr. Arjumand A. Ansari of the Department at (202) 693–8566. (This is not a toll-free number.)

**Svenska Cellulosa Aktiebolaget SCA (publ) (SCA) Located in Stockholm, Sweden**

[Prohibited Transaction Exemption 2004–12; Exemption Application Nos. L–11217 through L–11219]

*Exemption*

The restrictions of section 406(a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by SCA Reinsurance Limited (SCA Re), through its USVI Branch, in connection with insurance contracts sold by Aetna, Inc. (Aetna), or any successor insurance company to Aetna which is unrelated to SCA, to provide long-term disability, accidental death and dismemberment, and basic and supplemental life insurance benefits to participants in programs maintained by SCA North America, Inc. (SCA North America) to provide such benefits to its employees (the Plans),[7] provided the following conditions are met:

(a) SCA Re—

(1) Is a party in interest with respect to the Plans by reason of a stock or partnership affiliation with SCA that is described in section 3(14)(E) or (G) of the Act; .

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act;

(3) Has obtained a Certificate of Authority from the Insurance Commissioner of its domiciliary state that has not been revoked or suspended;

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, the U.S. Virgin Islands)[8] by the Insurance Commissioner of the State within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred; and

(5) Is licensed to conduct reinsurance transactions by a State whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority; and

(b) The Plans pay no more than adequate consideration for the insurance contracts;

(c) No commissions are paid by the Plans with respect to the direct sale of such contracts or the reinsurance thereof;

(d) In the initial year of any contract involving SCA Re, there will be an immediate and objectively determined benefit to the Plans' participants and beneficiaries in the form of increased benefits;

(e) In subsequent years, the formula used to calculate premiums by Aetna or any successor insurer will be similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(f) The Plans only contract with insurers with a rating of A or better from A.M. Best Company. The reinsurance arrangement between the insurers and SCA Re will be indemnity insurance only, *i.e.*, the insurer will not be relieved of liability to the Plans should SCA Re be unable or unwilling to cover any liability arising from the reinsurance arrangement;

(g) SCA Re retains an independent fiduciary (the Independent Fiduciary), at SCA North America's expense, to analyze the transactions and render an opinion that the requirements of sections (a) thorough (f) have been complied with. For purposes of this exemption, the Independent Fiduciary is a person who:

[7] Each Plan will be considered an "employee welfare benefit plan" as defined in section 3(1) of the Act.

[8] The U.S. Virgin Islands are considered a "State," as defined in section 3(10) of the Act.

(1) Is not directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with SCA, SCA North America or SCA Re (this relationship hereinafter referred to as an "Affiliate");

(2) Is not an officer, director, employee of, or partner in, SCA, SCA North America or SCA Re (or any Affiliate of either);

(3) Is not a corporation or partnership in which SCA, SCA North America or SCA Re has an ownership interest or is a partner;

(4) Does not have an ownership interest in SCA or SCA Re, or any of either's Affiliates;

(5) Is not a fiduciary with respect to the Plans prior to the appointment; and

(6) Has acknowledged in writing acceptance of fiduciary responsibility and has agreed not to participate in any decision with respect to any transaction in which the Independent Fiduciary has an interest that might affect its best judgment as a fiduciary.

For purposes of this definition of an "Independent Fiduciary," no organization or individual may serve as an Independent Fiduciary for any fiscal year if the gross income received by such organization or individual (or partnership or corporation of which such individual is an officer, director, or 10 percent or more partner or shareholder) from SCA, SCA Re, or their Affiliates (including amounts received for services as Independent Fiduciary under any prohibited transaction exemption granted by the Department) for that fiscal year exceeds 5 percent of that organization or individual's annual gross income from all sources for such fiscal year.

In addition, no organization or individual who is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow funds from SCA, SCA Re, or their Affiliates during the period that such organization or individual serves as Independent Fiduciary, and continuing for a period of six months after such organization or individual ceases to be an Independent Fiduciary, or negotiates any such transaction during the period that such organization or individual serves as Independent Fiduciary.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 4, 2004 at 69 FR 24679.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 1st day of July, 2004.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.*

[FR Doc. 04–15362 Filed 7–6–04; 8:45 am]

BILLING CODE 4510–29–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–54,884]**

### American Airlines, Las Vegas Reservations Office, Las Vegas, NV; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 11, 2004 in response to a worker petition filed by on behalf of workers at American Airlines, Las Vegas Reservations Office, Las Vegas, Nevada.

All workers were separated from the subject firm more than one year before the date of the petition. Section 223(b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 17th day of June, 2004.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–15319 Filed 7–6–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–55,034]**

### Android Industries, Lordstown LLC, Vienna, Ohio; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 14, 2003, in response to a petition filed on by a company official on behalf of workers of Android Industries, Lordstown LLC, Vienna, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 18th day of June, 2004.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–15316 Filed 7–6–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–54,692]**

### The Bank of New York, New York, NY; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at the Bank of New York, New York, New

York. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–54,692; the Bank of New York, New York, New York (June 30, 2004).

Signed in Washington, DC this 30th day of June 2004.

**Timothy Sullivan,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 04–15311 Filed 7–6–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–54,954]**

### Ciprico, Inc., Plymouth, MN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 21, 2004 in response to a petition filed by a state agency representative on behalf of workers at Ciprico, Inc., Plymouth, Minnesota.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 18th day of June, 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–15318 Filed 7–6–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance

**AGENCY:** Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 19, 2004.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 19, 2004.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC., this 30th day of June, 2004.

**Timothy Sullivan,**

*Director, Division of Trade Adjustment Assistance.*

APPENDIX

[Petitions Instituted Between 06/21/2004 and 06/25/2004]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 55,108 | Cosom Sporting Goods (NJ) | Thorofare, NJ | 06/21/2004 | 06/21/2004 |
| 55,109 | Ericson Manufcturing Co. (Comp) | Willoughby, OH | 06/21/2004 | 06/17/2004 |
| 55,110 | Model Die Casting, Inc. (Comp) | Carson City, NV | 06/21/2004 | 06/18/2004 |
| 55,111 | Cemco, Inc. (Comp) | Whitesburg, TN | 06/21/2004 | 06/18/2004 |
| 55,112 | SCP Global Technologies (Comp) | Boise, ID | 06/21/2004 | 06/18/2004 |
| 55,113 | Veltri Metal Products (USWA) | New Baltimore, MI | 06/21/2004 | 06/07/2004 |
| 55,114 | M.A. Moslow and Brothers, Inc. (IAMAW) | Buffalo, NY | 06/21/2004 | 06/04/2004 |
| 55,115 | Weyerhaeuser Co. (GCU) | Portland, OR | 06/21/2004 | 06/20/2004 |
| 55,116 | Southern NJ Steel (NJ) | Vineland, NJ | 06/21/2004 | 06/21/2004 |
| 55,117 | Baush and Lomb (SIWU) | Manchester, MO | 06/21/2004 | 06/15/2004 |
| 55,118 | Frick Gallagher Mfg. (Comp) | Wellston, OH | 06/22/2004 | 06/18/2004 |
| 55,119 | Allegheny Cast Metals Inc. (Comp) | Titusville, PA | 06/23/2004 | 06/11/2004 |
| 55,120 | Agfa Corporation (Comp) | Wilmington, MA | 06/23/2004 | 06/11/2004 |
| 55,121 | Shell Information Tech., Int'l (Wkrs) | Houston, TX | 06/23/2004 | 06/11/2004 |
| 55,122 | Fasco (Wkrs) | St. Clair, MO | 06/23/2004 | 06/21/2004 |
| 55,123 | Tyco Healthcare Retail Group (Comp) | Waco, TX | 06/23/2004 | 06/09/2004 |
| 55,124 | General Elec. Capital Auto Financial (Wkrs) | Depew, NY | 06/23/2004 | 06/09/2004 |
| 55,125 | Volt (Wkrs) | Redmon, WA | 06/23/2004 | 06/17/2004 |
| 55,126 | Walt Diskey Television Int'l Latin Amer. (NPW) | Coral Gables, FL | 06/23/2004 | 06/16/2004 |
| 55,127 | Frybrant, Inc. (Comp) | Frederick, OK | 06/23/2004 | 06/14/2004 |
| 55,128 | Hoover Co. (The) (Comp) | El Paso, TX | 06/23/2004 | 06/07/2004 |
| 55,129 | Fashion Elite, Inc. (Wkrs) | San Francisco, CA | 06/23/2004 | 06/16/2004 |
| 55,130 | Lee Middleton Orginal (Comp) | Belpre, OH | 06/23/2004 | 06/22/2004 |
| 55,131 | Vaughan Furniture Co. (Comp) | Stuart, VA | 06/23/2004 | 06/18/2004 |
| 55,132 | Grede Foundries, Inc. (Wkrs) | Kingsfold, MI | 06/23/2004 | 06/10/2004 |
| 55,133 | HE Microwave Corp.(IAMAW) | Tucson, AZ | 06/23/2004 | 06/17/2004 |
| 55,134 | Sara Lee Underwear (Comp) | Asheboro, NC | 06/23/2004 | 06/22/2004 |
| 55,135 | Envirovac (Wkrs) | Savannah, GA | 06/23/2004 | 05/28/2004 |
| 55,136 | ITW Auto-Sleeve (Wkrs) | Twinsburg, OH | 06/23/2004 | 06/11/2004 |
| 55,137 | Ames Screw Mach. Prod., Inc. (Comp) | Addison, IL | 06/23/2004 | 06/23/2004 |

APPENDIX—Continued

[Petitions Instituted Between 06/21/2004 and 06/25/2004]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 55,138 | Trend Technologies, LLC (Comp) | Longmont, CO | 06/24/2004 | 06/24/2004 |
| 55,139 | Hamrick Industries, Inc. (Wkrs) | Gaffney, SC | 06/24/2004 | 06/24/2004 |
| 55,140 | A.O Smith E.P.C. (Comp) | Mebane, NC | 06/24/2004 | 06/23/2004 |
| 55,141 | Vardi Stone House, Inc. (Comp) | Long Island, NY | 06/24/2004 | 06/09/2004 |
| 55,142 | Riddle Fabrics, Inc. (Wkrs) | Kings Mtn., NC | 06/24/2004 | 05/18/2004 |
| 55,143 | Oxford Ind., Inc. (Comp) | Walhalla, SC | 06/24/2004 | 06/14/2004 |
| 55,144 | Boeing Aircraft Co. (IAMAW) | Wichita, KS | 06/25/2004 | 06/21/2004 |
| 55,145 | Springs Industries, Inc. (Wkrs) | Lyman, SC | 06/25/2004 | 06/21/2004 |
| 55,146 | Hekman Furniture Co. (Wkrs) | Lexington, NC | 06/25/2004 | 06/10/2004 |
| 55,147 | BASF Corporation (LA) | Geismar, LA | 06/25/2004 | 06/18/2004 |

[FR Doc. 04–15302 Filed 7–6–04; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–54,922]**

### E–Z–GO Textron, Augusta, GA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 18, 2004, in response to a petition filed by the company on behalf of workers at E-Z-Go Textron, Augusta, Georgia.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 16th day of June, 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–15308 Filed 7–6–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–55,084]**

### Eastman Chemical Company, Jefferson Plant, West Elizabeth, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 16, 2004, in response to a petition filed by a company official on behalf of workers at Eastman Chemical Company, Jefferson Plant, West Elizabeth, Pennsylvania. The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 22nd day of June, 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–15313 Filed 7–6–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–54,718]**

### Hood Cable Company, Yazoo City, MS; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Hood Cable Company, Yazoo City, Mississippi. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–54,718; Hood Cable Company, Yazoo City, Mississippi (June 29, 2004).

Signed in Washington, DC, this 30th day of June, 2004.

**Timothy Sullivan,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 04–15310 Filed 7–6–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W 55,067]**

### Intier Automotive, Auburn Hills, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 10, 2004, in response to a petition filed by a company official on behalf of workers at Intier Automotive, Auburn Hills, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 18th day of June, 2004.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–15315 Filed 7–6–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–54,870B]**

### J&L Specialty Steel, LLC, Louisville Plant, Louisville, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 10, 2004 in response to a petition filed by a company official on behalf of workers of J&L Specialty Steel, LLC, Louisville Plant, Louisville, Ohio.

The petitioning group of workers is covered by an active certification issued on September 9, 2002 which remains in effect until September 9, 2004 (TA–W–39,575). Consequently, further investigation in this case would serve

no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 23rd day of June, 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–15320 Filed 7–6–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–55,009]**

### Oregon Panel Products, LLC, Formerly Known as Lebanite Corp., Hardboard Division, Lebanon, Oregon; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 2, 2003, in response to a petition filed on behalf of workers of Oregon Panel Products, LLC, formerly known as Lebanite Corporation, Hardboard Division, Lebanon, Oregon.

The petitioning group of workers is covered by an active certification issued on October 29, 2003 (TA–W–52,773), which remains in effect and has been amended to reflect the name change of the subject facility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 14th day of June 2004.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–15305 Filed 7–6–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of June 2004.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a) (2) (A) all of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a) (2) (B) both of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

**Negative Determinations for Worker Adjustment Assistance**

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.)(increased imports) and (a) (2) (B) (II.B) (No shift in production to a foreign country) have not been met.

*TA–W–54,805; Plastek Industries, Inc., Plaster Management Group, Inc., Triangle Tool Company, Inc., Spectrum Molding Division, including leased workers of Career Concepts, Erie, PA*

*TA–W–54,766; Chicopee Iron Works, Inc., d/b/a Dearden Iron Works, Chicopee, MA*

*TA–W–54,553; Global Farms Enterprises, Inc., Garlic Plant, San Joaquin, CA*

*TA–W–54,780; Pottstown Metal Welding Company, Pottstown, PA.*

*TA–W–54,783; Eighth Floor Promotions, LLC, Bloomington, MN*

*TA–W–54,706; Kardex Systems, Inc., Marietta, OH*

*TA–W–54,886 & A; Geron Furniture, a subsidiary of Leggett and Platt, Carson, CA and Torrance, CA*

*TA–W–54,838; Swarovski North America, Ltd, USA Operations, a subsidiary of Swarovski U.S. Holding, including leased workers of Talent Tree, Cranston, RI*

*TA–W–54,818; EBW/APT, (Enterprise Brass Works/Advanced Polymer Technology, Inc.), a div. of Franklin Fueling Systems, a Franklin Electric Co., Inc., including leased workers of Manpower, Angola Personnel & Kelly Services, Muskegon, MI*

*TA–W–54,462; Steward Machine Co., Inc., Birmingham, AL*
*TA–W–54,776; Jefferson Mills, Inc., Pulaski, VA*
*TA–W–54,620; NVF Company, Fabrication Div., Wilmington, DE*
*TA–W–54,562; Davis Tool and Engineering, Inc., Subsidiary of Davis Industries, Inc., Detroit, MI*
*TA–W–54,905; Compucom Systems, Inc., employed at Weirton Steel Corp., Weirton, WV*
*TA–W–54,484; Cady Industries, Inc., Pearson, GA*
*TA–W–54,642; Smart Papers LLC, Hamilton, OH*
*TA–W–54,896; Phillips Plastics Corp., Multi-Shot Facility, Eau Claire, WI*
*TA–W–54,803; Saint Gobain Performance Plastics, Engineered Polymer Plastics, Garden Grove, CA*
*TA–W–54,700; Detroit Tool and Engineering, Lebanon, MO*
*TA–W–54,690; Siemens Dematic, Software Application/Product Engineering Department, Grand Rapids, MI*
*TA–W–54,635; Westside Stitching, Inc., West Wyoming, PA*
*TA–W–54,463; Bodycote Thermal Processing, Sturtevant, WI*

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*TA–W–54,666; TDK Electronics Corp., Anaheim, CA*
*TA–W–54,554; Volt Services Group, employed at Hewlet Packard Co., Atlanta, GA*
*TA–W–54,396; Volt Services Group, a div. of Volt Technical Resources, LLC, a wholly owned subsidiary of Volt Management Corp. and Volt Management Corp., a wholly owned subsidiary of Volt Information Sciences, Inc., leased workers at Hewlett-Packard Co. (HP), Roseville, CA*
*TA–W–54,924; Northlands Orthopedic and Sports Medicine Associates, P.A., Clifton, NJ*
*TA–W–54,873; Cylogix, Inc., a subsidiary of Keane, Inc., Moosic, PA*
*TA–W–54,296; Sprint/United Management Co., Plymouth, IN*
*TA–W–54,908; In Gear Fashions, Inc., Miami, FL*
*TA–W–55,022; Jantzen, Inc., a subsidiary of Perry Ellis International, Portland, OR*
*TA–W–54,829; Manpower, Inc., IBM Purchasing Area, Poughkeepsie, NY*
*TA–W–54,992; Nervewire, a/k/a/ Wipro, Newton, MA*
*TA–W–55,039; APAC Customer Services, Inc., Kewanee Facility, Deerfield, IL*
*TA–W–54,910; Earthlink, Inc., Harrisburg, PA*
*TA–W–54,972; CBCA Administrators, a Division of CBCA, Inc., Fort Worth, TX*
*TA–W–54,876; Amcor Pet Packaging, Erie, PA*
*TA–W–54,715; Goodrich Aviation Technical Services, Inc., Everett, WA*
*TA–W–54,715; Goodrich Aviation Technical Services, Inc., Everett, WA*
*TA–W–54,974; Tarkett, Inc., Whitehall, PA*
*TA–W–54,993; Biopool US, Inc. d/b/a Trinity Biotech Distribution, Allentown, PA.*
*TA–W–54,933; Mensha Forest Products Corp., North Bend, OR*
*TA–W–54,913; Travelocity.Com, LP, a subsidiary of Sabre Holdings, Finance and Fraud Department, San Antonio, TX*
*TA–W–54,744; Kroger Regional Accounting Service Center, Expense Department, a div. of Kroger Limited Partnership 1, Nashville, TN*
*TA–W–54,563; Volt Services Group, a div. of Volt Technical Resources, LLC, (a wholly owned subsidiary of Volt Management Corp), and Volt Management Corp., (a wholly owned subsidiary of Volt Information Sciences, Inc.), leased workers at Hewlett-Packard Co (HP), Houston, TX*
*TA–W–54,979; American Express Travel Related Services Co., Inc., United States Corporate Travel, Field Accounting Operations, Phoenix, AZ*
*TA–W–54,740; Weyerhaeuser Co., Timberlands Div., Aberbeen, WA*
*TA–W–54,865; H.E. Services Co., Universal Inspection and Sorting Div., Saginaw, MI*
*TA–W–54,867; Pennsylvania Resources Corporation, Call Center, Dunmore, PA*

The investigation revealed that criterion (a)(2)(A)(I.A) (no employment decline) has not been met.

*TA–W–55,015; Allen Systems Group, Inc., Development Department, Naples, FL*
*TA–W–54,589; Aqua Products, Inc., Cedar Grove, NJ*

The investigation revealed that criterion (a)(2)(A)(I.A) (no employment decline) has not been met and (a)(2)(B)(II.B) (has shifted production to a county not under the free trade agreement with U.S.) have not been met.

*TA–W–54,998; Gregtagmacbeth, LLC, a subdivision of Amazys Holding AG, New Windsor, NY*

The investigation revealed that criteria (a)(2)(A)(I.B) (sales or production, or both, did not decline) and (a)(2)(B)(II.B) (has shifted production to a county not under the free trade agreement with U.S.) have not been met.

*TA–W–54,788; Quadco, Inc., Alaska Division, Anchorage, AK*
*TA–W–54,857; Valley Mills, Inc., Valley Head, AL*
*TA–W–54,629; Motorola, Inc., Information Technology, Semiconductor Products Sector, Tempe, AZ*

The investigation revealed that criteria (a)(2)(A), (a)(2)(A)(I.A) (no employment decline) and (I.B) (sales or production, or both, did not decline) have not been met.

*TA–W–54,825; Utica Enterprises, Inc., 15030, 23 Mile Road, Shelby Townships, MI*
*TA–W–54,996; Minnesota Mold and Engineering, Vadnais Heights, MN*

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies

*TA–W–54,816; Phipps Patterns, Inc., Decatur, IL*
*TA–W–54,943; Swainsboro Electro Plating, Inc., Swainsboro, GA*
*TA–W–54,636; Wyoming Wood Products, Inc., West Wyoming, PA*

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a) (2) (A) (increased imports) of Section 222 have been met.

*TA–W–54,787; Light Artistry, Inc., Pottsville, PA: April 16, 2003.*
*TA–W–54,662; Altek, Inc., Tool Room, including leased workers of Volt Temporary Services and Humanix, Liberty Lake, WA: April 1, 2003.*
*TA–W–54,610; Watts Regulator, Brass and Tubular and Foundry Divisions, a subsidiary of Watts Industries, Inc., including leased workers of Manpower, Spindale, NC: March 17, 2003.*
*TA–W–54,841; Elastex, Inc., a div. of The Elastic Corporation of America, Asheboro, NC: April 30, 2003.*
*TA–W–54,789; Edenton Dyeing and Finishing LLC, Edenton, NC: April 22, 2003.*
*TA–W–55,006; Westpoint Stevens, Longview Plant, Bed Products Div., Hickory, NC: June 1, 2003.*
*TA–W–55,028; Goodrich Power Systems, Aurora, OH: June 22, 2004.*
*TA–W–54,904; Envirco Corp., Albuquerque, NM: April 27, 2003.*
*TA–W–54,897; Tidewater Occupational Center, Suffolk, VA: May 5, 2003.*

*TA–W–54,868; R & W Manufacturing, Inc., Avera, GA: May 6, 2003.*
*TA–W–54,859; Artistic Laces, Inc., Warwick, RI: May 4, 2003.*
*TA–W–54,858; Hope Valley Dyeing Corp., West Warwick, RI: May 4, 2003.*
*TA–W–54,809; Hot Wax Candle Co., Greensboro, NC: April 28, 2003.*
*TA–W–54,830; ITT Industries, New Lexington, OH: April 13, 2003.*
*TA–W–54,821; Burlington Industries LLC, Corporate Office, a div. of WL Ross & Co. LLC, Greensboro, NC: February 5, 2004.*
*TA–W–54,817; RHC/Spacemaster Corp., Melrose Park, IL: April 27, 2003.*
*TA–W–54,547; Ispat Inland, Inc., Information Technology Department, East Chicago, IN: March 20, 2004.*
*TA–W–54,920; Dekko Technologies, Inc. a/k/a Dekko Heating Technologies, Inc., Clayppool, IN: May 17, 2003.*
*TA–W–54,532 & A; G. Leblanc Corporation, Kenosha, WI and Martin Band Instruments, a subsidiary of G. Leblanc Corporation, Kenosha, WI: Mary 16, 2003.*
*TA–W–54,719; Shafer Electronics Co., Pine City, MN: April 12, 2003.*
*TA–W–54,915; Valenite, LLC, Gainesville, TX: May 17, 2003.*
*TA–W–54,843; Trent Tube, a div. of Crucible Materials Corp., Carrollton, GA: April 24, 2003.*
*TA–W–54,835; International Mill Service, Inc., subsidiary of Envirosource, Inc., Georgetown, SC: April 30, 2003.*
*TA–W–54,833; Bayer Clothing Group, Inc., Clearfield, PA: May 3, 2003.*
*TA–W–54,864; Cullman Apparel Manufacturing Co., Inc., Cullman, AL: May 6, 2003.*
*TA–W–54,956; Monarch Hosiery Mills, Inc., Administrative Office, Altamahaw, NC, A; Hold Street Finishing Plant and Distribution Center, Burlington, NC, B; Broad Street Knitting Plant, Burlington NC and C; Church Street Sales Office, Burlington, NC: May 20, 2003.*
*TA–W–54,781; Delta Mills, Inc., Division of Delta Woodside Industries, Inc., Estes Plant, Piedmont, SC: April 15, 2003.*
*TA–W–54,756; Stature Electric, Inc., a subsidiary of Owosso Corporation, Watertown, NY: April 13, 2003.*
*TA–W–54,738; Morrill Motors, Inc. a/k/a Morrill Electric, Inc., Sneedville, TN: April 16, 2003.*
*TA–W–54,516; Scalamandre Silks, Dying and Weaving Div., Long Island City, NY: March 8, 2003.*
*TA–W–54,863 & A; Ethan Allen, Inc., Boonville, NY and Bridgewater, VA: April 29, 2003.*
*TA–W–54,778; Iflex, Inc., Minnetonka, MN: April 23, 2003.*
*TA–W–54,568; Warnaco, Inc., Intimate Apparel Div., Pre-Production Unit, Van Nuys, CA: March 9, 2003.*
*TA–W–54,731; Tecumseh Compressor Co., Tupelo Div., Verona, MS: April 14, 2003.*

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

*TA–W–54,765; Oxy-Dry Corp., Itasca Div., Itasca, IL: April 8, 2003.*
*TA–W–54,696; New Frontier Clothing Co., Dallas, TX: April 8, 2003.*
*TA–W–54,988; Doveport Systems LLC, a subsidiary of Depco International, including leased workers of Kelly Services, Port Huron, MI: May 25, 2003.*
*TA–W–54,890; Inamed Corporation, Santa Barbara, CA: May 4, 2003.*
*TA–W–54,767; International Wire Group, Inc., Insulated Wire Division, PVC Department, El Paso, TX: April 15, 2003.*
*TA–W–54,377; Russell Corporation, Information Services Department, Alexander City, AL: February 2, 2003.*
*TA–W–54,832; Sun Microsystems, Inc., Worldwide Operations Div., Sunfire Computer Subcomponents, Newark, CA: March 2, 2003.*
*TA–W–54,945; Amcor Plastube, Inc., Breinigsville, PA: May 17, 2003.*
*TA–W–54,634; American Pad and Paper LLC, Ampad Division, West Valley City, UT: March 19, 2003.*
*TA–W–54,925; EGS Electrical Group, Shoemakersville, PA: May 10, 2003.*
*TA–W–54,844; Kwikset, Bristow, OK: April 29, 2003.*
*TA–W–54,810 & A; Webb Furniture Enterprises, Inc., Plant #1, Galax, VA and Plant #2, Galax, VA: April 28, 2003.*
*TA–W–54,980; Eljer Plumbingware, Salem, OH: May 25, 2003.*
*TA–W–54,797; American Firelog Corp. of Ohio, Akron, OH: April 21, 2003.*
*TA–W–54,693; ITW Chemtronics, Kennesaw, GA: April 7, 2003.*
*TA–W–54,748; FMC Corporation, Agricultural Products Group, Baltimore, MD: April 19, 2003.*
*TA–W–54,806; Endwave Corp., Diamond Springs, CA: April 19, 2003.*
*TA–W–54,990; Manpower International, Inc., working at Continental Teves, Asheville, NC: May 21, 2003.*
*TA–W–54,958; U.S. Electrical Motors, Philadelphia, MS: June 15, 2004.*
*TA–W–54,953; Ruhrpumpen, Inc., Tulsa, OK: May 14, 2003.*
*TA–W–54,854; Kentucky Apparel, LLP, Tompkinsville, KY: April 28, 2003.*
*TA–W–54,862; Irwin Industrial Tool Co., a div. of Newell Rubbermaid, Wilmington, OH: May 5, 2003.*
*TA–W–54,877; Steele Manufacturing, a div. of Calhoun Apparel, Water Valley, MS: May 7, 2003.*
*TA–W–54,831; Neese Industries, Inc, Gonzales, LA: April 23, 2003.*
*TA–W–54,888; Cooper Power Systems, including leased workers of Adecco and Randstad, Pewaukee, WI: May 10, 2003.*
*TA–W–54,940; J.R. Simplot Co., Food Group Div., Hermiston, OR: April 27, 2003.*
*TA–W–54,601; Lear Corporation, Seating Systems Div., Auburn Hills, MI: March 15, 2003.*
*TA–W–54,991; Marley Cooling Technologies, Fan Blade and Grid Operations, Olathe, KS: May 26, 2003.*
*TA–W–55,053; Solon Manufacturing Co., a subsidiary of O.E. Mossbers and Sons, including leased workers of from Adecco, Skowhegan, ME: March 20, 2004.*
*TA–W–54,931; Coupled Products, Inc., a subsidiary of The Dana Corporation, Andrews, IN: May 12, 2003.*
*TA–W–55,005; Sara Lee Intimates & Hosiery, a subsidiary of Sara Lee Corporation, Marion, SC: May 20, 2003*
*TA–W–54,792; M&G Polymers USA, LLC, a wholly owned subsidiary of M & G Finanziaria Industriale, S.P.A., Apple Grove, WV: April 26, 2003.*
*TA–W–54,986; Matsushita Electronic Components Corporation of America, including leased workers of Staffing Solutions, a subsidiary of Matsushita Electronic Corporation of America, Knoxville, TN: May 25, 2003.*
*TA–W–54,853; Reliance Electric, Rockwell Automation Power Systems Div., Seattle, WA: May 5, 2003.*
*TA–W–54,914; Medtronic Vascular, including leased workers of Micro Tech, Danvers, MA: May 6, 2003.*
*TA–W–54,967; American Greetings Corp., Bardstown, KY: May 24, 2003.*
*TA–W–54,938; Sunrise Medical, Inc., Long Term Care Div., Stevens Point, WI: May 18, 2003.*
*TA–W–54,969; Brown and Williamson Tobacco Corp., a subsidiary of British American Tobacco, Chester, VA: May 20, 2003.*
*TA–W–54,941 & A; ACI Distribution, a subsidiary of Vitro America, Inc., Tualatin, OR and Fife, WA: May 18, 2003.*

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

*TA–W–54,761; Detroit Diesel, a division of Daimlerchrysler, Detroit, MI: April 19, 2003.*
*TA–W–55,001; Newstech PA LP, Northampton, PA: May 19, 2003.*

*TA–W–54,759; Seacraft Instruments, Inc., including leased workers of Adecco, Batavia, NY: March 16, 2003.*

**Negative Determinations for Alternative Trade Adjustment Assistance**

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have not been met for the reasons specified.

The Department as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

*TA–W–54,941 &A; ACI Distribution, a subsidiary of Vitro America, Inc., Tualatin, OR and Fife, WA*
*TA–W–54,938; Sunrise Medical, Inc., Long Term Care Div., Stevens Point, WI*
*TA–W–54,969; Brown and Williamson Tobacco Corp., a subsidiary of British American Tobacco, Chester, VA*
*TA–W–54,967; American Greetings Corp., Bardstown, KY*
*TA–W–54,778; Iflex, Inc., Minnetonka, MN*
*TA–W–54,568; Warnaco, Inc., Intimate Apparel Div., Pre Production Unit, Van Nuys, CA*
*TA–W–54,731; Tecumseh Compressor Co., Tupelo Div., Verona, MS*

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

*TA–W–54,463; Bodycote Thermal Processing, Sturtevant, WI*
*TA–W–54,629; Motorola, Inc., Information Technology, Semiconductor Products Sector, Tempe, AZ*
*TA–W–54,635; Westside Stitching, Inc., West Wyoming, PA*
*TA–W–54,636; Wyoming Wood Products, In., West Wyoming, PA*
*TA–W–54,690; Siemens Dematic, Software Application/Product Engineering Department, Grand Rapids, MI*
*TA–W–54,700; Detroit Tool and Engineering, Lebanon, MO*
*TA–W–54,715; Goodrich Aviation Technical Services, Inc., Everett, WA*
*TA–W–54,803; Saint Gobain Performance Plastics, Engineered Polymer Plastic, Garden Grove, CA*
*TA–W–54,896; Phillips Plastics Corporation, Multi-Shot Facility, Eau Claire, WI*
*TA–W–54,974; Tarkett, Inc., Whitehall, PA*
*TA–W–55,015; Allen Systems Group, Inc., Development Department, Naples, FL*
*TA–W–54,998; Gregtagmacbeth, LLC, a subdivision of Amazys Holding AG, New Windsor, NY*
*TA–W–54,993; Biopool US, Inc., d/b/a Trinity Biotech Distribution, Allentown, PA*
*TA–W–54,943; Swainsboro Electro Plating, Inc., Swainsboro, GA*
*TA–W–54,933; Menasha Forest Products Corp., North Bend, OR*
*TA–W–54,642; Smart Papers LLC, Hamilton, OH*
*TA–W–54,816; Phipps Patterns, Inc., Decatur, IL*
*TA–W–54,484; Cady Industries, Inc., Pearson, GA*
*TA–W–54,905; Compucom Systems, Inc., employed at Weirton Steel Corp., Weirton, WV*
*TA–W–54,913; Travelocity. Com, LP, a subsidiary of Sabre Holdings, Finance and Fraud Department, San Antonio, TX*
*TA–W–54,562; Davis Tool and Engineering, Inc., a subsidiary of Davis Industries, Inc., Detroit, MI*
*TA–W–54,620; NVF Company, Fabrication Division, Wilmington, DE*
*TA–W–54,776; Jefferson Mills, Inc., Pulaski, VA*
*TA–W–54,462; Steward Machine Co., Inc., Birmingham, AL*
*TA–W–54,818; EBW/APT, (Enterprise Brass Works/Advanced Polymer Technology, Inc.), a div. of Franklin Fueling Systems, a Franklin Electric Co., Inc., including leased workers of Manpower, Angola Personnel & Kelly Services, Muskegon, MI*
*TA–W–54,825; Utica Enterprises, Inc., 15030, 23 Mile Road, Shelby Townships, MI*
*TA–W–54,838; Swarovski North America, LTD, USA Operations, a subsidiary of Swarovski U.S. Holdings, including leased workers of Talent Tree, Cranston, RI*
*TA–W–54,589; Aqua Products, Inc., Cedar Grove, NJ*
*TA–W–54,744; Kroger Regional Accounting Service Center, Expense Department, a div. of Kroger Limited Partnership 1, Nashville, TN*
*TA–W–54,563; Volt Services Group, a div. of Volt Technical Resources, LLC, (a wholly owned subsidiary of Volt Management Corp.), and Volt Management Corp., (a wholly owned subsidiary of Volt Information Sciences, Inc.), leased workers at Hewlett-Packard Co (HP), Houston, TX*
*TA–W–54,979; American Express Travel Related Services Co., Inc., United States Corp. Travel, Field Accounting Operations, Phoenix, AZ*
*TA–W–54,996; Minnesota Mold and Engineering, Vadnais Heights, MN*
*TA–W–54,886 & A; Geron Furniture, a subsidiary of Leggett and Platt, Carson, CA and Torrance, CA*
*TA–W–54,706; Kardex Systems, Inc., Marietta, OH*
*TA–W–54,740; Weyerhaeuser Co., Timberlands Div., Aberdeen, WA*
*TA–W–54,865; H.E. Services Co., Universal Inspection and Sorting Division, Saginaw, MI*
*TA–W–54,867; Pennsylvania Resources Corp., Call Center, Dunmore, PA*

**Affirmative Determinations for Alternative Trade Adjustment Assistance**

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.
II. Whether the workers in the workers' firm possess skills that are not easily transferable.
III. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

*TA–W–55,028; Goodrich Power Systems, Aurora, OH: June 22, 2004.*
*TA–W–54,904; Envirco Corporation, Albuquerque, NM: April 27, 2003.*
*TA–W–54,897; Tidewater Occupational Center, Suffolk, VA: May 5, 2003.*
*TA–W–54,868; R & W Manufacturing, Inc., Avera, GA: May 6, 2003.*
*TA–W–54,859; Artistic Laces, Inc., Warwick, RI: May 4, 2003.*
*TA–W–54,858; Hope Valley Dyeing Corp., West Warwick, RI: May 4, 2003.*
*TA–W–54,809; Hot Wax Candle Co., Greensboro, NC: April 28, 2003.*
*TA–W–54,830; ITT Industries, New Lexington, OH: April 12, 2003.*
*TA–W–54,821; Burlington Industries LLC, Corporate Office, a div. of WL Ross & Company LLC, Greensboro, NC: February 5, 2004.*
*TA–W–54,817; RHC/Spacemaster Corporation, Melrose Park, IL: April 27, 2003.*

*TA–W–54,547; Ispat Inland, Inc. Information Technology Department, East Chicago, IN: March 20, 2004.*
*TA–W–54,920; Dekko Technologies, Inc., a/k/a Dekko Heating Technologies, Inc., Claypool, IN: May 17, 2003.*
*TA–W–54,532 & A; G. Leblanc Corporation, Kenosha, WI and Martin Band Instruments, a subsidiary of G. Leblanc Corporation, Kenosha, WI: March 16, 2003.*
*TA–W–54,719; Shafer Electronics Co., Pine City, MN: April 12, 2003.*
*TA–W–54,915; Valenite, LLC, Gainesville, TX: May 17, 2003.*
*TA–W–54,843; Trent Tube, a div. of Crucible Materials Corp., Carrollton, GA: April 24, 2003.*
*TA–W–54,835; International Mill Service, Inc., subsidiary of Envireosource, Inc., Georgetown, SC: April 30, 2003.*
*TA–W–54,833; Bayer Clothing Group, Inc., Clearfield, PA: May 3, 2003.*
*TA–W–54,864; Cullman Apparel Manufacturing Co., Inc., Cullman, AL: May 6, 2003.*
*TA–W–54,781; Delta Mills, Inc., div. of Delta Woodside Industries, Inc., Estes Plant, Piedmont, SC: April 15, 2003.*
*TA–W–54,756; Stature Electric, Inc., a subsidiary of Owosso Corporation, Watertown, NY: April 13, 2003.*
*TA–W–54,738; Morrill Motors, Inc. a/k/a Morrill Electric, Inc., Sneedville Plant, Sneedville, TN: April 16, 2003.*
*TA–W–54,516; Scalamandre Silks, Dying and Weaving Div., Long Island City, NY: March 8, 2003.*
*TA–W–54,863 & A; Ethan Allen, Inc., Boonville, NY and Bridgewater, VA: April 29, 2003.*
*TA–W–54,804; Southern Glove Manufacturing Co., Inc., Cumberland Glove Div., Duffield, VA: April 19, 2003.*
*TA–W–55,001; Newstech PA LP, Northampton, PA: May 19, 2003.*
*TA–W–54,759; Seacraft Instruments, Inc., including leased workers of Adecco, Batavia, NY: March 16, 2003.*
*TA–W–54,925; EGS Electrical Group, Shoemakersville, PA: May 10, 2003.*
*TA–W–54,956; Monarch Hosiery Mills, Inc., Administrative Office, Altamahaw, NC, A; Holt Street Finishing Plant and Distribution Center, Burlington, NC, B; Broad Street Knitting Plant, Burlington, NC and C; Church Street Sales Office, Burlington, NC: May 20, 2003.*
*TA–W–54,810 & A; Webb Furniture Enterprises, Inc., Plant #1, Galax, VA and Plant #2, Galax, VA: April 28, 2003.*
*TA–W–54,980; Eljer Plumbingware, Salem, OH: May 25, 2003.*
*TA–W–54,797; American Firelog Corp. of Ohio, Akron, OH: April 21, 2003.*
*TA–W–54,693; ITW Chemtronics, Kennesaw, GA: April 7, 2003.*
*TA–W–54,748; FMC Corporation, Agricultural Products Group, Baltimore, MD: April 19, 2003.*
*TA–W–54,806; Endwave Corporation, Diamond Springs, CA: April 19, 2003.*
*TA–W–54,990; Manpower International, Inc., Working at Continental Teves, Asheville, NC: May 21, 2003.*
*TA–W–54,958; U.S. Electrical Motors, Philadelphia, MS: June 15, 2004.*
*TA–W–54,953; Ruhrpumpen, Inc., Tulsa, OK: May 14, 2003.*
*TA–W–54,854; Kentucky Apparel, LLP, Tompkinsville, KY: April 28, 2003.*
*TA–W–54,831; Neese Industries, Inc., Gonzales, LA: April 23, 2003.*
*TA–W–54,862; Irwin Industrial Tool Co., a div. of Newell Rubbermaid, Wilmington, OH: May 5, 2003.*
*TA–W–54,877; Steele Manufacturing, a div. of Calhoun Apparel, Water Valley, MS: May 7, 2003.*
*TA–W–54,888; Cooper Power Systems, including leased workers of Adecco and Randstad, Pewaukee, WI: May 10, 2003.*
*TA–W–54,940; J.R. Simplot Co., Food Group Div., Hermiston, OR: April 27, 2003.*
*TA–W–54,601; Lear Corporation, Seating Systems Div., Auburn Hills, MI: March 15, 2003.*
*TA–W–54,991; Marley Cooling Technologies, Fan Blade and Grid Operations, Olathe, KS: May 26, 2003.*
*TA–W–55,053; Solon Manufacturing Co., a subsidiary of O.E. Mossbers & Sons, including leased workers from Adecco, Skowhegan, ME: March 20, 2004.*
*TA–W–54,931; Coupled Products, Inc., a subsidiary of The Dana Corporation, Andrews, IN: May 12, 2003.*
*TA–W–55,005; Sara Lee Intimates & Hosiery, a subsidiary of Sara Lee Corp., Marion, SC: May 20, 2003.*
*TA–W–54,792; M&G Polymers USA, LLC, a wholly owned subsidiary of M&G Finanziaria Industriale S.P.A., Apple Grove, WV: April 26, 2003.*
*TA–W–54,986; Matsushita Electronic Components Corporation of America, including leased workers of Staffing Solutions, a subsidiary of Matsushita Electronic Corporation of America, Knoxville, TN: May 25, 2003.*
*TA–W–54,853; Reliance Electric, Rockwell Automation Power Systems Div., Seattle, WA: May 5, 2003.*
*TA–W–54,914; Medtronic Vascular, including leased workers of Micro Tech, Danvers, MS: May 6, 2003.*

I hereby certify that the aforementioned determinations were issued during the months of June 2004. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 29, 2004.

**Timothy Sullivan,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 04–15309 Filed 7–6–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–54,983]**

### PLM Garment Cutting Service, DeSoto, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 26, 2004, in response to a petition filed by the company on behalf of workers at PLM Garment Cutting Service, DeSoto, Texas.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level; consequently the petition has been terminated.

Signed at Washington, DC this 16th day of June, 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–15306 Filed 7–6–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–54,934]**

### Roseburg Forest Products, Plant 6, Coquille, OR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 19, 2004, in response to a petition filed by a state agency representative on behalf of workers of Roseburg Forest Products, Plant 6, Coquille, Oregon.

The investigation revealed that the workers of the subject firm are covered by an existing certification, TA–W–51,429D, which remains in effect. Subsequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 15th day of June, 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–15307 Filed 7–6–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,664 and TA–W–52,664A]**

### Slater Steel Corporation, a Wholly Owned Subsidiary of Slater Steel, Inc., Fort Wayne, IN; Including an Employee of Slater Steel Corporation a Wholly Owned Subsidiary of Slater Steel, Inc., Located in San Francisco, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 25, 2003, applicable to workers of Slater Steel Corporation, a wholly owned subsidiary of Slater Steel, Inc., Fort Wayne, Indiana. The notice was published in the **Federal Register** on November 28, 2003 (68 FR 66879).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that a worker was separated involving an employee of the Fort Wayne, Indiana facility of Slater Steel Corporation, a wholly owned subsidiary of Slater Steel, Inc. located in San Francisco, California. This employee provided sales function services supporting the production of stainless steel bar products at the Fort Wayne, Indiana location of the subject firm.

Based on these findings, the Department is amending this certification to include an employee of the Fort Wayne, Indiana facility of the subject firm, located in San Francisco, California.

The intent of the Department's certification is to include all workers of Slater Steel Corporation, a wholly owned subsidiary of Slater Steel, Inc., Fort Wayne, Indiana, who were adversely affected by increased imports.

The amended notice applicable to TA–W–52,664 is hereby issued as follows:

All workers of Slater Steel Corporation, a wholly owned subsidiary of Slater Steel, Inc., Fort Wayne, Indiana (TA–W–52,664), including an employee of Slater Steel Corporation, a wholly owned subsidiary of Slater Steel, Inc., Fort Wayne, Indiana, located in San Francisco, California (TA–W–52,664A), who became totally or partially separated from employment on or after April 7, 2003, through September 25, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 28th day of June 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–15312 Filed 7–6–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–55,077 and TA–W–55,077A]**

### SMS DEMAG/PRO–ECO, Mentor, OH, SMS DEMAG/PRO–ECO, Solon, OH; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 14, 2004, in response to petition filed on behalf of workers at SMS DEMAG/PRO–ECO, Mentor, Ohio and Solon, Ohio.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223(b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 18th day of June, 2004.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–15314 Filed 7–6–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–55,036]**

### Spartech Vy-Cal Plastics, Conshohocken, Pennsylvania; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 7, 2004, in response to a worker petition filed by the United Steelworkers of America on behalf of workers at Spartech Vy-Cal Plastics, Conshohocken, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 16th day of June 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–15303 Filed 7–6–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–55,019]**

### Timken Co., Canton, Ohio; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 3, 2004, in response to a petition filed by the United Steelworkers of America, on behalf of workers at Timken Company, Canton, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 10th day of June 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–15304 Filed 7–6–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–55,023]

### X–L Grinding & Tool, Inc., Alpena, Michigan; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 3, 2004, in response to a petition filed by a company official on behalf of workers at X–L Grinding & Tool, Inc., Alpena, Michigan.

The petition regarding the investigation has been deemed invalid. In order to establish a valid worker group, there must be at least three full-time workers employed at some point during the period under investigation. Workers of the group subject to this investigation did not meet the threshold of employment. Consequently the investigation has been terminated.

Signed at Washington, DC, this 18th day of June, 2004.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–15317 Filed 7–6–04; 8:45 am]

BILLING CODE 4510–30–P

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Leadership Initiatives Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Advisory Panel (Media section) to the National Council on the Arts will be held on Thursday, July 22, 2004 from 9 a.m. to 5 p.m. e.d.t., in Room 729 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden. Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: July 1, 2004.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. 04–15393 Filed 7–6–04; 8:45 am]

BILLING CODE 7537–01–P

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by August 6, 2004. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy at the above address or (703) 292–7405.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

**1. Applicant**

Permit Application No. 2005–008, Mahlon C. Kennicutt, II, Director, Geochemical & Environmental Research Group, Texas A&M University, 833 Graham Road, College Station, TX 77845.

*Activity for Which Permit Is Requested*

Enter Antarctic Specially Protected Area. The applicant proposes to enter Cape Bird (ASPA # 116) and Arrival Heights (ASPA # 122) to collect soil samples and take permafrost measurements as part of the ongoing environmental monitoring program. These sites were chosen because of the nature of their geology, climatic influences and topography. One site will service as a reference control for the study of the temporal and spatial scales of various types of disturbances in and around McMurdo Station, Antarctica.

*Location*

Cape Bird (ASPA # 116) and Arrival Heights (ASPA # 122), Ross Island, Antarctica

*Dates*

November 21, 2004 to December 31, 2004

**2. Applicant**

Permit Application No. 2005–009, John C. Priscu, Department of Land Resources and Environmental Sciences, 334 Leon Johnson Hall, Montana State University, Bozeman, MT 59717.

*Activity for Which Permit Is Requested*

Introduce non-indigenous species to Antarctica. The applicant plans to import bacterial isolates, originally collected from the McMurdo Dry Valleys, and insert fluorescent green protein (GFPs) marker genes. The marker genes are expressed in the cytoplasm as a colored fluroscence enabling them to be seen inside phytoflagellates when viewed under epiflourescence microscopy with the appropriate filter sets. The marker genes will express different colors (red, green, yellow, cyano). By using mixtures of these bacteria, it can be determined if phytoflagellates are selectively feeding on different strains of bacteria. If they are selective, then their grazing may impact on the diversity of the bacterial communities of the Dry Valley lakes. Experiments will be conducted in the Crary Lab at McMurdo Station and all waste from experiments will be destroyed for disposal.

*Location*

McMurdo Dry Valleys and Crary Science and Engineering Center, McMurdo Station, Ross Island

*Dates*

November 01, 2004 to December 31, 2005

**3. Applicant**

Permit Application No. 2005–010, W. Berry Lyons, Byrd Polar Research Center, The Ohio State University, 108 Scott Hall, 1090 Carmack Road, Columbus, OH 43210.

*Activity for Which Permit Is Requested*

Entry into Antarctic Specially Protected Area. The applicant proposes to enter and camp at Cape Hallet (ASPA # 106), to conduct work in collaboration with the Antarctic New Zealand Latitude Gradient Project and as an extension of the McMurdo Dry Valleys Long-Term Ecological Research project. The applicant will perform routine maintenance and download data from the automated weather installed in the area in 2003. In addition, water samples will be collected for chemical analysis, as well as snow samples and soil samples. The team will also assist the New Zealanders in collecting debris for removal from the site.

*Location*

Cape Hallett, Victoria Land, Antarctica (ASPA # 106)

*Dates*

October 01, 2004 to February 18, 2005

**Nadene G. Kennedy,**

*Permit Officer, Office of Polar Programs.*

[FR Doc. 04–15416 Filed 7–6–04; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–315 and 50–316]**

### Indiana Michigan Power Company; Notice of Withdrawal of Application for Amendment to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Indiana Michigan Power Company (the licensee) to withdraw its April 6, 2004, application for proposed amendment to Facility Operating License Nos. DPR–58 and DPR–74 for the Donald C. Cook Nuclear Plant, Unit No. 1 and Unit No. 2, located in Berrien County. In addition, the licensee's application requested exemptions from regulations.

The proposed amendment would have revised the Licenses. The proposed amendment and the requested exemptions from Title 10 of the Code of Federal Regulations (10 CFR), Section 50.44, 10 CFR 50.46, and 10 CFR part 50, Appendix K would have supported a transition to Framatome ANP, Incorporated as the fuel vendor.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 11, 2004 (69 FR 26192). However, by letter dated June 14, 2004, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 6, 2004, and the licensee's letter dated June 14, 2004, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

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

For the Nuclear Regulatory Commission.

**L. Raghavan,**

*Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 04–15322 Filed 7–6–04; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–219]**

### Amergen Energy Company, LLC Oyster Creek Nuclear Generating Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of schedular exemptions from Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Section 50.71(e)(4) for Facility Operating License No. DPR–16, which authorizes operation of the Oyster Creek Nuclear Generating Station (OCNGS), a boiling-water reactor facility, located in Ocean County, New Jersey. Therefore, pursuant to 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

**Environmental Assessment**

*Identification of the Proposed Action*

Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Paragraph 50.71(e)(4) requires that licensees provide the NRC with updates to the Updated Final Safety Analysis Report (UFSAR) annually or 6 months after each refueling outage provided the interval between successive updates does not exceed 24 months. The revisions must reflect changes up to 6 months prior to the date of filing. This regulation would require the licensee to submit the next OCNGS UFSAR update by April 25, 2005, which is 24 months after the most recent update (April 25, 2003).

The licensee requested a one-time schedular exemption from the requirements of 10 CFR 50.71(e)(4), extending the filing date by "approximately 6 months." This one-time schedular exemption would thus extend the 24-month interval between the last and next filing to be 30 months. Since the licensee last submitted an update on April 25, 2003, this proposed one-time, 6-month extension would permit the next update be as late as October 25, 2005.

The licensee also requested a permanent schedular exemption to allow filing of all future UFSAR updates up to 12 months, instead of 6 months, after completion of a refueling outage. Thus, accordingly to the licensee's current refueling schedule, this would permit the licensee to file future updates in the fall of odd-numbered years.

The proposed action is in accordance with the licensee's application for exemption dated March 26, 2004.

*The Need for the Proposed Action*

In its March 26, 2004, application, the licensee stated that following the schedular requirements of 10 CFR 50.72(e)(4) literally means that the licensee has to file both OCNGS and Peach Bottom Atomic Power Station (PBAPS, owned by the licensee's parent company, Exelon) UFSAR updates in the same time frame (*i.e.*, spring) of odd-numbered years. Such filing schedule for both OCNGS and PBAPS constitutes a hardship for the licensee and its parent company Exelon; additional temporary resources would have to be employed in order to simultaneously

prepare both OCNGS and PBAPS updates.

*Environmental Impacts of the Proposed Action*

The NRC has completed its evaluation of the proposed action and concludes that the exemption is administrative and would not affect any plant equipment, operation, or procedures. The UFSAR contains the analysis, assumptions, and technical details of the facility design and operating parameters. Until the UFSAR is updated, the recent changes are documented in the licensee's written evaluations of changes prepared pursuant to 10 CFR 50.59, and in the NRC's Safety Evaluations for actions requiring prior approval. A delay in submitting the UFSAR update will not change the plant design or the manner in which it is operated.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC staff concludes that there are no significant environmental impacts associated with the proposed action.

*Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for OCNGS, dated December 1974, published by the Atomic Energy Commission.

*Agencies and Persons Consulted*

On May 11, 2004, the NRC staff consulted with the New Jersey State official, Mr. Rich Pinney of the New Jersey Department of Environmental Protection, Bureau of Nuclear Engineering, regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 26, 2004. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 23rd day of June, 2004.

For the Nuclear Regulatory Commission.

**Peter S. Tam,**

*Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 04–15321 Filed 7–6–04; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Workshop on Regulatory Structure for New Plant Licensing: Technology-Neutral Framework and Options for Non-Light-Water Reactor Containment Functional Performance Requirements and Criteria

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of public workshop.

**SUMMARY:** The Nuclear Regulatory Commission has requested the staff to develop Regulatory Structure for New Plant Licensing: Technology-Neutral Framework and Options for Non-Light-Water Reactor (Non-LWR) Containment Functional Performance Requirements and Criteria. The purpose of the public workshop/meeting is to discuss and solicit comments on the draft regulatory framework for future reactors and options for non-LWR containment functional performance requirements and criteria.

**DATES:** July 27, 2004, 8:30 a.m.–4:30 p.m. July 28, 2004, 8:30 a.m.–12 p.m.

**ADDRESSES:** Nuclear Regulatory Commission Auditorium, 11545 Rockville Pike, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Margaret T. Bennett, Office of Nuclear Regulatory Research, Mail Stop: T–10 F13A, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, (301) 415–7252, e-mail: *mtb1@nrc.gov*.

**SUPPLEMENTARY INFORMATION:** This notice serves as initial notification of a public workshop to provide for the exchange of information with all stakeholders regarding the staff's efforts to develop a technology-neutral framework for future plant licensing and options for containment functional performance requirements and criteria for future non-light water reactors. The meeting will focus on the current work being performed by the NRC staff. A preliminary agenda is attached.

*Workshop Meeting Information:* The staff intends to conduct a workshop to provide for an exchange of information related to the staff's initial efforts to develop a Regulatory Structure for New Plant Licensing: Technology-Neutral Framework and options for containment functional performance requirements and criteria for future non-light water reactors. Persons other than NRC staff and NRC contractors interested in making a presentation at the workshop should notify Margaret T. Bennett, Office of Nuclear Regulatory Research, Mail Stop: T–10 G8, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, (301) 415–7252, e-mail: *mtb1@nrc.gov*.

*Registration:* There is no registration fee for the workshop; however, so that adequate space, materials, etc., for the workshop can be arranged, please provide notification of attendance to Margaret T. Bennett, Office of Nuclear Regulatory Research, Mail Stop: T–10 F13A, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, (301) 415–7252, e-mail: *mtb1@nrc.gov*.

*Background:* As noted in the Advanced Reactor Research Plan, a risk-informed regulatory structure that can be applied to license and regulate future reactors, regardless of their technology, could enhance the effectiveness, efficiency, and predictability (*i.e.*, stability) of new plant licensing. As such this new process, if implemented, could be available for future reactors based on a number of considerations, including the following:

- While the NRC has over 30 years of experience of licensing and regulating nuclear power plants, this experience (*e.g.*, regulations, regulatory guidance, policies and practices) has been focused on current light water-cooled reactors (LWRs) and may have limited applicability to future reactors that may be distinctly different from current LWR issues.
- The regulatory structure for current LWRs has evolved over five decades, and the bulk of this evolution occurred without the benefit of insights from probabilistic risk assessments (PRAs) and severe accident research. It is expected that future applicants will rely on PRA and PRA insights as an integral part of their license applications. In addition, it is further expected that the regulations licensing these future reactors will be risk-informed. Both deterministic and probabilistic results and insights will be used in the development of these regulations governing these reactors. Consequently, a structured approach for a regulatory structure for future reactors that provides guidance about how to use PRA results and insights will help ensure the safety of these reactors by focusing the regulations on where the risk is most likely while maintaining basic safety principles, such as defense-in-depth and safety margins.

The development of this structure will help to ensure that a structured and systematic approach is used during the development of the regulations that will govern the design construction and operation of future reactors.

The possibility of using alternatives to the traditional "essentially leak-tight" containment structures for non-LWRs has been the subject of Commission policy review, beginning with SECY–93–092, "Issues Pertaining to the Advanced Reactor (PRISM, MHTGR, and PIUS) and CANDU 3 Designs and Their Relationship to Current Regulatory Requirements," dated April 8, 1993. More recently, in SECY–02–0139, "Plan for Resolving Policy Issues Related to Licensing Non-Light Water Reactor Designs," dated July 22, 2002, the staff informed the Commission of its plan to develop policy options for the design and safety performance of the containment structure and related systems for non-LWRs.

In SECY–03–0047, "Policy Issues Related to Licensing Non-Light-Water Reactor Designs," dated March 28, 2003, staff discussed the policy issue of the conditions, if any, that would be acceptable for licensing a plant without a pressure-retaining containment building. In SECY–03–0047, the staff recommended to the Commission that (1) functional performance requirements be approved for use in establishing the acceptability of either a pressure retaining, low leakage containment or a non-pressure retaining building for future non-LWR reactor designs and, if approved, (2) the staff develop the functional performance requirements using the guidance contained in the July 30, 1993, Commission Staff Requirements Memorandum (SRM) for SECY–93–092 and the Commission's guidance on the other issues in SECY–03–0047. In the June 26, 2003, SRM for SECY–03–0047, the Commission requested the staff to submit options and recommendations to the Commission on functional performance requirements and criteria for the containment of non-LWRs.

Options for containment functional performance requirements and criteria for future non-LWRs are under development by the staff. The final options and recommendations are due in December 2004. Public workshops on this subject were previously held on November 19, 2003, and January 14, 2004. The NRC staff is including in the July 27–28, 2004 workshop, presentations and solicitation of feedback from the public on options and recommendations. Key considerations for discussion include:

—Are the identified containment functional performance requirements being considered appropriate?

—Are the options for containment performance criteria reasonable?

—Are there other or alternative options for containment functional performance requirements and criteria which should be considered?

—What is the role of containment in relation to defense-in-depth?

—What metrics and considerations should be used to evaluate the options, including specific advantages and disadvantages?

PRELIMINARY WORKSHOP AGENDA

| TIME | TOPIC |
|---|---|
| July 27, 2004: | |
| 8:30—8:40 | Introduction and Overview for Technology-Neutral Framework. |
| 8:40–9:00 | Proposed Scope. |
| 9:00–9:20 | Framework Roadmap. |
| 9:20–9:40 | Safety Fundamentals. |
| 9:40–10:10 | Public Health and Safety Objectives. |
| 10:10–10:25 | BREAK |
| 10:25–11:00 | Risk Objectives. |
| 11:00–11:45 | Design, Construction, and Operation Objectives. |
| 11:45–1:00 | LUNCH |
| 1:00–1:30 | Treatment of Uncertainties. |
| 1:30–2:00 | Development of Requirements. |
| 2:00–4:00 | Open Discussion. |
| 4:00–4:30 | Wrap-up. |
| July 28, 2004: | |
| 8:30–8:40 | Introduction and Purpose for Non-LWR Containment Functional Performance. Requirements and Criteria. |
| 8:40–9:20 | Stakeholder Presentations. |
| 9:20–9:45 | NRC Staff Presentation: Background, Scope, Approach, Evaluation Metrics and Considerations. |
| 9:45–10:00 | BREAK |
| 10:00–11:15 | Preliminary Options for Non-LWR Containment Functional Performance. Requirements and Criteria. |
| 11:15–11:45 | Open Discussion. |
| 11:45–Noon | Wrap-up. |

Dated at Rockville, Maryland, this 30th day of June, 2004.

For the Nuclear Regulatory Commission.

**Farouk Eltawila,**

*Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.*

[FR Doc. 04–15323 Filed 7–6–04; 8:45 am]

BILLING CODE 7590–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49941; File No. SR–Amex–2003–39]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 5 to a Proposed Rule Change by the American Stock Exchange LLC To Adopt a Clearly Erroneous Transaction Rule and Half-Point Error Guarantee for Trades in Nasdaq National Market Securities

June 29, 2004.

### I. Introduction

On April 30, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a "clearly erroneous" transaction rule and "half-point error guarantee" for trades in Nasdaq National Market securities. On October 15, 2003, Amex submitted Amendment No. 1 to the proposed rule change.[3] Amex submitted Amendment No. 2 to the proposed rule change on November 21, 2003.[4] Amex submitted Amendment No. 3 to the proposed rule change on December 10, 2003.[5] Amex submitted Amendment No. 4 to the proposed rule change on February 2, 2004.[6] The proposed rule change, as amended, was published for comment in the **Federal Register** on March 3, 2004.[7] The Commission received no comments on the proposal.

On May 17, 2004, Amex submitted Amendment No. 5 to the proposed rule change.[8] This order approves the proposed rule change, as amended by Amendment Nos. 1, 2, 3, and 4; solicits comments on Amendment No. 5 from interested persons; and grants accelerated approval to Amendment No. 5 to the proposed rule change.

### II. Description of the Proposal

The Exchange is proposing new Amex Rule 118(*l*) that would provide it with authority to break or revise trades in Nasdaq National Market securities occurring on the Exchange. Proposed Amex Rule 118(*l*) would be substantively similar to NASD Rule 11890. Like NASD Rule 11890(a), proposed Amex Rule 118(*l*) would set forth the circumstances in which trades can be broken or revised at the request of a member who is part of a trade or at the motion of the self-regulatory organization itself. In the former case, any member who Seeks review of a trade in a Nasdaq National Market security must submit the matter to an Amex Floor Official[9] and deliver a written complaint to the Service Desk within 30 minutes of the trade. Upon such delivery, the complainant would have up to 30 minutes to submit any supporting written information necessary for a review of the trade. The other member that was part of the trade would have up to 30 minutes after being notified of the complaint to submit information. Either 30-minute period could be extended at the discretion of the Floor Official.

The Floor Official would be required to review the trade and make a ruling unless both members involved agreed to withdraw the application for review before the Floor Official made the ruling. The Floor Official would be required to review the trade "with a view toward maintaining a fair and orderly market and the protection of investors and the public interest."[10] If the Floor Official determined that the trade was "clearly erroneous," he or she would be required to: (1) Nullify the trade; or (2) modify one or more terms of the trade. In the latter case, the Floor Official would be required to adjust the price and/or size of the trade "to achieve an equitable rectification of the error that would place the parties * * * in the same position, or as close as possible to the same position, as they would have been in had the error not occurred."[11] Under Amex Rule 118(*l*)(i), a trade would be "clearly erroneous" if "there is an obvious error in any term, such as price. number of shares or the unit of trading, or identification of the security."

Similar to NASD Rule 11890(b), proposed Amex Rule 118(*l*)(iii) would permit an Exchange Floor Governor[12] to break or revise a trade in a Nasdaq National Market security on his or her own motion. A Floor Governor could exercise this authority in the following circumstances:

- A disruption or malfunction in the use or operation of any facility of the Exchange;
- A disruption or malfunction in the use or operation of any facility of Nasdaq that results in the nullification or modification of trades on Nasdaq; or
- Extraordinary market conditions or other circumstances in which nullification or adjustment of a trade may be necessary for the maintenance of a fair and orderly market or for the protection of investors and the public interest.

Before a Floor Governor could exercise this authority, the Exchange must have received confirmation from NASD or Nasdaq that there was a disruption or malfunction in the Nasdaq market that resulted in the nullification or modification of trades in that market. A Floor Governor acting pursuant to proposed Amex Rule 118(*l*)(iii) could nullify or modify a trade if he or she determined that the trade was "clearly erroneous" or such action was "necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest." A Floor Governor acting under the proposed rule, in the absence of extraordinary circumstances, would be required to take action within 30 minutes of the detection of the transaction, but in no event later than 3 p.m. eastern time on the next trading day following the date of the trade at issue.

A member could *Seek* review of a Floor Official's ruling pursuant to proposed Amex Rule 118(*l*)(i) and (ii) or

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from William Floyd Jones, Associate General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 14, 2003 ("Amendment No. 1").

[4] *See* Letter from William Floyd Jones, Associate General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated November 20, 2003 ("Amendment No. 2").

[5] *See* Letter from William Floyd Jones, Associate General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated December 9, 2003 ("Amendment No. 3").

[6] *See* Letter from William Floyd Jones, Associate General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated January 30, 2004 ("Amendment No. 4").

[7] *See* Securities Exchange Act Release No. 49319 (February 25, 2004), 69 FR 10081.

[8] *See* Letter from William Floyd Jones, Associate General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 14, 2004 ("Amendment No. 5"). *See also infra* Section III.

[9] Floor Officials are deemed to be Officers of the Exchange. *See* Amex Rule 22(c). Floor Officials are generally responsible for the supervision of operations the Exchange Floor. There are four classifications of Floor Official. In ascending order of responsibility, these classifications are: (1) Floor Official, (2) Exchange Official, (3) Senior Floor Official, and (4) Senior Supervisory Officer. The Vice Chairman of the Exchange is a Floor Governor and serves as the Senior Supervisory Officer. Governors of the Exchange that spend a significant amount of time on the Floor are Senior Floor Officials. Numerous provisions of the Exchange's rules specifically call for Floor Official involvement in the Exchange's operations.

[10] *See* Proposed Amex Rule 118(*l*)(i).

[11] *Id.*

[12] Four members of the Board of Governors are designated as "Floor Governors" under Section 1 of Amex Rule 9011. Floor Governors are members of the Amex Board of Governors who spend a substantial part of their time on the floor of the Exchange.

of a Floor Governor's ruling pursuant to proposed Amex Rule 118(*l*)(iii). Such a review would follow the procedures set forth in Amex Rule 22(d) and Commentary .02 to Amex Rule 22.

The Exchange also has proposed new Amex Rule 118(m) that would establish a "half-point error guarantee" for trades in Nasdaq National Market securities occurring on the Exchange. Proposed Amex Rule 118(m) would state that Amex Rule 129[13] would not apply to orders for Nasdaq National Market securities of 1,000 shares or less received by a specialist through the Exchange's electronic order routing system. As to such orders, proposed Amex Rule 118(m) would apply instead. Amex has stated that this rule would allow small investors to rely upon reports of executions where the report is within $0.50 of the execution price. Proposed Amex Rule 118(m) is substantively identical to New York Stock Exchange ("NYSE") Rule 123B(b)(2).

Finally, the Exchange is proposing new Amex Rule 118(n), stating that members and member organizations may share in losses in a customer's account when the member or member organization determines that the member or firm was responsible for the loss. Amex Rule 118(n) is substantively similar to NYSE Rule 352.

## III. Amendment No. 5

In Amendment No. 5, the Exchange revised the text of proposed Amex Rule 118(*l*) to specify that a member seeking to have a trade reviewed by a Floor Official must deliver a written complaint to the Service Desk "and to the other member(s) who were part of the trade." In addition, Amex replaced the term "party" with the term "member" throughout the rule text. The text of Amendment No. 5 is available at the Commission's Public Reference Room and at the principal office of the Exchange.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 5 to the proposed rule change, including whether Amendment No. 5 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–Amex–2003–39 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–Amex–2003–39. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2003–39 and should be submitted on or before July 28, 2004.

## V. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[14] which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.[15] New Amex Rule 118(*l*) will set forth formal procedures to be followed by an Exchange member that seeks to have a trade nullified or revised or by an Amex Floor Governor who seeks to nullify or revise trades on his or her own motion. The Commission believes that it is proper for trade nullification and revision procedures to be codified and thus made transparent. The new rule also sets forth a procedure for the appeal of a determination made by an Exchange Floor Official or Floor Governor pursuant to Amex Rule 118(*l*). The Commission believes that the existence of such a procedure should help ensure that the rule is exercised in a fair and reasonable manner.

In addition, the Commission believes that Amex Rule 118(m), offering a "half-point error guarantee," is reasonable and consistent with the Act. In approving an amendment to the NYSE rule (NYSE Rule 123B(b)(2)) on which Amex Rule 118(m) is based, the Commission stated that this guarantee protects customers "since the specialist absorbs any price difference below one-half a point."[16]

Finally, the Commission believes that Amex Rule 118(n) is consistent with the Act because it allows a member to share in customer losses that were caused in whole or in part by the member's action or inaction.

Pursuant to Section 19(b)(2) of the Act,[17] the Commission finds good cause for approving Amendment No. 5 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register**. The Commission notes that no comments were received in response to the initial notice. Because Amendment No. 5 makes only minor changes to the rule text that do not alter the substance

[13] Amex Rule 129 states: "The price at which an order is executed shall be binding notwithstanding the fact that an erroneous report in respect thereto may have been rendered. A report shall not be binding if an order was not actually executed but was in error reported to have been executed; however, an order which was executed, but in error reported as not executed, shall be binding; provided, however, when a member who is on the Floor reports in good faith the execution of an order entrusted to him by another member or member organization and the other party to that transaction does not know it, the member or member organization to whom such report was rendered and the member broker who made the report shall treat the transaction as made for the account of the member who made the report, or the account of his member organization, if the price and size of the transaction were within the price and volume of transactions in the security at the time that the member who made the report believed he had executed the order. A detailed memorandum of each such transaction shall be prepared and filed with the Exchange by the member assuming the transaction."

[14] 15 U.S.C. 78f(b)(5).

[15] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] Securities Exchange Act Release No. 25145 (November 20, 1987), 52 FR 45699, n.4 (December 1, 1987) (approving SR–NYSE–87–29).

[17] 15 U.S.C. 78s(b)(2).

of the proposal, the Commission believes that no purpose would be served by delaying approval of Amendment No. 5 until the completion of another notice-and-comment period. Accordingly, the Commission finds good cause for accelerating approval of Amendment No. 5 to the proposed rule change.

## VI. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–Amex–2003–39) and Amendment Nos. 1, 2, 3, and 4 are approved, and that Amendment No. 5 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–15330 Filed 7–6–04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49932; File No. SR–CBOE–2002–24]**

## Self-Regulatory Organizations; Order Granting Approval of the Proposed Rule Change and Amendment Nos. 1 and 2 by the Chicago Board Options Exchange, Inc., and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3 and 4 Relating to Listing Standards for Options on Micro Narrow-Based Security Indexes

June 28, 2004.

## I. Introduction

On May 7, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt criteria for a new classification of narrow-based indexes, classified as "Micro Narrow-Based" indexes and adopt initial listing standards and maintenance standards for options on Micro Narrow-Based security indexes. The CBOE filed Amendment Nos. 1 and 2 to the proposed rule change on August 6, 2002[3] and August 29, 2002,[4] respectively. On October 16, 2002, the proposed rule change, as modified by Amendment Nos. 1 and 2, was published in the **Federal Register**.[5] The Commission received no comment letters with respect to the proposal. The CBOE filed Amendment Nos. 3 and 4 on July 15, 2003[6] and May 17, 2004,[7] respectively. This order approves the proposed rule change, as modified by Amendment Nos. 1 and 2, and grants accelerated approval to Amendment Nos. 3 and 4. For the complete text of the proposed rule change, see Exhibit A, attached hereto.

## II. Description of the Proposal

In the Notice, the Exchange proposes to amend CBOE Rule 24.2 (Designation of the Index) by adopting criteria for a new classification of narrow-based indexes, classified as "Micro Narrow-Based" indexes, that is consistent with the definition of "Narrow-Based" indexes under the Commodity Futures Modernization Act of 2000 ("CFMA").[8] The Exchange proposes to adopt initial listing standards and maintenance standards for options on Micro Narrow-Based security indexes that are consistent with listing standards for futures on a narrow-based security index.[9] CBOE proposes the use of the term "Micro Narrow-Based" to distinguish this classification of narrow-based indexes from the existing "narrow-based" security indexes, as currently defined under CBOE Rule 24.2(b),[10] which are also referred to as "Industry Indexes" under some provisions of CBOE's rules.[11]

Specifically, under proposed Rule 24.2(d), the Exchange proposes to list and trade options on a Micro Narrow-Based security index, pursuant to Rule 19b–4(e) under the Act, if the index is a Micro Narrow-Based security index:

(1) That has 9 or fewer component securities; or

(2) in which a component security comprises more than 30% of the index's weighting; or

(3) in which the 5 highest weighted component securities in the aggregate comprise more than 60% of the index's weighting; or

(4) in which the lowest weighted component securities comprising, in the aggregate, 25% of the index's weighting, have an aggregate dollar value of average daily trading volume of less than $50 million (or in the case of an index with 15 or more component securities, $30 million), except that if there are 2 or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25% of the index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security.

According to the Exchange, the proposed rule change also makes other modifications that are consistent with the standards for futures on narrow-based indices. For example, the proposed rule change requires that all component securities of a narrow-based security index be registered pursuant to Section 12 of the Act.

The proposed rule change also permits a Micro Narrow-Based index to be a modified capitalization-weighted index.[12] The CBOE also proposes three

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[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter dated August 6, 2002 from Madge Hamilton, Legal Division, CBOE, to Kelly Riley, Senior Special Counsel, Division of Market Regulation ("Division"), Commission ("Amendment No. 1"). Amendment No. 1 makes certain technical corrections to the proposed rule change.

[4] *See* Letter dated August 29, 2002 from Madge Hamilton, Legal Division, CBOE, to Florence Harmon, Senior Special Counsel, Division, Commission ("Amendment No. 2"). Amendment No. 2 makes certain technical corrections to the proposed rule text and adds a requirement that component securities be registered under Section 12 of the Act. Amendment No. 2 also adds a requirement that the total number of securities in an index may not increase or decrease by more than 33⅓% from the number of component securities in the index at the time of its initial listing. Finally, Amendment No. 2 adds a requirement that cash settled index options be designated as AM-settled index options.

[5] *See* Securities Exchange Act Release No. 46629 (October 9, 2002), 67 FR 63949.

[6] *See* Letter dated July 14, 2003 from James Flynn, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division, Commission ("Amendment No. 3"). In Amendment No. 3, CBOE submitted a new Form 19b–4, which replaces and supersedes the original filing in its entirety.

[7] *See* Letter dated May 14, 2003 from James Flynn, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division, Commission ("Amendment No. 4"). In Amendment No. 4, CBOE submitted a new Form 19b–4, which replaces and supersedes the original filing in its entirety.

[8] Section 201 of the CFMA; 15 U.S.C. 78c(a)(55)(B).

[9] *See* Securities Exchange Act Release No. 34–48191 (July 17, 2003), 68 FR 43555 (SR–OC–2003–06). The Exchange states that these listing and maintenance standards are consistent with the Commission's Staff Legal Bulletin No. 15: Listing Standards for Trading Security Futures Products (September 5, 2001) ("Division Bulletin").

[10] CBOE Rule 24.2(b) will remain unchanged.

[11] *See e.g.* CBOE Rule 24.1(i)(2) and CBOE Rule 24.4A.

[12] *See* III.A.(ii)(a) of the Division: Staff Legal Bulletin No. 15, supra note 9. *See also* Securities Exchange Act Release No. 42787, 65 FR 33598 (May 24, 2000)(amending Amex Rule 1000A to permit the index underlying a series of Index Fund Shares to be calculated based on modified market capitalization weighting methodology, among others); Securities Exchange Act Release No. 43912,

additional index weighting methodologies for Micro Narrow-Based indexes—modified equal-dollar weighted, approximate equal-dollar weighted, and share-weighted. According to CBOE, the Commission has previously granted the CBOE approval to list options on a modified equal-dollar weighted index [13] and the Commission has not abrogated the rule filing submitted by OneChicago for products overlying indexes that utilize an approximate equal dollar-weighted methodology.

A modified equal-dollar weighted methodology is designed to be a fair measurement of the particular industry or sector represented by the index, but without assigning an excessive weight to one or more index components that have a large market capitalization relative to other index components. Under this methodology, each component is assigned a weight that takes into account the relative market capitalization of the securities comprising the index. The index is subsequently rebalanced to maintain these pre-established weighting levels. In the case of an index with 9 components or less, the weight assigned to the largest component will not exceed 50% of the entire index weight. Like equal-dollar weighted indexes, the value of a modified equal-dollar weighted index will equal the current combined market value (based on U.S. primary market prices) of the assigned number of shares of each of the underlying components divided by the appropriate index divisor. A modified equal-dollar weighted index will be balanced quarterly.

An approximate equal-dollar weighted index is composed of one or more securities in which each component security will be weighted equally based on its market price on the index's selection date. The index must be reconstituted and rebalanced if the notional value of the largest component is at least twice the notional volume of the smallest component for fifty percent or more of the trading days in the three months prior to December 31 of each year. For purposes of this provision, the Exchange defines "notional value" as the market price of the component times the number of shares of the underlying component in the index. The Exchange also states that the reconstitution and rebalancing are also mandatory if the number of components in the index changes. The Exchange also states that it will reserve the right to rebalance quarterly at its discretion. Exhibit B, attached hereto, contains a table that illustrates the appropriate maintenance procedures that must be taken upon the occurrence of certain types of corporate actions that may affect the components that underlie an approximate equal-dollar weighted index.

A share-weighted index is designed to mimic the value of a portfolio consisting of two or more securities. The weight of each component security is calculated by multiplying the price of the component security by an adjustment factor. Adjustment factors are chosen to reflect the investment objective deemed appropriate by the designer of the index and will be published by the Exchange as part of the contract specifications.[14] The value of the index is calculated by adding the weight of each component security and dividing the total by an index divisor.[15] If a share-weighted Micro Narrow-Based index fails to meet the maintenance listing standards under CBOE Rule 24.2(e), the index would not be rebalanced by the Exchange. Instead, the Exchange would restrict options transactions to "closing-only" transactions and would not issue any additional series for that index.[16] Upon the expiration of the last series on that index, the Exchange will no longer calculate that index and no additional series would be listed.

Unlike other indexes currently available, share-weighted indexes do not require divisor changes in order to adjust for corporate actions. Rather, a change is made to the adjustment factor for a particular stock undergoing the corporate action. Thus, only the stock undergoing the corporate action is affected, which mimics the impact on a replicating portfolio. For example, the index is adjusted for a stock split by multiplying the adjustment factor of the affected stock by its split ratio. The index is adjusted for spin-offs and other distributions, excluding regular cash dividends, by taking the value of the property being distributed and then changing the adjustment factor to reflect the purchase of additional shares of the index component. Unlike a capitalization-weighted index, share-weighted indexes are not adjusted to reflect changes in the number of outstanding shares of its constituents. So, the issuance of additional shares by a company whose stock underlies the index would not impact a share-weighted index. The Exchange has provided the following examples for the share-weighted index.

Example: Adjusting a share-weighted index to reflect a 2-for-1 stock split in the shares of one of its components.

Consider the following share-weighted index. A company (Stock 2) has declared a 2-for-1 split and the prices listed below represent the closing prices for each index component on the business day immediately prior to the ex-distribution date. The index divisor, which was chosen to yield a benchmark level of 100, is 1.00. Therefore, the closing index level prior to the ex-date is 91.00.

| Component | Price ($P_i$) | Adjustment factor ($A^i$) | $P_i \times A_i$ | Component weight (percent) |
|---|---|---|---|---|
| Stock 1 | $23 | 1.25 | 28.75 | 31.59 |

66 FR 9401 (February 7, 2001) (permitting an index underlying a series of Index Fund Shares to be calculated on modified market capitalization); Philadelphia Stock Exchange, Inc. Rule 1009A(b)(2), which permits a narrow-based index to be modified capitalization-weighted.

[13] Securities Exchange Act Release No. 36623 (December 21, 1995), 60 FR 67379 (December 29, 1995) (approving options on the CBOE Automotive Index, which is modified equal-dollar weighting). In the Commission's release adopting final rules regarding new derivative securities products, it noted that "[t]he index underlying a new derivative securities product should be constructed according to established criteria for initial inclusion of new component securities. SROs seeking to rely on the proposed amendment should employ objective index construction standards that include a minimum number of component securities and a fixed and objective weighting methodology (*e.g.*, capitalization weighted, price weighted, equal-dollar weighted or modified equal-dollar weighted." (footnote omitted.) Securities Exchange Act Release No. 40761 File No. S7–13–98; 63 FR 70952, 70961 (December 22, 1998). *See also* Securities Exchange Act Release No. 42787, 65 FR 33598 (May 24, 2000)(amending Rule 1000A to permit the index underlying a series of Index Fund Shares to be calculated based on modified equal-dollar weighting methodology, among others.)

[14] For example, an index designer might want to apply an adjustment factor in order to prevent one or a few components from dominating the weight of the index. This is similar to an adjustment factor in other types of weighting methods such as modified capitalization weighted indexes.

[15] The index "divisor" is calculated to yield a benchmark index level (50, 100, 200, etc.) as of a particular date.

[16] When option series are restricted to "closing-only" status, the only opening transactions allowed in such a series are (i) opening transactions by market-makers executed to accommodate closing transactions of other market participants and (ii) opening transactions by CBOE member organizations to facilitate the closing transactions of public customers executed as crosses pursuant to and in accordance with CBOE Rule 6.74(b) or (d). CBOE will issue a regulatory circular to notify members and member organizations of such a situation.

| Component | Price ($P_i$) | Adjustment factor ($A^i$) | $P_i \times A_i$ | Component weight (percent) |
|---|---|---|---|---|
| Stock 2 | 92 | 0.5 | 46 | 50.55 |
| Stock 3 | 5 | 1.25 | 6.25 | 6.87 |
| Stock 4 | 8 | 1.25 | 10 | 10.99 |
| Total | | | 91 | 100.00 |

As shown in the table below, the adjustment to reflect the 2-for-1 split would require that the Adjustment Factor for Stock 2 be multiplied by the split ratio (2), thereby changing it from 0.5 to 1.0. The post-split price of Stock 2 ($46) is adjusted by dividing the pre-split price ($92) by the split ratio. The product of the new Adjustment Factor and the post-split price of Stock 2 is exactly the same as product of the old Adjustment Factor and pre-split price of Stock 2. Furthermore, the sum of the products ($P_i \times A_i$) and individual component weights are exactly the same as before the split, and the index divisor remains unchanged at 1.00.

| Component | Price ($P_i$) | Adjustment factor ($A_i$) | $P_i \times A_i$ | Component weight (percent) |
|---|---|---|---|---|
| Stock 1 | $23 | 1.25 | 28.75 | 31.59 |
| Stock 2 | 46 | 1.0 | 46 | 50.55 |
| Stock 3 | 5 | 1.25 | 6.25 | 6.87 |
| Stock 4 | 8 | 1.25 | 10 | 10.99 |
| Total | | | 91 | 100.00 |

Exhibit C, attached hereto, contains a table that illustrates the appropriate maintenance procedures that must be taken upon the occurrence of certain types of corporate actions that may effect the components that underlie a share-weighted index.

Regardless of the weighting methodology, the Exchange represents that it will also reserves the right to rebalance any Micro Narrow-Based index on an interim basis if warranted as a result of extraordinary changes in the relative values of the component securities. Proposed CBOE Rule 24.2(d)(2)(iv) shall provide that, to the extent investors with open positions must rely upon the continuity of the options contract on the index, CBOE listing standards will clarify that outstanding contracts are unaffected by rebalancings. The Exchange believes that these provisions are consistent with previous rule changes approved by the Commission.[17]

Proposed CBOE Rule 24.2(e) contains the maintenance standards that will apply to Micro Narrow-Based security indexes. The Exchange believes that the maintenance standards generally adhere to the Division's Bulletin and those standards applicable to futures in a narrow-based security index. The Exchange represents that CBOE's surveillance procedures are adequate to monitor the trading in options on Micro Narrow-Based Indexes as defined under CBOE Rule 24.2(d).[18]

*Position Limits and Exercise Limits*

CBOE also proposes to establish a new method for determining the applicable position limits for options on any Micro Narrow-Based Index that meets the generic listing standards under proposed CBOE Rule 24.2(d). CBOE represents that it will utilize a formulaic approach as provided in proposed CBOE Rule, 24.4B, "Position Limits for Options on Micro Narrow-Based Indexes as Defined Under Rule 24.2(d)."

This new methodology is a departure from the manner in which position limits are assigned for index options under existing CBOE rules. Under CBOE Rule 24.4 ("Position Limits for Broad-Based Index Options") and CBOE Rule 24.4A ("Position Limits for Industry Index Options"), position limits are assigned from pre-determined tiers based on an analysis of the respective index's underlying components. Under the proposed methodology, position limits would be determined in accordance with a formula that considers a Micro Narrow-Based Index's market capitalization and contract size in relation to the market capitalization of the S&P 500 index and the contract size and position limit of a futures contract on the S&P 500 index.

In determining compliance with CBOE Rule 4.12 (Exercise Limits), the applicable exercise limit for option contracts on any Micro Narrow-Based Index, as defined under proposed CBOE Rule 24.2(b), shall be a limit equivalent to the applicable position limits for options on that Micro Narrow-Based Index, as calculated under CBOE Rule 24.4B(a)(1)–(7).

*Margin*

CBOE Rule 12.3 governs the determination of the applicable margin treatment for options traded on the exchange, including options that overlie Narrow-Based indexes. The existing applicable margin for options on narrow-based indexes, as provided under CBOE Rule 12.3, also shall apply to Micro Narrow-Based indexes.

*Strikes Prices*

The interval between strike prices for options on indexes that meet the criteria under CBOE Rule 24.4(d) will be no less than $2.50.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4, including whether Amendment No. 4 is consistent with the Act. Comments may be submitted by any of the following methods:

[17] Securities Exchange Act Release No. 42787, *supra* note 4 (citing to Commentary .03 to AMEX Rule 1000, Commentary .02 to AMEX Rule 1000A, Commentary .01 to AMEX Rule 1202).

[18] The Exchange removed from this proposed rule change any reference to the trading of LEAPs in Micro Narrow-Based Indexes. Telephone conversation between James Flynn, Attorney, CBOE, and Florence Harmon, Senior Special Counsel, Commission, Division on June 25, 2004.

*Electronic Comments*

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-CBOE–2002–24 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–CBOE–2002–24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE–2002–24 and should be submitted on or before July 28, 2004.

## IV. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Rule 6(b)(5)[19] of the Act, which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.[20] Specifically, the Commission notes that the proposed rule change would permit the Exchange to list and trade, pursuant to Section 19b-4(e) of the Act, options on Micro Narrow-Based security indexes that meet the listing criteria of CBOE Rule 24.2.

The Commission believes that the proposed initial listing and maintenance standards are consistent with the listing standards for futures on a narrow-based security index.[21] The Commission also believes that the proposed generic standards covering, among other things, minimum capitalization, monthly trading volume, and relative weightings of component stocks are reasonably designed to ensure that the trading market for component stocks are adequately capitalized and sufficiently liquid. In addition, the Commission notes position limits for options on any Micro-Narrow-Based index that meets the generic listing standards of proposed CBOE Rule 24.2(d) would be determined in accordance with a proposed new formula that considers the index's market capitalization and contract size in relation to the market capitalization of the S&P 500 index and the contract size and position limit of a futures contract on the S&P 500 index. The Commission believes that the proposed formula for determining position limits is appropriate to deter manipulation of the index. In addition, the Commission finds that the weighting methodologies, employed by CBOE, including the modified equal-dollar weighted, approximate equal-dollar weighted, and share-weighted methodologies, are appropriate index construction standards. The Commission believes that the applicable margin standards for options on narrow-based indexes, as provided under CBOE Rule 12.3, are adequate standards for Micro Narrow-Based indexes. The Commission notes that the Exchange represents that the Options Price Reporting Authority ("OPRA") has provided CBOE with assurances that it has sufficient operational capacity to accommodate CBOE's listing and trading of Micro Narrow-Based security indexes.

The Exchange is also charged with surveillance for the product class, options on Micro Narrow-Based security indices. The Exchange represents that its surveillance procedures are adequate to monitor the trading in options in Micro Narrow-Based Indices. The Exchange will have complete access to information regarding trading activity in the underlying securities. The Exchange has developed new surveillance procedures specific to this new derivative product that the Commission finds adequate to monitor for manipulation in the Micro Narrow Based Indexes.

The Commission's approval of the proposed generic listing standards for options on Micro Narrow-Based security indexes will allow those options that satisfy these standards to start trading under Rule 19b–4(e), without constituting a proposed rule change within the meaning of section 19(b) of the Act[22] and Rule 19b–4,[23] for which notice and comment and Commission approval is necessary. Rule 19b–4(e)[24] states that the listing and trading of a new derivative securities product by [an SRO] shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of [Rule 19b–4], if the Commission has approved, pursuant to Section 19(b) of the Act, such [SRO's] trading rules, procedures and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class. The Exchange's ability to rely on Rule 19b–4(e) for these products potentially reduces the time frame for bringing these securities to the market, promoting competition and providing investors with derivative securities products to meet their needs more quickly. As stated above, the Commission believes that the Exchange has adequate trading rules, procedures, listing standards, and a surveillance program for the Micro Narrow-Based indexes, and thus the Commission is approving generic listing standards pursuant to Rule 19b–4(e) for this product class.

The Commission finds good cause for approving Amendment Nos. 3 and 4 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to section 19(b)(2) of

[19] 15 U.S.C. 78f(b)(5).

[20] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] *See* Release No. 34–48191, supra note 9. This definition in CBOE Rule 24.2(d)(1) is consistent with the definition of narrow-based security index established by the CFMA for purposes of determining whether futures on security indexes are security futures subject to the jurisdiction of the Commission and the Commodity Futures Trading Commission ("CFTC").

[22] 15 U.S.C. 78s(b).

[23] 17 CFR 240.19b–4.

[24] 17 CFR 240.19b–4(e).

the Act.[25] The Commission believes that the adoption of the proposed rule change will enable CBOE to act expeditiously in listing options on new Micro Narrow-Based security indexes in the same manner currently afforded to narrow-based indexes as defined under CBOE Rule 24.2(b). In addition, the Commission believes that the proposed rule change would remove impediments to a free and open market place by providing competition for new products. Accordingly, the Commission finds good cause for accelerating approval of Amendment Nos. 3 and 4 to the proposed rule change.

## V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, section 6(b)(5) of the Act.[26]

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[27] that the proposed rule change (SR–CBOE–2002–24), as amended by Amendment Nos. 1 and 2, be, and hereby is, approved and that Amendment Nos. 3 and 4 to the proposed rule change be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

**Margaret H. McFarland,**

*Deputy Secretary.*

**EXHIBIT A**

(Additions are *italicized*; deletions are [bracketed])

**Chicago Board Options Exchange, Incorporated**

**Rules**

**CHAPTER XII**

**Margins**

Rule 12.1–Rule 12.2 No Change.

**Rule 12.3—Margin Requirements**

Rule 12.3(a)–(b) No Change.

Rule 12.3(c) Customer Margin Account—Exception. The foregoing requirements are subject to the following exceptions. Nothing in this paragraph (c) shall prevent a broker-dealer from requiring margin from any account in excess of the amounts specified in these provisions.

(1)–(4) No Change.

(5) Initial and Maintenance Requirements on Short Options, Stock Index Warrants, Currency Index Warrants and Currency Warrants.

(A) Listed. General Rule. The initial and maintenance margin required on any listed put, call, stock index warrant, currency index warrant or currency warrant carried "short" in a customer's account shall be 100% of the current market value of the option or warrant plus the percentage of the current "underlying component value" (as described in Column IV of the table below) specified in column II of the table below reduced by any "out-of-the-money" amount as defined in this subparagraph (c)(5)(A) below.

Notwithstanding the margin required above, the minimum margin for each such call option or call warrant shall not be less than 100% of the current market value of the option or warrant plus the percentage of the current market value of the underlying component specified in column III of the table below, and for each such put option or put warrant, shall not be less than 100% of the current market value of the option or warrant plus the percentage of the option or warrant's aggregate exercise price amount specified in column III of the table below.

| I. Type of option | II. Initial and/or maintenance margin required (percent) | III. Minimum margin required (percent) | IV. Underlying component value |
|---|---|---|---|
| 1. Stock | 20 | 10 | The equivalent number of shares at current market prices. |
| 2. Narrow based index as defined in Rule 24.1 and *Micro Narrow-Based Index as defined in Rule 24.2(d).* | 20 | 10 | The product of the current index group value and the applicable index multiplier. |
| 3. Broad-based index (including Capped-style options (CAPS & QCAPS) Packaged Vertical Spreads and Packaged Butterfly Spreads) as defined in Rule 24.1 15%. | [1] 15 | [2] 10 | The product of the current index group value and the applicable index multiplier. |
| 4. Interest Rate Contracts | 10 | 5 | The product of the index value and the applicable index multiplier. |
| 5. U.S. Treasury bills–95 days or less to maturity | 10 | 5 | The underlying principal amount. |
| 6. U.S. Treasury notes | 3 | ½ | The underlying principal amount. |
| 7. U.S. Treasury bonds | 3.5 | ½ | The underlying principal amount. |
| 8. Foreign Currency Options Warrants | | | The product of units per foreign currency contract and the closing spot price.[3] |
| Australian Dollar | 4 | ¾ | |
| British Pound | 4 | ¾ | |
| Canadian Dollar | 4 | ¾ | |
| German Mark | 4 | ¾ | |
| European Currency Unit | 4 | ¾ | |
| French Franc | 4 | ¾ | |
| Japanese Yen | 4 | ¾ | |
| Swiss Franc | 4 | ¾ | |
| 9. Currency Index Warrants | 3 | [4] | The product of the index value and the applicable index multiplier. |
| 10. Stock Index Warrants (broad-based) | 15 | 10 | The product of the index value and the applicable index multiplier. |
| 11. Stock Index Warrants (narrow-based) | 20 | 10 | The product of the index value and the applicable index multiplier. |
| 12. Registered investment companies based on a broad-based index or portfolio of securities. | 15 | 10 | The equivalent number of shares at current market prices. |

[25] 15 U.S.C. 78s(b)(2).

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

| I. Type of option | II. Initial and/or maintenance margin required (percent) | III. Minimum margin required (percent) | IV. Underlying component value |
|---|---|---|---|
| 13. Registered investment companies based on a narrow-based index or portfolio of securities. | 20 | 10 | The equivalent number of shares at current market prices. |

[1] In any event, the maximum margin required on a capped style index option (CAPS and Q-CAPS), Packaged Vertical Spread and Packaged Butterfly Spread as qdefined in Rule 24.1 need not exceed the aggregate cap interval, vertical spread interval and butterfly spread interval, respectively. Cap interval, vertical spread interval and butterfly spread interval shall have the meanings defined in Rule 24.1.

[2] In respect of a capped-style index option, Packaged Vertical Spread and Packaged Butterfly Spread as defined in Rule 24.1 which is out-of-the-money, the minimum margin required is as follows: CALLS—the lesser of (a) 100% of the current market value of the option plus 10% of the underlying index value or (b) the aggregate cap, vertical spread or butterfly spread interval, respectively, PUTS—the lesser of (a) 100% of the current market value of the option plus 10% of the aggregate put exercise price or (b) the aggregate cap, vertical spread or butterfly spread interval, respectively. Cap interval, vertical spread interval and butterfly spread interval shall have the meanings defined in Rule 24.1.

[3] The term "spot price" in respect of a currency warrant on a particular business day means the noon buying rate in U.S. dollars on such day in New York City for cable transfers of the particular underlying currency as certified for customs purposes by the Federal Reserve Bank of New York.

[4] A percentage of the aggregate exercise price as specified by the exchange and approved by the SEC.

For purposes of this subparagraph (c)(5)(A), "out-of-the-money" amounts are determined as follows:

| Option or warrant issue | Call | Put |
|---|---|---|
| Stock Options, Registered Investment Company Options. | Any excess of the aggregate exercise price of the option over the current market value of the equivalent number of shares of the underlying security. | Any excess of the current market value of the equivalent number of shares of the underlying security over the aggregate exercise price of the option. |
| U.S. Treasury Options | Any excess of the aggregate exercise price of the option over the current market value of the underlying principal amount. | Any excess of the current market value of the underlying principal amount over the aggregate exercise price of the option. |
| Index stock options, currency index warrants and stock index warrants. | Any excess of the aggregate exercise price of the option or warrant over the product of the current index value and the applicable multiplier. | Any excess of the product of the current index value and the applicable multiplier over the aggregate exercise price of the option or warrant. |
| Foreign currency options and warrants | Any excess of the aggregate exercise price of the option or warrant over the product of units per foreign currency contract and the closing spot prices. | Any excess of the product of units per foreign currency contract and the closing spot prices over the aggregate price of the option or warrant. |
| Interest rate options | Any excess of the aggregate exercise price of the option over the product of the current interest rate measure value and the applicable multiplier. | Any excess of the product of the current interest rate measure value and the applicable multiplier over the aggregate exercise price of the option. |

(B) OTC Option. General Rule. (No Change).

| I. Type of option | II. Initial and/or maintenance margin required (percent) | III. Minimum margin required (percent) | IV. Underlying aggregate value |
|---|---|---|---|
| 1. Stock and Convertible Corporate Debt | 30 | 10 | The equivalent number of shares times current market price per share for stocks or the underlying principal amount for convertible securities. |
| 2. Narrow based index *and Micro Narrow-Based index as defined in Rule 24.2(d).* | 30 | 10 | The product of the current index value and the applicable index multiplier. |
| 3. (No changes). | | | |
| 4. (No changes). | | | |
| 5. (No changes). | | | |
| 6. (No changes). | | | |

[1] Options contracts under category (4) must be for a principal amount of not less than $500,000. If the principal amount is less than $500,000, category (6) will apply.

[2] Option transactions on all other OTC margin bonds as defined in paragraph 12.3(a) are not eligible for the margin requirements contained in this provision. Margin requirements for such securities are to be computed pursuant to category (6).

(c) No Change.
(d)–(k) No Change.
Interpretations and Policies . . . .01–.19 No Change.

**CHAPTER XXIV**

**Index Options**

**Rule 24.1 Definitions—**

Rule 24.1

(a)–(h) No Change.
(i)(1)The terms "market index" and "broad-based index" mean an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries.
(2) The terms "industry index" and "narrow-based" index mean an index designed to be representative of a particular industry or a group of related industries.
*(3) The term "Micro Narrow-Based Index" means an industry or narrow-based index that meets the specific criteria provided under Rule 24.2(d).*
(j)–(x) No Change.

Rule 24.2. Designation of the Index

(a) The component securities of an index underlying an index option contract need not meet the requirements of Rule 5.3. Except as set forth in subparagraph (b) *and (d)* below, the listing of a class of index options on a new underlying index will be treated by the Exchange as a proposed rule change subject to filing with and approval by the Securities and Exchange Commission ("Commission") under Section 19(b) of the Exchange Act.
(b)–(c) No Change.
*(d) Notwithstanding paragraph (a) above, the Exchange may trade options on a Micro Narrow-Based security index pursuant to Rule 19b–4(e) of the Securities Exchange Act of 1934, if each of the following conditions is satisfied:*
*(1) The Index is a security index:*
*(i) That has 9 or fewer component securities; or*
*(ii) In which a component security comprises more than 30 percent of the index's weighting; or*
*(iii) In which the 5 highest weighted component securities in the aggregate comprise more than 60 percent of the index's weighting; or*
*(iv) In which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than $50,000,000 (or in the case of an index with 15 or more component securities, $30,000,000) except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security;*
*(2) The index is capitalization-weighted, modified capitalization-weighted, price-weighted, share weighted, equal dollar-weighted, approximate equal-dollar weighted, or modified equal-dollar weighted;*
*(i) For the purposes of this Rule 24.2(d), an approximate equal-dollar weighted index is composed of one or more securities in which each component security will be weighted equally based on its market price on the index's selection date and the index must be reconstituted and rebalanced if the notional value of the largest component is at least twice the notional volume of the smallest component for fifty percent or more of the trading days in the three months prior to December 31 of each year. For purposes of this provision the "notional value" is the market price of the component times the number of shares of the underlying component in the index. Reconstitution and rebalancing are also mandatory if the number of components in the index is greater than five at the time of rebalancing. The Exchange reserves the right to rebalance quarterly at its discretion.*
*(ii) For the purposes of this Rule 24.2(d), a modified equal-dollar weighted index is an index in which each underlying component represents a pre-determined weighting percentage of the entire index. Each component is assigned a weight that takes into account the relative market capitalization of the securities comprising the index. A modified equal-dollar weighted index will be balanced quarterly.*
*(iii) For the purposes of this Rule 24.4(d), a share-weighted index is calculated by multiplying the price of the component security by an adjustment factor. Adjustment factors are chosen to reflect the investment objective deemed appropriate by the designer of the index and will be published by the Exchange as part of the contract specifications. The value of the index is calculated by adding the weight of each component security and dividing the total by an index divisor, calculated to yield a benchmark index level as of a particular date. A share-weighted index is not adjusted to reflect changes in the number of outstanding shares of its components. A share-weighted Micro Narrow-Based index will not be re-balanced. If a share-weighted Micro Narrow-Based Index fails to meet the maintenance listing standards under Rule 24.2(e), the Exchange will restrict trading in existing option series to closing transactions and will not issue additional series for that index.*
*(iv) The Exchange may rebalance any Micro Narrow-Based index on an interim basis if warranted as a result of extraordinary changes in the relative values of the component securities. To the extent investors with open positions must rely upon the continuity of the options contract on the index, outstanding contracts are unaffected by rebalancings.*
*(3) Each component security in the index has a minimum market capitalization of at least $75 million, except that each of the lowest weighted securities in the index that in the aggregate account for no more than 10% of the weight of the index may have a minimum market capitalization of only $50 million;*
*(4) The average daily trading volume in each of the preceding six months for each component security in the index is at least 45,500 shares, except that each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index may have an average daily trading volume of only 22,750 shares for each of the last six months;*
*(5) In a capitalization-weighted index, the lesser of: (1) The five highest weighted component securities in the index each have had an average daily trading volume of at least 90,000 shares over the past six months; or (2) the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index each have had an average daily trading volume of at least 90,000 shares over the past six months;*
*(6) Subject to subparagraphs (4) and (5) above, the component securities that account for at least 90% of the total index weight and at least 80% of the total number of component securities in the index must meet the requirements of Rule 5.3 applicable to individual underlying securities;*
*(7)(i) Each component security in the index is a "reported security" as defined in Rule 11Aa3–1 under the Exchange Act; and*
*(ii) Foreign securities or ADRs that are not subject to comprehensive surveillance sharing agreements do not represent more than 20% of the weight of the index;*
*(8) The current underlying index value will be reported at least once every fifteen seconds during the time the index options are traded on the Exchange;*
*(9) An equal dollar-weighted index will be rebalanced at least once every quarter;*
*(10) If the underlying index is maintained by a broker-dealer, the index is calculated by a third party who is not a broker-dealer, and the broker-dealer has in place an information barrier around its personnel who have access to information concerning changes in and adjustments to the index;*
*(11) Each component security in the index is registered pursuant to Section 12 of the Exchange Act; and*
*(12) Cash settled index options are designated as A.M.-settled options.*
*(e) The following maintenance listing standards shall apply to each class of index options originally listed pursuant to paragraph (d) above:*
*(1) The index meets the criteria of paragraph (d)(1) of this Rule;*
*(2) Subject to subparagraphs (4) and (9) below, the component securities that account for at least 90% of the total index weight and at least 80% of the total number of component securities in the index must meet the requirements of Rule 5.3;*
*(3) Each component security in the index has a market capitalization of at least $75 million, except that each of the lowest weighted component securities that in the aggregate account for no more than 10% of the weight of the index may have a market capitalization of only $50 million;*
*(4) The average daily trading volume in each of the preceding six months for each component security in the index is at least 22,750 shares, except that each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index may have an average daily trading volume of at least 18,200 shares for each of the last six months;*

*(5) Each component security in the index is a "reported security" as defined in Rule 11Aa3–1 under the Exchange Act; and*

*(6) Foreign securities or ADRs thereon that are not subject to comprehensive surveillance sharing agreements do not represent more than 20% of the weight of the index;*

*(7) The current underlying index value will be reported at least once every fifteen seconds during the time the index options are traded on the Exchange;*

*(8) If the underlying index is maintained by a broker-dealer, the index is calculated by a third party who is not a broker-dealer, and the broker-dealer has in place an information barrier around its personnel who have access to information concerning changes in and adjustments to the index;*

*(9) In a capitalization-weighted index the lesser of: (1) the five highest weighted component securities in the index each have had an average daily trading volume of at least 45,500 shares over the past six months; or (2) the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index each have had an average daily trading volume of at least 45,500 shares over the past six months;*

*(10) The total number of component securities in the index may not increase or decrease by more than 33⅓% from the number of component securities in the index at the time of its initial listing;*

*(11) Trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months;*

*(12) In a capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index each have had an average monthly trading volume of at least 1,000,000 shares over the past six months;*

*(13) Each component security in the index is registered pursuant to Section 12 of the Exchange Act;*

*(14) In an approximate equal-dollar weighted index, the index must be reconstituted and rebalanced if the notional value of the largest component is at least twice the notional volume of the smallest component for fifty percent or more of the trading days in the three months prior to December 31 of each year. For purposes of this provision the "notional value" is the market price of the component times the number of shares of the underlying component in the index. Reconstitution and rebalancing are also mandatory if the number of components in the index is greater than five at the time of rebalancing. The Exchange reserves the right to rebalance quarterly at its discretion;*

*(15) In a modified equal-dollar weighted index the Exchange will re-balance the index quarterly;*

*(16) In a share-weighted index, if a share-weighted Micro Narrow-Based Index fails to meet the maintenance listing standards under Rule 24.2(e), the Exchange will not re-balance the index, will restrict trading in existing option series to closing transactions, and will not issue additional series for that index; and*

*(17) In the event a class of index options listed on the Exchange fails to satisfy the maintenance listing standards set forth herein, the Exchange shall not open for trading any additional series of options of that class unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of that class of index options has been approved by the Commission under Section 19(b)(2) of the Exchange Act.*

Rule 24.4B—Position Limits for Options on Micro Narrow-Based Indexes As Defined Under Rule 24.2(d)

*Rule 24.4B. In determining compliance with Rule 4.11, cash-settled option contracts on any Micro Narrow-Based Index, as defined and determined under Rule 24.2(d), shall be subject to the following methodologies for determining the applicable position limits:*

*(a) Methodology for Establishing Position Limits on Cash-Settled Options on Micro Narrow-Based Indexes as defined under Rule 24.2(d). The position limit for a cash-settled option on a Micro Narrow-Based Index that meets the criteria under Rule 24.2(d) shall be calculated in accordance with the following methodology:*

*(1) Determine the Market Capitalization of the S&P 500 Index.*

*(2) Calculate the Notional Value of a position at the limit in the Chicago Mercantile Exchange's ("CME") S&P 500 futures contract. The position limit for that contract is 20,000 (in all months combined) and the Index Multiplier is $250.*

*Notional Value for the purposes of this Rule 24.4B(a)(1) = Index Level * Index Multiplier. Therefore,*

*Notional Value of 20,000 S&P 500 futures contracts = 20,000 * S&P 500 Index Level * 250.*

*(3) Calculate the Market Capitalization Ratio of the S&P 500 Index Market Capitalization to the Notional Value of a position limit at the limit.*

*Market Capitalization Ratio = Market Capitalization of the S&P 500 ÷ Notional Value of 20,000 S&P 500 futures contract positions.*

*(4) Determine the Market Capitalization of the Micro Narrow-Based Index by adding together the market capitalization of each underlying security component.*

*(5) Determine the Notional Value of the Micro Narrow-Based Index Option (Index Level * Contract Multiplier).*

*(6) Calculate the Position Limit of the Micro Narrow-Based Index using the following formula: Contract Position Limit on the Micro Narrow-Based Index = Market Capitalization of Micro Narrow-Based Index ÷ (Notional Value of Micro Narrow-Based Index Option * Market Capitalization Ratio).*

*(7) Establishing the Position Limit. After the applicable position limit has been determined pursuant to section 24.4B(a)(1)–(6), round the calculated position limit to the nearest 1,000 contracts using standard rounding procedures. For position limits that are 400 or greater, but less than 1000 contracts, round up to 1,000 contracts.*

*Rule 24.2(d) shall not apply to any Micro Narrow-Based Index in which the applicable position limit, as calculated using Rule 24.4B(a)(1)–(6), for that Micro Narrow-Based Index is less than 400 contracts.*

**Exhibit B**

MAINTENANCE OF APPROXIMATE EQUAL-DOLLAR WEIGHTED INDEXES

| Type | | Adjustments | | Notes |
|---|---|---|---|---|
| Action | Company | Close price/action | Share lot | |
| Special Cash Dividend | Component of Index .. | Adj. Close = Prev. Close − Dividend. | Adj. Share Lot = (Share Lot * Prev Close)/Adj. Close. | |
| Stock Split or Dividend. | Component of Index .. | Adj. Close = Prev. Close/Adjustment Factor. | Adj. Share Lot = Prev. Share Lot * Adjustment Factor. | Adjustment Factor = number of new shares for one old share. |
| Spin Off ..... | Component of Index (A). | Adj. Close = Close − (Ratio * Spun off company's Price). | ..... | Ratio = number of shares of spun-off company received for every share of parent company owned. Spun-off company be added at a weight such that the market capitalization of the two companies after the event is equal to the market capitalization of the parent prior to the event. |

MAINTENANCE OF APPROXIMATE EQUAL-DOLLAR WEIGHTED INDEXES—Continued

| Type | | Adjustments | | Notes |
|---|---|---|---|---|
| Action | Company | Close price/action | Share lot | |
| | Spun Off Company (B). | ADDED ..... | Share Lot = ((Share Lot A * Prev. Close A) = (Adj. Share Lot A*Adj. Close A))/ Close B. | |
| Two Components Merge in an All Stock, Cash or Combination Deal. | Remaining Companies (A). | ..... | Adj. Share Lot = Share Lot + B's Share Lot)/number of remaining components)/A's Close. | All remaining companies will be adjusted using the formula to the left. Their shares will increase based on their price so as to distribute the weight of the acquired company evenly. |
| | Acquired Company (B). | DELETED. | | |
| A Non-Component Takes Over a Component. | Acquirer (A) ..... | ADDED ..... | Adj. Share Lot = (B's Share Lot * B's Close)/A's Close. | The acquiring company will replace the acquired company in the index and the share lot will be adjusted. |
| | Acquried Component of Index (B). | DELETED. | | |
| Rights Issue ..... | Component of Index (A). | Adj Close = (Close + (Ratio * Subscription Price))/(1 + Ratio). | Adj. Share Lot = (Close * Share Lot)/ Adj. Close. | Ratio = number of rights received for 1 share of A. |
| Extraordinary Removal. | Replacement Company (A). | ADDED ..... | Adj. Share Lot = (B's Share Lot * B's Close)/A's Close. | Component B may be removed for: bankruptcy proceedings, financial distress (as determined by Dow Jones), delisting from a primary exchange (NYSE, Nasdaq, Amex), or illiquidity (10 consecutive no-trade days). Replacement A would be the highest ranked (as of the most recent Selection Date) of the remaining securities in the industry group which qualify for inclusion. |
| | Component of Index (B). | DELETED. | | |

**EXHIBIT C**

MAINTENANCE OF SHARE-WEIGHTED INDEXES

| Type | | Adjustments | | Notes |
|---|---|---|---|---|
| Corporate action | Company | Component price change | Adjustment factor change | |
| Special Cash Dividend | Component of Index .. | New Close = Prev Close − Dividend. | New Adj. Factor = (Prev. Adj. Factor * Prev. Close)/New Close. | |
| Stock Split or Dividend. | Component of Index .. | New Close = Prev. Close/Split Ratio. | New Adj. Factor = Prev. Adj. Factor * Split Ratio. | For example, in the case of a 2-for-1 split, the Split Ratio would be 2. In the case of a 5% stock dividend, the split ratio would be 1.05. |
| Spin Off ..... | Component of Index .. | New Close = Prev. Close − (Price Adjustment due value of spun-off company). | New Adj. Factor = (Prev. Adj. Factor * Prev. Close)/New Close. | Price Adjustment due to value of spun-off company = (market capitalization of parent company − market capitalization of spun-off company)/number of outstanding shares of the parent company. Spun-off Company is not added. |
| Two Index Components Merge in an All Stock, Cash or Combination Deal. | Acquiring Company ... | ..... | New Adj. Factor = Prev. Adj. Factor + ((Acquired Company's Close * Acquired Company's Adj. Factor)/Acquiring Company's Close). | The weight of the Acquired Company is added to the weight of the Acquiring Company. |
| | Acquired Company .... | COMPONENT DELETED. | | |

MAINTENANCE OF SHARE-WEIGHTED INDEXES—Continued

| Type | | Adjustments | | Notes |
|---|---|---|---|---|
| Corporate action | Company | Component price change | Adjustment factor change | |
| A Non-Component Takes Over a Component. | Non-Component Acquiring Company. | ADDED | New Adj. Factor = ((Acquired Company's Close * Acquired Company's Adj. Factor)/Acquiring Company's Close). | Non-Component Acquiring Company added to index at Acquired Company's weight. |
| | Acquired Component of Index. | DELETED. | | |
| Rights Offering | Component of Index | New Close = Prev. Close − Price Adjustment due to value of offering. | New Adj. Factor = (Prev. Adj. Factor * Prev. Close)/New Close. | Price Adjustment due to value of rights offering = (market capitalization of parent company − market capitalization of rights)/number of outstanding shares of the parent company. |
| Extraordinary Removal. | Index Component | DELETED | The Adjustment Factors for each remaining component will be increased to reflect an equal distribution of the weight of a deleted component. | An Index Component will be removed for: bankruptcy proceedings, financial distress, or delisting from a national market (NYSE, Nasdaq, Amex). |

[FR Doc. 04–15329 Filed 7–6–04; 8:45 am]
BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49930; File No. SR–DTC–2003–09]**

## Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to Establishing a New Service To Destroy Certain Certificates

June 28, 2004.

### I. Introduction

On June 12, 2003, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change SR–DTC–2003–03 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on January 23, 2004.[2] The Commission received ten comment letters, which are discussed in Section III. For the reasons discussed below, the Commission is approving the proposed rule change.

### II. Description

DTC filed this proposed rule change to establish a new service, which DTC calls the Destruction of Non-Transferable Securities Certificate Program. The new service will allow DTC to destroy certain certificates that represent positions in securities for which transfer agent services are not available and have not been available for six years or longer. DTC notes that the issuers of the securities in question are often inactive or insolvent and that the lack of transfer agent services generally renders the certificates non-transferable. The new service will reduce DTC's custodial expenses for such non-transferable securities and will allow participants to avoid certain fees to which they would otherwise be subject for the ongoing custody of the non-transferable issues. The filing also was to implement a DTC fee increase relating to DTC's custody of such non-transferable securities that are not designated for destruction by DTC participants, but as noted below the fee increase was implemented in a separate filing on December 23, 2003.

(1) Background. Over the years, DTC has moved aggressively to reduce the number of securities certificates held in its vaults, principally through expansion of the Book-Entry-Only ("BEO") program, bearer-to-registered conversions, and Fast Automated Securities Transfer ("FAST") program. These efforts have been spurred by the desire of the industry and regulators to move towards a book-entry or dematerialized environment. Because significant costs and risks are associated with ongoing maintenance of custody, control, and audit of certificates, certificate reduction reduces DTC's costs and risks. As a result of these efforts, DTC has significantly reduced the number of corporate, municipal, and bearer certificates it holds.

At the same time, however, the number and percentage of certificates held in DTC's vaults that represent securities for which transfer agent services are not available has grown considerably. DTC refers to these certificates as "non-transferable securities certificates." Typically, they are equity securities of a company that has become inactive or insolvent. Currently, DTC holds approximately 1.2 million such certificates, representing nearly 22% of its entire certificate inventory.

To address the costs and risks presented by the rising inventory of non-transferable certificates, DTC, having considered helpful input provided by many participants and industry groups, has developed its Destruction of Non-Transferable Securities Certificates Program.

(2) Previous Commission Orders Approving Certificate Destruction. DTC has twice in the past adopted programs pursuant to which it destroys certificates. The Commission approved DTC programs to destroy certificates representing (1) worthless warrants, rights, and put options whose expiration dates have passed[3] and (2) matured

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 49080 (January 14, 2004), 69 FR 3405.

[3] Securities Exchange Act Release No. 28642 (November 21, 1990), 55 FR 49725 [File No. SR–DTC–90–11].

book-entry-only debt.[4] During 2003, DTC destroyed a total of 35,652 certificates pursuant to these two programs.

(3) PREM. Many participants currently use DTC's Position Removal ("PREM") function to remove positions in non-transferable securities certificates from their participant accounts. Currently, those positions are moved to a DTC internal PREM account. However, the certificates representing those positions are still held in DTC's vaults with all the costs and risks associated with storing such certificates, maintaining the related accounts, and monitoring the status of such issues.

(4) Modifying the PREM Process. Prior to this rule change, the only effects of a participant's "deleting" its position in an issue using PREM were to eliminate: (1) The custody fees associated with the position and (2) the reporting of the position on the participant's securities position listing statements. Under the new program, DTC will notify its participants that using PREM to remove a position from its participant account or maintaining a position in PREM constitutes an acknowledgement by the participant that not only may DTC cease crediting the security to the participant's securities account, it may at its option based upon PREM criteria include the certificates representing the position in DTC's Destruction of Non-Transferable Securities Certificate Program. DTC will implement this new program with issues in which all participant positions have been moved to PREM.

(5) Destruction Process. Authorized DTC personnel will oversee and witness the destruction of the certificates. DTC will maintain detailed ledger control over the certificates through the point of destruction. In addition, prior to their destruction the certificates will be computer imaged by DTC. For all destroyed certificates, DTC will maintain an accurate record that will be searchable both by certificate number and by date of destruction. DTC will retain copies of the computer images of these certificates and of related positional information following destruction of the certificates for at least six years. For at least the first six months after destruction the computer images will be kept in a place that is easily accessible by authorized DTC personnel. Such records will be: (1) Available at all times for examination by the Commission or other appropriate regulatory agency in an easily readable projection enlargement; (2) immediately provided upon request by the Commission or other appropriate regulatory agency; (3) arranged and indexed in a manner that permits immediate location of any particular record: and (4) copied and stored separately from any original records.

Participants will be relieved of future DTC fees for any positions that the participant moves to PREM. If at a later date and in the unlikely event that transfer agent services are resumed for a security issue where the depository has already destroyed certificates, DTC will use its best efforts to have the destroyed certificates replaced and to return the position to the appropriate participants.

(6) Withdrawing Certificates. Alternatively, a participant may wish to withdraw its position in an issue of non-transferable securities certificates that is subjected to the custody fee which is described below. DTC will attempt to honor the participants' requests for participants if certificates in proper denominations are available in DTC's inventory. If proper denominations are not available, which as a practical matter may typically be the case, DTC will hold a certificate of greater value than that represented by the participant's long position and will charge the participant fees as described below.

(7) Checking for Issues of Non-Transferable Securities Certificates. Participants can systemically identify issues of non-transferable securities certificates by accessing either the Corporate and Municipal Eligible Security Files or the Corporate and Municipal Change Files. If appropriate, participants can then move their positions in any such issues to PREM and avoid the fees associated with the continued custody of the positions. Participants can also subsequently elect to deposit into DTC additional certificates of non-transferable securities issues and then move them to PREM so that they may be destroyed.

(8) Fee. Since much of DTC's cost to custody certificates is now directly attributable to non-transferable securities certificates, DTC increased its monthly charge for each position of a security that has been non-transferable for six or more years and that is not in PREM from $.17 to $1.00 per position per month in such issues (in addition to any other applicable fees) on December 23, 2003.[5] DTC anticipates that it will increase the fee on January 1, 2005, to $5.00 per position per month in such issues.[6] Currently, about 93% of all DTC non-transferable securities certificates are in PREM.

(9) The Benefits. As a result of this new procedure, DTC will provide uniform and consistent controls and procedures (as well as physical safeguards) for issues of non-transferable securities.

As further benefits, DTC believes that this new program will reduce both DTC's and overall industry expenses as follows: First, the program will eliminate the costs and risks associated with the ongoing maintenance of custody, control, insurance protection, and audit of these 1.2 million certificates. Second, DTC's destruction of such certificates on a centralized basis will provide the industry with scale economies for the destruction process.

DTC reports that it solicited comments from all DTC participants concerning the program through a DTC Important Notice dated January 22, 2003, a copy of which is attached to the DTC filing. In addition, DTC worked with the Securities Industry Association's Securities Operations Division's Regulatory and Clearance Committee and with DTC's Securities Processing Advisory Board. DTC reports that feedback from participants and from such industry groups, while generally positive and supportive, also led DTC to refine the proposal by extending the time period during which the securities must be in non-transferable status before they can be destroyed (*i.e.*, six years) and by extending the timing of the implementation of the related fee.

## III. Comments

Ten commenters, consisting of five broker-dealers, four trade associations in the securities industry, and one self-regulatory organization submitted comment letters to the Commission on this proposal.[7] All ten letters endorsed

[4] Securities Exchange Act Release No. 44169 (April 10, 2001), 66 FR 19592 [File No. SR–DTC–99–6].

[5] The fee of $1.00 per position was filed with the Commission under Section 19(b)(3)(A) of the Act on December 29, 2003, and as such was effective when filed. Securities Exchange Act Release No. 49100 January 20, 2004), 69 FR 3959 (January 27, 2004) [File No. SR–DTC–2003–15].

[6] As required by Section 19(b) of the Act, DTC will file any proposed fee change with the Commission.

[7] The commenters were: Phil Lanz, Managing Director, Bear, Stearns Securities Corp. (February 4, 2004); Robert D. Becker, Chairperson, Bank Depository User Group (February 1, 2004); John Cusumano, President, Customer Account Transfer Division, Inc. (February 11, 2004); Ralph Guzman, Senior Vice President, National Investor Services Corp. (February 6, 2004); Kristin Johnson, Operations Division, Edward Jones (February 9, 2004); Brian Urkowitz, First Vice President, Merrill Lynch (February 13, 2004); Frank M. Ciavarella, Cashiers' Division, Wachovia Securities (February 12, 2004); Edward Hazel, Securities Operations

DTC's proposal, stating generally that the destruction of the non-transferable securities certificates would promote efficiency and would reduce expenses within the securities industry.[8]

## IV. Discussion

We note that Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of funds and securities which are in its custody or control or for which it is responsible.[9] In Section 17A(a)(1)(B) of the Act, Congress stated its finding that inefficient procedures for clearance and settlement imposed unnecessary costs on public investors.[10] Section 17(a) of the Act and Rule 17a–1 thereunder provides that a registered clearing agency must maintain certain records for a period of five years.[11] (The Commission has previously taken the position that Rule 17a–1 includes records pertaining to worthless securities certificates.)[12]

DTC correctly stated in its rule proposal that the Commission has twice approved DTC programs that authorized DTC to destroy certain securities certificates. In 1990, the Commission approved a proposed rule change enabling DTC to destroy certificates representing expired and worthless warrants, rights, and put options, provided DTC maintained copies of such certificates for seven years after their destruction.[13] In 2001, the Commission approved a DTC proposed rule change that authorized DTC to destroy matured book-entry only ("BEO") debt securities certificates, together with their related DTC letters of transmittal and DTC redemption summary payment forms, provided that DTC maintain microfilm or computer images of these BEO certificates and related paperwork for ten years following their destruction.[14] In both cases, the Commission indicated that it favored the efficiencies involved in eliminating custodial services for certain categories of worthless securities certificates provided there are proper disposal procedures in place and proper records being maintained of the destroyed certificates.

We note that DTC's new program provides that: (1) The securities certificates in question must have been held by DTC in non-transferable status for at least six years before DTC may destroy them and (2) DTC will maintain electronic images of the destroyed certificates for at least six years after the certificates are destroyed. Thus, for recordkeeping purposes, the certificates will be available either in original form or in imaged form for two consecutive periods of not less than six years, a total of not less than 12 years.[15]

In this case, we believe that the protections required by Section 17A(b)(3)(F) and goals set forth in Section 17A(a)(1)(B) of the Act and other applicable provisions are met by DTC's proposal. The new DTC program provides for: (1) Secure certificate disposal procedures that will be overseen and witnessed by DTC personnel and (2) appropriate certificate imaging and recordkeeping.

## V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–2003–09) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–15285 Filed 7–6–04; 8:45 am]

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Division, Securities Industries Association (February 6, 2004); Thomas Davis, Morgan Stanley (received March 1, 2004); and Jack R. Weiner, Managing Director & Deputy General Counsel, DTC (June 2, 2004).

[8] One commenter, Wachovia Securities, while supportive of DTC's proposal, appeared to raise the issue of the possibility of non-transferable securities certificates returning to circulation in the marketplace. In response, DTC submitted a comment letter stating that it had contacted the commenter to discuss the commenter's issue and that the commenter was supportive of the proposal and that the Commission should move forward with approving the proposal.

[9] 15 U.S.C. 78q–1(b)(3)(A).

[10] 15 U.S.C. 78q–1(a)(1)(B).

[11] 15 U.S.C. 78q(a); 17 CFR 240.17a–1.

[12] *Supra* note 3.

[13] *Supra* note 3.

[14] *Supra* note 4.

[15] *See also* Rules 17Ad–6(c) and 17Ad–7(d) under the Act, whereby transfer agents are required to maintain cancelled certificates for "not less than six years." 17 CFR 240.17Ad–6(c) and 17Ad–7(d).

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49942; File No. SR–PCX–2004–12]**

## Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the Pacific Exchange, Inc. Creating an Additional Processing Capability for PNP Orders Called "PNP Plus"

June 29, 2004.

On February 23, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly-owned subsidiary, PCX Equities, Inc., filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the rules governing the Archipelago Exchange ("ArcaEx") to create an additional processing capability for Post No Preference ("PNP") Orders designated as PNP Plus. On April 23, 2004, PCX submitted Amendment No. 1 to the proposal.[3] PCX submitted Amendments No. 2 [4] and 3 [5] on April 28, 2003 and May 11, 2004, respectively. The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on May 24, 2004.[6] The Commission received no comment letters on the proposal.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Steven B. Matlin, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 22, 2004 ("Amendment No. 1"). Amendment No. 1 superseded and replaced the original rule filing in its entirety. In Amendment No. 1, the PCX changed the proposal to make PNP Plus Order election an order-by-order designation, made conforming and clarifying changes in the rule text, and provided an example of how a PNP Plus Order would be processed.

[4] *See* letter from Steven B. Matlin, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 27, 2004 ("Amendment No. 2"). In Amendment No. 2, the PCX corrected typographical errors and made clarifying changes in the rule text.

[5] *See* letter from Steven B. Matlin, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 10, 2004 ("Amendment No. 3"). In Amendment No. 3, the PCX made a clarifying edit to the rule text.

[6] *See* Securities Exchange Act Release No. 49713 (May 17, 2004), 69 FR 29609.

exchange[7] and, in particular, the requirements of Section 6(b)(5) of the Act.[8] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and national market system, and, in general, to protect investors and the public interest.

The Commission notes that the proposed rule change creates an additional processing capability for PNP Orders designated as PNP Plus. While an ordinary PNP Order is automatically cancelled in the event that such order locks or crosses the national best bid or offer ("NBBO"), a PNP Plus designation would avoid such cancellation in the event that the PNP Order would lock or cross the NBBO by re-pricing the PNP Order by one penny greater than the national best bid (for sell orders) or one penny lower than the national best offer (for buy orders) and posting the re-priced PNP Order in the ArcaEx Book. With each subsequent change in the NBBO, the PNP Order would continue to be re-priced and re-posted in this manner until such time that the original PNP Order price would not lock or cross the NBBO, at which time the PNP Order would revert to its original price. The Commission notes that such order would be assigned a new price time priority as of the time of each re-posting in the ArcaEx Book. The Commission believes that the PNP Plus designation should extend additional flexibility to PNP Orders and that it should provide ETP Holders and Sponsored Participants with enhanced trading options. Further, the Commission believes that the proposed rule change should help improve the efficiency of order interaction on ArcaEx by increasing the opportunity for PNP Orders to execute, while avoiding locked and crossed markets. Therefore, the Commission finds that the proposed rule change, as amended, is consistent with the Act.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–PCX–2004–12), as amended by Amendment Nos. 1, 2, and 3, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–15284 Filed 7–6–04; 8:45 am]

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[7] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49949; File No. SR–PCX–2004–55]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to a Twelve-Month Extension of the Automatic Execution System Book Function Pilot Program

June 30, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, notice is hereby given that on June 28, 2004, 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 PCX. PCX filed the proposed rule change as "non-controversial" pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6)[4] thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX is proposing to amend its rules to extend the Automatic Execution System ("Auto-Ex") Book Function Pilot Program for one year until June 30, 2005. The text of the proposed rule change is available at PCX and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX 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 June 22, 2001, the Commission approved, on a one-year pilot basis, the Exchange's proposal to amend PCX Rule 6.87, which allows automatic executions of orders in the Exchange's Limit Order Book when those orders become marketable.[5] On June 17, 2002, the Commission approved a one-year extension of the pilot program.[6] On June 17, 2003, the Commission approved a one-year extension of the pilot program.[7] The pilot program is currently set to expire on June 30, 2004.

The Auto-Ex[8] Book Function of the Pacific Options Exchange Trading System ("POETS") permits orders in the Limit Order Book to be executed via the Auto-Ex system when those orders become marketable subject to certain procedures. The function may be used when one or more orders in the Limit Book Order become marketable, as indicated by a locked or crossed market being displayed on the trading floor. When this occurs, the Lead Market Maker may direct the Order Book Official to initiate the Auto-Ex Book Function, which will cause marketable orders in the Limit Order Book to be automatically executed against the accounts of Market Makers who are participating on the Auto-Ex system at the time.

The Exchange is requesting an additional extension of the pilot program for one year from June 30, 2004 through June 30, 2005. The Exchange represents that the added time permits the Exchange to phase-in the Exchange's new trading platform for options, "PCX

[1] 15 U.S.C. 78s(b)(1).

[2] 217 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Exchange Act Release No. 44468 (June 22, 2001), 66 FR 34505 (June 28, 2001).

[6] *See* Exchange Act Release No. 46082 (June 17, 2002), 67 FR 42307 (June 21, 2002).

[7] *See* Exchange Act Release No. 48043 (June 17, 2003), 68 FR 37190 (June 23, 2003).

[8] Auto-Ex is the Exchange's Automated Execution system feature of POETS for market or marketable limit orders. POETS is the Exchange's automated trading system comprised of an options order routing system, an automatic execution system ("Auto-Ex"), an on-line limit order book system and an automatic market quote update system. Option orders can be sent to POETS via the Exchange's Member Firm Interface ("MFI"). Market and marketable linit orders sent through the MFI will be executed by Auto-Ex if they meet order type and size requirements of the Exchange.

Plus," on an issue-by-issue basis.[9] As each issue is phased into PCX Plus, the Exchange will simultaneously phase-out such issue from the Auto-Ex Book Function. PCX Plus will eventually replace the Auto-Ex Book Function in its entirety. Currently, the Auto-Ex Book Function is operating as intended and provides a service to both customers and members by facilitating the execution of orders in the Limit Order Book. Therefore, the Exchange believes that a one-year extension of the program is warranted.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5),[11] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has designated the proposed rule change as one that does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6)[13] thereunder.

Under Rule 19b–4(f)(6)(iii), a proposed "non-controversial" rule change does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time. PCX has requested that the Commission waive the five business day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing, and the PCX Auto-Ex Book Function Pilot Program can continue without interruption.

The Commission believes that waiver of the five-day pre-filing requirement and the 30-day operative delay is consistent with the protection of investors and the public interest.[14] The Commission notes that the Auto-Ex Book Function Pilot Program expires on June 30, 2004. Accelerating the operative date will allow for the continued operation of PCX's Auto-Ex Book Function Pilot Program without interruption until such time as PCX Plus is fully operative. Therefore, the Commission designates the proposed rule change to be effective and operative immediately.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[15]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic comments:*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2004–55 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–2004–55. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2004–55 and should be submitted on or before July 28, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–15326 Filed 7–6–04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49948; File No. SR–PCX–2004–54]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to a Twelve-Month Extension of the Automatic Execution System Incentive Pilot Program

June 30, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, notice is hereby given that on June 28, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission

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[9] *See* Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (Order approving PCX Plus).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(3)(C).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 217 CFR 240.19b–4.

("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by PCX. PCX filed the proposed rule change as "non-controversial" under section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) [4] thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

PCX is proposing to amend its rules to extend the Automatic Execution System ("Auto-Ex") Incentive Pilot Program for one year until June 30, 2005. The text of the proposed rule change is available at PCX and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX 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 September 25, 2001, the Commission approved, on a nine-month pilot basis, the Exchange's proposal to amend PCX Rule 6.87 to provide an Auto-Ex [5] Incentive Pilot Program for apportioning Auto-Ex trades among Market Makers.[6] On June 25, 2002, the Commission approved an additional six-month extension of the pilot program.[7] On December 24, 2002, the Commission approved an additional six-month extension of the pilot program.[8] On June 11, 2003, the Commission approved a one-year extension of the pilot program.[9] The pilot program is currently set to expire on June 30, 2004.

The Auto-Ex Incentive Pilot Program allows the Exchange to assign Auto-Ex orders to a logged-on Market Maker according to the percentage of its in-person agency contracts [10] traded in an issue (excluding Auto-Ex contracts) compared to all of the Market Makers in-person agency contracts traded (excluding Auto-Ex contracts) during the review period. The review period is determined by the Exchange and may be for any period of time not in excess of two weeks.[11] The percentage distribution determined for a review period will be effective for the succeeding review period.

The Exchange is requesting an additional extension of the pilot program for one year from June 30, 2004 through June 30, 2005. The Exchange represents that the added time permits the Exchange to phase-in the Exchange's new trading platform for options, "PCX Plus," on an issue-by-issue basis.[12] As each issue is phased into PCX Plus, the Exchange will simultaneously phase-out such issue from the Auto-Ex Incentive Pilot Program. PCX Plus will eventually replace the Auto-Ex Incentive Pilot Program in its entirety. Therefore, the Exchange believes that a one-year extension of the program is warranted.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[13] in general, and furthers the objectives of section 6(b)(5),[14] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has designated the proposed rule change as one that does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) [16] thereunder.

Under Rule 19b–4(f)(6)(iii), a proposed "non-controversial" rule change does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time. PCX has requested that the Commission waive the five business day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing and the PCX Auto-Ex Incentive Pilot Program can continue without interruption.

The Commission believes that waiver of the five-day pre-filing requirement and the 30-day operative delay is consistent with the protection of investors and the public interest.[17] The Commission notes that the Auto-Ex Incentive Pilot Program expires on June 30, 2004. Accelerating the operative date will allow for the continued operation of PCX's Auto-Ex Incentive Pilot Program without interruption until such time as PCX Plus is fully operative. Therefore, the Commission designates

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] Auto-Ex is the Exchange's Automated Execution system feature of the Pacific Options Exchange Trading System ("POETS") for market or marketable limit orders. POETS is the Exchange's automated trading system comprised of an options order routing system, an automatic execution system ("Auto-Ex"), an on-line limit order book system and an automatic market quote update system. Option orders can be sent to POETS via the Exchange's Member Firm Interface ("MFI"). Market and marketable limit orders sent through the MFI will be executed by Auto-Ex if they meet order type and size requirements of the Exchange.

[6] *See* Exchange Act Release No. 44847 (Sept. 25, 2001), 66 FR 50237 (Oct. 2, 2001).

[7] *See* Exchange Act Release No. 46115 (June 25, 2002), 67 FR 44494 (July 2, 2002).

[8] *See* Exchange Act Release No. 47088 (Dec. 24, 2002), 68 FR 140 (Jan. 2, 2003).

[9] *See* Exchange Act Release No. 48019 (June 11, 2003), 68 FR 36621 (June 18, 2003).

[10] Agency contracts are those contracts that are represented by an agent and do not include contracts traded between Market Makers in person in the trading crowd.

[11] The Exchange has set a two-week review period for all options classes and the Exchange will not vary the term of the review period except for exigent circumstances.

[12] *See* Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (Order approving PCX Plus).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

the proposed rule change to be effective and operative immediately.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[18]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2004–54 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–2004–54. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2004–54 and should be submitted on or before July 28, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–15327 Filed 7–6–04; 8:45 am]

BILLING CODE 8010–01–P

[18] 15 U.S.C. 78s(b)(3)(C).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49946; File No. SR–PCX–2004–56]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. to Relating to the Certificate of Incorporation and Bylaws of Archipelago Holdings, Inc.

June 30, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange, through PCXE, is filing with the Commission certain organizational documents of Archipelago Holdings, Inc. ("New Arca Holdings"), an entity that will succeed Archipelago Holdings, L.L.C. ("Current Arca Holdings") as the sole parent of the current equities trading facility of PCX and PCXE, the Archipelago Exchange, L.L.C. ("ArcaEx"). New Arca Holdings' proposed Certificate of Incorporation and Bylaws are collectively referred to herein as the "proposed rule change" and are available for viewing on the Commission's Web site, *http://www.sec.gov/rules/sro.shtml*, and at PCX and the Commission.

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

**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. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is filing with the Commission the proposed organizational documents of New Arca Holdings, the entity that is proposed to succeed Current Arca Holdings as the parent company of ArcaEx, the operator of the equities trading facility of PCX and PCXE. Current Arca Holdings is proposing to convert into a Delaware corporation (New Arca Holdings) and effect an initial public offering of the common stock of New Arca Holdings, and expects to use the proceeds of the offering for general corporate purposes, including to provide additional funds for its operations and to expand and diversify its product and service offerings, and possibly to acquire new businesses, products and technologies.

In connection with the conversion to a Delaware corporation, each of the current members of Current Arca Holdings will receive 0.222222 shares of common stock of New Arca Holdings for each of their current shares in Current Arca Holdings, and one of Current Arca Holdings' members, GAP Archa Holdings, Inc., will be merged with and into New Arca Holdings.[3] The stockholders of GAP Archa Holdings, Inc. will receive shares of common stock of New Arca Holdings for their shares of common stock of GAP Archa Holdings, Inc., and the shares of New Arca Holdings common stock owned by GAP

[3] Current Area Holdings represents that the following persons currently own 5% or more of the shares of Current Area Holdings: The Goldman Sachs Group, Inc., GAP Archa Holdings, Inc., Credit Suisse First Boston Next Fund, Inc., Fidelity Global Brokerage Group, Inc., and Merrill Lynch L.P. Holdings Inc. Telephone Conversation among Mai S. Shiver, Acting Director/Senior Counsel, PCX; Kevin O'Hara, Chief Administrative Officer and General Counsel, Current Arca Holdings; and David Hsu, Attorney, Division of Market Regulation ("Division"), Commission, on June 29, 2004.

Archa Holding, Inc. prior to the merger will be cancelled.

The common stock of New Arca Holdings will have the traditional features of common stock, including voting, dividend and liquidation rights. Subject to the limitations described below, holders of common stock will be entitled to vote on all matters submitted to the stockholders for a vote. New Arca Holdings may issue preferred stock in the future, the terms of which will be determined by the board of directors. In connection with the proposed initial public offering, Current Arca Holdings has filed a registration statement on Form S–1 with the Commission (File No. 333–113226).

New Arca Holdings will be governed under the direction of a board of directors. The number of directors shall be fixed by resolution of the board of directors, and is expected to be nine initially. Pursuant to New Arca Holdings' Certificate of Incorporation, for so long as ArcaEx is a facility of PCX and PCXE and the Amended and Restated Facility Services Agreement among PCX, PCXE and Current Arca Holdings (the "Amended and Restated Facilities Agreement") is in effect, one member of New Arca Holdings' board of directors will be required to be a member of PCX's Board of Directors or an officer or employee of PCX nominated by the PCX Board of Directors. New Arca Holdings will have the following committees of the board of directors: an audit committee, a corporate governance and nominating committee and a compensation committee.

Current Arca Holdings is currently the sole owner of ArcaEx. As a result of the conversion, New Arca Holdings will become the sole owner of ArcaEx. New Arca Holdings will operate ArcaEx as the equities trading facility of PCX and PCXE. After the conversion of Current Arca Holdings into New Arca Holdings, PCX and PCXE will continue to have regulatory and oversight obligations with respect to ArcaEx, and New Arca Holdings will operate the facility in a manner not inconsistent with the regulatory and oversight functions of PCX and PCXE. All persons using ArcaEx will continue to be subject to the PCXE rules. The regulatory relationship of PCX and PCXE to ArcaEx will not be affected by the conversion or the initial public offering. Certain provisions of the Certificate of Incorporation and Bylaws of New Arca Holdings are intended to ensure that the conversion of the parent company of ArcaEx from a privately-owned limited liability company to a publicly-held Delaware corporation will not unduly interfere with or restrict the ability of the Commission or PCX to effectively carry out its regulatory oversight responsibilities under the Act with respect to ArcaEx and generally to enable ArcaEx to operate in a manner that complies with the federal securities laws, including furthering the objectives of Section 6(b)(5) of the Act.

Certain provisions of the New Arca Holdings Certificate of Incorporation relating to ownership and voting limitations on New Arca Holdings' stockholders and to the regulatory oversight by the Commission, PCX and PCXE are summarized below. In addition, the requirements that must be met to amend the Certificate and Bylaws are summarized. The proposed terms of the Certificate of Incorporation and Bylaws of New Arca Holdings are available for viewing on the Commission's Web site, *http://www.sec.gov/rules/sro.shtml*, and at PCX and the Commission.

*(i) Voting Limitation*

Pursuant to the Certificate of Incorporation, no person,[4] either alone or with its related persons (as defined below), would be entitled to (1) vote or cause the voting of shares of stock of New Arca Holdings to the extent such shares represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (the "Voting Limitation") or (2) enter into any agreement, plan or arrangement not to vote shares, the effect of which agreement, plan or arrangement would be to enable any person, either alone or with its related persons, to vote or cause the voting of shares that would represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (the "Nonvoting Agreement Prohibition"). The Voting Limitation and the Nonvoting Agreement Prohibition will apply unless and until (1) a person, either alone or with its related persons, delivers to the board of directors of New Arca Holdings a notice in writing, at least 45 days (or such shorter period as the board of directors of New Arca Holdings expressly consents to) prior to the voting of any shares that would cause such person, either alone or with its related persons, to violate the Voting Limitation or the Nonvoting Agreement Prohibition and (2) such person, either alone or with its related persons, receives prior approval from the board of directors of New Arca Holdings and the Commission to exceed the Voting Limitation or enter into an agreement, plan or arrangement not otherwise allowed pursuant to the Nonvoting Agreement Prohibition. Specifically, (1) the board of directors of New Arca Holdings would be required to adopt a resolution approving such person and it related persons to exceed the Voting Limitation or to enter into an agreement, plan or arrangement not otherwise allowed pursuant to the Nonvoting Agreement Prohibition, (2) the resolution would be required to be filed with the Commission as a proposed rule change under Rule 19b–4 of the Act and (3) such proposed rule change must first become effective thereunder.[5]

The Certificate of Incorporation defines "related persons" to mean with respect to any person (a) any other person(s) whose beneficial ownership of shares of stock of New Arca Holdings with the power to vote on any matter would be aggregated with such first person's beneficial ownership of such stock or deemed to be beneficially owned by such first person pursuant to Rules 13d–3 and 13d–5 under the Act; (b) in the case of a person that is a natural person, for so long as ArcaEx remains a facility of PCX and PCXE and the Amended and Restated Facility Services Agreement is in full force and effect, any broker or dealer that is an ETP Holder (as defined in the PCXE rules of PCX, as such rules may be in effect from time to time) with which such natural person is associated; (c) in the case of a person that is an ETP Holder, for so long as ArcaEx remains a facility of PCX and PCXE and the Amended and Restated Facility Services Agreement is in full force and effect, any broker or dealer with which such ETP Holder is associated; (d) any other person(s) with which such person has any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the stock of New Arca Holdings; and (e) in the case of a person that is a natural person, any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of New Arca Holdings or any of its parents or subsidiaries.[6]

[4] The Certificate of Incorporation defines "Person" to mean a natural person, company, government, or political subdivision, agency, or instrumentality of a government. New Arca Holdings Certificate of Incorporation, Article Fourth.H(2).

[5] New Arca Holdings Certificate of Incorporation, Article Fourth.C.

[6] New Arca Holdings Certificate of Incorporation, Article Fourth.H(3). The Certificate of Incorporation further provides that "related persons" includes, with respect to any person (1) any other person beneficially owning pursuant to Rules 13d–3 and 13d–5 under the Act shares of stock of New Arca Holdings with the power to vote on any matter that also are deemed to be beneficially owned by such

PCX and PCXE believe that this definition will permit New Arca Holdings to monitor the ownership of its stock by monitoring filings on Schedules 13D and 13G by its stockholders. In addition, stockholders will be able to effectively monitor their shareholdings in New Arca Holdings using systems they already have in place.

In approving any such resolution, the board of directors of New Arca Holdings must determine that: (1) The exercise of such voting rights or the entering into of such agreement, plan or arrangement, as applicable, by such person, either alone or with its related persons, would not impair New Arca Holdings," PCX's or PCXE's ability to discharge its responsibilities under the Act and the rules and regulations thereunder and is otherwise in the best interests of New Arca Holdings and its stockholders; (2) the exercise of such voting rights or the entering into of such agreement, plan or arrangement would not impair the Commission's ability to enforce the Act; (3) such person and its related persons are not subject to any statutory disqualification (as defined in Section 3(a)(39) of the Act); and (4) such person and its related persons are not ETP Holders. In making such determinations, the board of directors of New Arca Holdings may impose any conditions and restrictions on such person and its related persons owning any shares of stock of New Arca Holdings entitled to vote on any matter as the board of directors of New Arca Holdings in its sole discretion deems necessary, appropriate or desirable in furtherance of the objectives of the Act and the governance of New Arca Holdings.[7]

If votes are cast in excess of the Voting Limitation, New Arca Holdings shall disregard such votes cast in excess of the Voting Limitation. The provisions described in this section shall not apply to (1) any solicitation of any revocable proxy from any stockholder of New Arca Holdings by or on behalf of New Arca Holdings or by an officer or director of New Arca Holdings acting on behalf of New Arca Holdings or (2) any solicitation of any revocable proxy from any stockholder of New Arca Holdings by any other stockholder that is conducted pursuant to, and in accordance with, Regulation 14A promulgated pursuant to the Act.[8]

PCX and PCXE believe that these provisions would prevent any stockholder, or any stockholders acting together, from exercising undue control over the operation of New Arca Holdings and, therefore, ArcaEx. Specifically, PCX and PCXE believe that these provisions are designed to prohibit any person, either alone or with its related persons, from having the power to control a substantial number of outstanding votes entitled to be cast on any matter without Commission review. PCX and PCXE believe that the imposition of a voting limitation on any person that, either alone or with its related persons, owns more than 20% of the then outstanding votes entitled to be cast on any matter, would help ensure that New Arca Holdings would not be subject to undue influence from a stockholder or group of stockholders that controls a substantial number of outstanding votes entitled to be cast on any matter that may be adverse to PCX's, PCXE's and the Commission's regulatory oversight responsibilities. These provisions, along with the related ownership limitations discussed below, would serve to protect the integrity of PCX's, PCXE's and the Commission's regulatory oversight responsibilities and would allow the Commission to review, and subject to public notice and comment, the acquisition of substantial voting power by any stockholder and its related persons.

*(ii) Ownership Limitations.*

*Concentration Limitation.* Pursuant to the Certificate of Incorporation, no person, either alone or with its related persons, may own beneficially shares of stock of New Arca Holdings representing in the aggregate more than 40% of the then outstanding votes entitled to be cast on any matter.[9] The 40% ownership limitation will apply unless and until (1) a person, either alone or with its related persons, delivers to the board of directors of New Arca Holdings a notice in writing, at least 45 days (or such shorter period as the board of directors of New Arca Holdings expressly consents to) prior to the acquisition of any shares that would cause such person, either alone or with its related persons, to own beneficially shares of stock of New Arca Holdings in excess of the 40% ownership limitation and (2) such person, either alone or with its related persons, receives prior approval by the board of directors of New Arca Holdings and the Commission to exceed the 40% ownership limitation. Specifically, (1) the board of directors of New Arca Holdings would be required to adopt a resolution approving such person and its related persons to exceed the ownership limitation, (2) the resolution would be required to be filed with the Commission as a proposed rule change under Rule 19b–4 of the Act and (3) such proposed rule change must first become effective thereunder.[10]

In approving any such resolution, the board of directors of New Arca Holdings must determine that: (1) Such acquisition of beneficial ownership by such person, either alone or with its related persons, would not impair any of New Arca Holdings', PCX's or PCXE's ability to discharge its responsibilities under the Act and the rules and regulations thereunder and is otherwise in the best interests of New Arca Holdings and its stockholders; (2) such acquisition of beneficial ownership by such person, either alone or with its related persons, would not impair the Commission's ability to enforce the Act; and (3) such person and its related persons are not subject to any statutory disqualification (as defined in Section 3(a)(39) of the Act). In making such determinations, the board of directors of New Arca Holdings may impose any conditions and restrictions on such person and its related persons owning any shares of stock of New Arca Holdings entitled to vote on any matter as the board of directors of New Arca Holdings in its sole discretion deems necessary, appropriate or desirable in furtherance of the objectives of the Act and the governance of New Arca Holdings.[11]

If a person, either alone or with its related persons, owns beneficially

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first person pursuant to Rules 13d–3 and 13d–5 under the Act; (2) any other person that would be deemed to own beneficially pursuant to Rules 13d–3 and 13d–5 under the Act shares of stock of New Arca Holdings with the power to vote on any matter that are beneficially owned directly or indirectly by such first person pursuant to Rules 13d–3 and 13d–5 under the Act; and (3) any additional person through which such other person would be deemed to directly or indirectly own beneficially pursuant to Rules 13d–3 and 13d–5 under the Act shares of stock of New Arca Holdings with the power to vote on any matter.

[7] New Arca Holdings Certificate of Incorporation, Article Fourth.C.

[8] *Id.*

[9] In considering whether a person owns shares of stock of New Arca Holdings or has voted shares of stock of New Arca Holdings in violation of the applicable ownership and voting limitations, New Arca Holdings will consider any filings made with the Commission under Section 13(d) and Section 13(g) of the Act by such person and its related persons and will aggregate all shares owned or voted by such person and its related persons to determine such person's beneficial ownership.

Currently, no person or related persons owns more than 40% of the shares of Current Arca Holdings. Telephone conversation among Mai S. Shiver, Acting Director/Senior Counsel, PCX; Kevin O'Hara, Chief Administrative Officer and General Counsel; and David Hsu, Attorney, Division, Commission, on June 29, 2004.

[10] New Arca Holdings Certificate of Incorporation, Article Fourth.D(1).

[11] *Id.*

shares of stock of New Arca Holdings in excess of the 40% limitation without prior approval, New Arca Holdings shall call from such person and its related persons that number of shares of stock entitled to vote that exceeds the 40% limitation at a price equal to the par value of the shares of stock.[12] PCX and PCXE believe that these provisions would provide the Commission with the authority to review and subject to public notice and comment any substantial acquisition of ownership of shares of stock of New Arca Holdings with the power to vote that may allow a person, either alone or with its related persons, to control New Arca Holdings and which the Commission may deem to have the potential to affect PCX's, PCXE's and the Commission's regulatory oversight responsibilities regarding ArcaEx.

*Limitation on Ownership by ETP Holders.* Notwithstanding any other provision of the Certificate of Incorporation other than paragraph (2)(b) of Section (D) of Article Fourth, as described in the next paragraph, for so long as ArcaEx is a facility of PCX and PCXE and the Amended and Restated Facility Services Agreement is in effect, no ETP Holder, either alone or with its related persons, may own beneficially shares of stock of New Arca Holdings representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter.[13] If an ETP Holder, either alone or with its related persons, owns beneficially shares of stock of New Arca Holdings in excess of this 20% limitation, New Arca Holdings shall call from such ETP Holder and its related persons that number of shares of stock entitled to vote that exceeds the 20% limitation at a price equal to the par value of the shares of stock.[14]

Members of Current Arca Holdings who were ETP Holders as of the date of the Certificate of Incorporation, either alone or with their related persons, have a temporary exemption, not to extend past July 31, 2014, from this ownership limitation to the extent of their beneficial ownership, either alone or with their related persons, of shares of stock of New Arca Holdings after giving effect to the initial public offering of shares of common stock of New Arca Holdings.[15] Members of Current Arca Holdings qualifying for this exemption may not increase their beneficial ownership of New Arca Holdings above their beneficial ownership at the time of the initial public offering.

New Arca Holdings shall not register the purported transfer of any shares of stock of New Arca Holdings that would result in a violation of the 40% ownership limitation and the ownership limitation applicable to ETP Holders.[16] In practical terms, this limitation would apply only in situations where a stockholder is the record owner of shares.

For the purposes of the 40% ownership limitation and the ownership limitation applicable to ETP Holders, no person shall be deemed to have any agreement, arrangement or understanding to act together with respect to voting shares of stock of New Arca Holdings solely because such person or any of such person's related persons has or shares the power to vote or direct the voting of such shares of stock pursuant to a revocable proxy given in response to a public proxy or consent solicitation conducted pursuant to, and in accordance with, Regulation 14A promulgated pursuant to the Act, except if such power (or the arrangements relating thereto) is then reportable under Item 6 of Schedule 13D under the Act (or any similar provision of a comparable or successor report).[17]

*(iii) New Arca Holdings' Right To Require Information From Stockholders.*

Pursuant to the Certificate of Incorporation, the board of directors of New Arca Holdings has the right to require any person and its related persons reasonably believed (1) to be subject to the 20% voting limitation or the prohibition on certain agreements not to vote shares of stock of New Arca Holdings, (2) to own beneficially (within the meaning of Rules 13d–3 and 13d–5 under the Act) shares of stock of New Arca Holdings entitled to vote on any matter in excess of the 40% ownership limitation, (3) to own beneficially (within the meaning of Rules 13d–3 and 13d–5 under the Act) an aggregate of 5% or more of the then outstanding shares of stock of New Arca Holdings entitled to vote on any matter, which ownership such person, either alone or with its related persons, has not reported to New Arca Holdings, (4) to be subject to the ownership limitation applicable to ETP Holders described above or (5) to own shares of stock of New Arca Holdings entitled to vote on any matter in excess of 20% that is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Act) to provide New Arca Holdings complete information as to all shares of stock of New Arca Holdings beneficially owned by such person and its related persons and any other factual matter relating to the applicability or effect of Article Fourth of the Certificate of Incorporation as may reasonably be requested of such person and its related persons.[18]

PCX and PCXE believe that this provision would enable New Arca Holdings to obtain information about the ownership of its shares of stock in order to determine whether a person, either alone or with its related persons, is in violation of the voting and ownership limitations set forth in the Certificate of Incorporation.

*(iv) Responsibilities of the Directors.*

Pursuant to the Certificate of Incorporation, in discharging his or her responsibilities as a member of the board of directors of New Arca Holdings, each director shall take into consideration the effect that New Arca Holdings' actions would have on the ability of PCX and PCXE to carry out their responsibilities under the Act and on the ability of PCX, PCXE and New Arca Holdings to engage in conduct that fosters and does not interfere with PCX's, PCXE's and New Arca Holdings's ability to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, in discharging his or her responsibilities as a member of the board of directors of

[12] *Id.* New Arca Holdings will call the number of shares of stock of New Arca Holdings from such person and its related persons necessary to decrease the beneficial ownership of such person and its related persons to 40% of the outstanding shares of stock entitled to vote on any matter after giving effect to the redemption of the shares.

[13] New Arca Holdings Certificate of Incorporation, Article Fourth.D(2).

[14] New Arca Holdings will call the number of shares of stock of New Arca Holdings from such person and its related persons necessary to decrease the beneficial ownership of such person and its related persons to 20% of the outstanding shares of stock entitled to vote on any matter after giving effect to the redemption of the shares.

[15] New Arca Holdings Certificate of Incorporation, Article Fourth.D(2). Currently, only one member of Current Arca Holdings that is an ETP Holder owns more than 20% of the shares of Current Arca Holdings. Telephone conversation among Mai S. Shiver, Acting Director/Senior Counsel, PCX; Kevin O'Hara, Chief Administrative Officer and General Counsel, Current Arca Holdings; and David Hsu, Attorney, Division, Commission, on June 29, 2004.

[16] New Arca Holdings Certificate of Incorporation, Article Fourth.D(3).

[17] New Arca Holdings Certificate of Incorporation, Article Fourth.D(4).

[18] New Arca Holdings Certificate of Incorporation, Article Fourth.G.

New Arca Holdings, each director shall comply with the federal securities laws and rules and regulations thereunder and cooperate with the Commission, and, for so long as ArcaEx is a facility of PCX and PCXE the Amended and Restated Facility Services Agreement is in effect, with PCX and PCXE pursuant to their regulatory authority.[19]

PCX and PCXE believe that these provisions would help ensure that directors of New Arca Holdings are cognizant of and take into account, when carrying out their duties and responsibilities as directors of New Arca Holdings, the fact that New Arca Holdings would operate a trading facility of an exchange that is subject to regulatory oversight by such exchange and the Commission and that the facility is required to be operated in compliance with federal securities laws. PCX and PCXE believe that these provisions also would help ensure that PCX, PCXE and the Commission are able to effectively fulfill their regulatory obligations with respect to ArcaEx.

*(v) Qualifications of Directors, Officers and Significant Stockholders*

Pursuant to the Certificate of Incorporation, no person subject to any statutory disqualification (as defined in Section 3(a)(39) of the Act) may be a director or officer of New Arca Holdings or may own shares of stock of New Arca Holdings representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter.[20] If a person, either alone or with its related persons, owns beneficially shares of stock of New Arca Holdings in violation of this 20% limitation, New Arca Holdings shall call from such person and its related persons that number of shares of stock entitled to vote that exceeds the 20% limitation at a price equal to the par value of the shares of stock.[21]

PCX and PCXE believe that these provisions would help to ensure that no person that is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Act) would be able to unduly influence the operation of ArcaEx and interfere with the ability of PCX, PCXE and the Commission to carry out their regulatory responsibilities under the Act.

*(vi) Amendments to the Certificate of Incorporation and Bylaws*

Pursuant to the Certificate of Incorporation, for so long as ArcaEx is a facility of PCX and PCXE and the Amended and Restated Facility Services Agreement is in effect, (1) any amendment to the Certificate of Incorporation must be submitted by the board of directors of New Arca Holdings to the Board of Directors of PCX and, if the Board of Directors of PCX determines that such amendment is required, under Section 19 of the Act and the rules promulgated thereunder, to be filed with, or filed with and approved by, the Commission before such amendment may be effective under Section 19 of the Act and the rules promulgated thereunder, then such amendment shall not be filed with the Secretary of State of the State of Delaware until filed with, or filed and approved by, the Commission, as the case may be, and (2) any resolution of the board of directors of New Arca Holdings authorizing a proposed amendment to the Certificate of Incorporation shall provide that such amendment shall be abandoned and not filed with the Secretary of State of the State of Delaware, notwithstanding stockholder approval of such amendment, unless the conditions of clause (x) of Article Nineteenth of the Certificate of Incorporation, as described in clause (1) of this paragraph, have been fulfilled.[22] In short, if the Board of Directors of PCX determines that an amendment to the Certificate of Incorporation must be filed with, or filed with and approved by, the Commission as a rule change pursuant to Section 19 of the Act and Rule 19b–4 thereunder, such amendment will not become effective until it becomes effective pursuant to this rule filing process.

Pursuant to the Bylaws, for so long as ArcaEx is a facility of PCX and PCXE and the Amended and Restated Facility Services Agreement is in effect, before any amendment to the Bylaws may be effective, such amendment shall be submitted to the Board of Directors of PCX and, if the Board of Directors of PCX determines that the amendment is required, under Section 19 of the Act and the rules promulgated thereunder, to be filed with, or filed with and approved by, the Commission before such amendment may be effective under Section 19 of the Act and the rules promulgated thereunder, then such amendment shall not be effective until it becomes effective pursuant to this rule filing process.[23]

PCX and PCXE believe that these provisions would help to preserve the ability of PCX and PCXE to carry out their regulatory responsibilities under the Act and would help to provide the Commission with the ability to review and subject to public notice and comment any changes in the Certificate of Incorporation and Bylaws that could have the potential to affect PCX's, PCXE's and the Commission's regulatory responsibilities regarding ArcaEx.

*(vii) PCX Director*

Pursuant to the Certificate of Incorporation, one member of New Arca Holdings' board of directors shall be a member of PCX's Board of Directors or an officer or employee of PCX nominated by the PCX Board of Directors for so long as ArcaEx is a facility of PCX and PCXE and the Amended and Restated Facility Services Agreement is in effect. If at any time there is not a director who is a member of PCX's Board of Directors or an officer or employee of PCX nominated by the PCX Board of Directors on the board of directors of New Arca Holdings, the board of directors of New Arca Holdings shall appoint a director nominated by the PCX Board of Directors.[24]

PCX and PCXE believe that these provisions would help to ensure that PCX and PCXE have the ability to participate in decisions relating to, and express views about, matters related to PCX's and PCXE's regulatory responsibilities discussed by the board of directors of New Arca Holdings, and would facilitate PCX's, PCXE's and the Commission's ability to effectively perform their regulatory oversight responsibilities with regard to ArcaEx.

*(viii) Compliance With Laws and Regulations by Officers and Employees*

Pursuant to the Certificate of Incorporation, in discharging his or her responsibilities as an officer or employee of New Arca Holdings, each officer or employee shall comply with the federal securities laws and rules and regulations thereunder and shall cooperate with the Commission, and, for so long as ArcaEx is a facility of PCX and PCXE and the Amended and Restated Facility Services Agreement is in effect, with PCX and PCXE pursuant

[19] New Arca Holdings Certificate of Incorporation, Article Tenth.

[20] New Arca Holdings Certificate of Incorporation, Article Fourth.E and Article Ninth.

[21] New Arca Holdings Certificate of Incorporation, Article Fourth.E. New Arca Holdings will call the number of shares of stock of New Arca Holdings from such person and its related persons necessary to decrease the beneficial ownership of such person and its related persons to 20% of the outstanding shares of stock entitled to vote on any matter after giving effect to the redemption of the shares.

[22] New Arca Holdings Certificate of Incorporation, Article Nineteenth.

[23] New Arca Holdings Bylaws, Section 6.8(b).

[24] New Arca Holdings Certificate of Incorporation, Article Eighth.

to their regulatory authority.[25] PCX and PCXE believe that these provisions are designed to help ensure that PCX, PCXE and the Commission are able to effectively fulfill their regulatory obligations with respect to ArcaEx.

*(ix) Confidential Information and Books and Records*

Pursuant to the Certificate of Incorporation, all confidential information pertaining to the self-regulatory function of PCX and PCXE (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in books and records of PCX or PCXE that shall come into the possession of New Arca Holdings shall: (1) Not be made available to any persons (other than as provided in the next two sentences) other than to those officers, directors, employees and agents of New Arca Holdings that have a reasonable need to know the contents thereof; (2) be retained in confidence by New Arca Holdings and the officers, directors, employees and agents of New Arca Holdings; and (3) not be used for any commercial purposes. Nothing in the Certificate of Incorporation shall be interpreted to limit or impede the rights of the Commission, and, for so long as ArcaEx is a facility of PCX and PCXE and the Amended and Restated Facility Services Agreement is in effect, PCX and PCXE to access and examine such confidential information pursuant to the federal securities laws and rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of New Arca Holdings to disclose such confidential information to the Commission, and, for so long as ArcaEx is a facility of PCX and PCXE and the Amended and Restated Facility Services Agreement is in effect, to PCX and PCXE. New Arca Holdings' books and records shall be subject at all times to inspection and copying by the Commission, and, for so long as ArcaEx is a facility of PCX and PCXE and the Amended and Restated Facility Services Agreement is in effect, by PCX and PCXE, provided that, in the case of PCX and PCXE, such books and records are related to the operation or administration of ArcaEx as a facility of PCX and PCXE. New Arca Holdings' books and records relating to ArcaEx shall be maintained within the United States.[26]

For so long as ArcaEx is a facility of PCX and PCXE and the Amended and Restated Facility Services Agreement is in effect, the books, records, premises, officers, directors and employees of New Arca Holdings shall be deemed to be the books, records, premises, officers, directors and employees of PCX and PCXE for purposes of and subject to oversight pursuant to the Act.[27]

PCX and PCXE believe that these provisions would help to ensure access to New Arca Holdings' books and records by the Commission, and, to the extent New Arca Holdings' books and records relate to the operation or administration of ArcaEx as a facility of PCX and PCXE, by PCX and PCXE, which would help enable PCX, PCXE and the Commission to carry out their regulatory responsibilities regarding ArcaEx.

*(x) Commission and PCX Jurisdiction*

New Arca Holdings, its directors and officers, and those of its employees whose principal place of business and residence is outside of the United States shall be deemed to irrevocably submit to the exclusive jurisdiction of the United States federal courts, the Commission, and, for so long as ArcaEx is a facility of PCX and PCXE and the Amended and Restated Facility Services Agreement is in effect, PCX, for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, the activities of ArcaEx, and New Arca Holdings and each such director, officer or employee, in the case of any such director, officer or employee by virtue of his acceptance of any such position, shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the Commission, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.[28]

From and after the consummation of the initial public offering of shares of common stock of New Arca Holdings, New Arca Holdings shall take reasonable steps necessary to cause its officers, directors and employees prior to accepting a position as an officer, director or employee, as applicable, to consent in writing to the applicability to them of Article Tenth, Article Thirteenth and Article Fifteenth of the Certificate of Incorporation, as applicable, with respect to their activities related to ArcaEx, it being understood that prior to the consummation of the initial public offering, New Arca Holdings shall have taken reasonable steps necessary to cause persons holding such positions prior to the consummation of the initial public offering to consent in writing to the applicability to them of such provisions, as applicable, prior to the consummation of the initial public offering.[29]

Pursuant to this provision, New Arca Holdings would require its directors and officers, and those of its employees whose principal place of business and residence is outside of the United States to consent explicitly to the jurisdiction of the United States courts, the Commission and PCX. In addition, New Arca Holdings would require its officers, directors and employees to agree to cooperate with the Commission, PCX and PCXE and agree to be deemed to be officers, directors and employees of PCX and PCXE. PCX and PCXE believe that it is imperative that regulatory cooperation is assured from such people. Accordingly, PCX and PCXE believe that these provisions are designed to ensure that, should an occasion arise that requires regulatory cooperation or submission to jurisdiction from such persons, it would be forthcoming and uncontested.

[25] New Arca Holdings Certificate of Incorporation, Article Tenth.

[26] New Arca Holdings Certificate of Incorporation, Article Fourteenth.

[27] New Arca Holdings Certificate of Incorporation, Article Fifteenth. PCXE Rule 14.3(b) currently provides that all officers and directors of Current Arca Holdings shall be deemed to be officers and directors of PCX and PCXE for purposes of and subject to oversight pursuant to the Act.

[28] New Arca Holdings Certificate of Incorporation, Article Thirteenth.

[29] New Arca Holdings Certificate of Incorporation, Article Eighteenth.

New Arca Holdings Certificate of Incorporation, Article Tenth requires that, subject to certain conditions, each director of New Arca Holdings take into consideration the effect that New Arca Holdings' actions would have on the ability of PCX and PCXE to carry out their regulatory responsibilities and requires directors, officers and employees of New Arca Holdings to comply with federal securities laws and to cooperate with the Commission, PCX and PCXE.

New Arca Holdings Certificate of Incorporation, Article Thirteenth requires that, subject to certain conditions, New Arca Holdings, its directors and officers, and those of its employees whose principal place of business and residence is outside of the United States submit to the jurisdiction of the Commission and PCX and to waive all claims that it or they are not personally subject to such jurisdiction.

New Arca Holdings Certificate of Incorporation, Article Fifteenth states that, subject to certain conditions, the books, records, premises, officers, directors and employees of New Arca Holdings shall be deemed to be the books, records, premises, officers, directors and employees of PCX and PCXE.

*(xi) Responsibilities of New Arca Holdings*

Pursuant to the Certificate of Incorporation, New Arca Holdings shall comply with the federal securities laws and rules and regulations thereunder and shall cooperate with the Commission, and, for so long as ArcaEx is a facility of PCX and PCXE and the Amended and Restated Facility Services Agreement is in effect, with PCX and PCXE pursuant to their regulatory authority.[30]

In addition, New Arca Holdings shall take reasonable steps necessary to cause its agents to cooperate with the Commission, and, for so long as ArcaEx is a facility of PCX and PCXE and the Amended and Restated Facility Services Agreement is in effect, with PCX and PCXE pursuant to their regulatory authority with respect to such agents' activities related to ArcaEx.[31] PCX and PCXE believe that these provisions would help to ensure that New Arca Holdings does not interfere with the Commission's, PCX's and PCXE's regulatory responsibilities by ensuring that New Arca Holdings complies with federal securities laws, cooperates with the Commission, and, for so long as ArcaEx is a facility of PCX and PCXE and the Amended and Restated Facility Services Agreement is in effect, with PCX and PCXE pursuant to their regulatory authority, and takes reasonable steps to ensure that its agents do not interfere with the Commission's, PCX's and PCXE's ability to carry out their regulatory responsibilities.

2. Statutory Basis

The Exchange believes that this filing is consistent with section 6(b)[32] of the Act, in general, and furthers the objectives of Section 6(b)(1),[33] in particular, in that it enables the Exchange to be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and (subject to any rule or order of the Commission pursuant to Section 17(d) or 19(g)(2) of the Act) to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this filing furthers the objectives of Section 6(b)(5),[34] in particular, because the rules summarized herein would create a governance and regulatory structure with respect to the operation of ArcaEx that is designed to help prevent fraudulent and manipulative acts and practices; to promote just and equitable principals of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change 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*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2004–56 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–2004–56. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2004–56 and should be submitted on or before July 28, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[35]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–15328 Filed 7–6–04; 8:45 am]

BILLING CODE 8010–01–P

[30] New Arca Holdings Certificate of Incorporation, Article Sixteenth.

[31] New Arca Holdings Certificate of Incorporation, Article Seventeenth.

[32] 15 U.S.C. 78f(b).

[33] 15 U.S.C. 78f(b)(1).

[34] 15 U.S.C. 78f(b)(5).

[35] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3585]**

### State of Indiana; Amendment #3

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 29, 2004, the above numbered declaration is hereby amended to include Adams, Allen, Dearborn, Decatur, DeKalb, Franklin, Huntington, Jennings, Kosciusko, Noble, Ohio, Ripley,

Switzerland, Wells, and Whitley Counties as disaster areas due to damages caused by severe storms, tornadoes, and flooding occurring on May 27, 2004, and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Elkhart, LaGrange, Steuben, and Union in the State of Indiana; Boone, and Gallatin Counties in the Commonwealth of Kentucky; and Butler, Defiance, Hamilton, Mercer, Paulding, Van Wert, and Williams Counties in the State of Ohio may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

The number assigned to this disaster for economic injury is 9ZK300 for Ohio.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 2, 2004, and for economic injury the deadline is March 3, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 29, 2004.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 04–15359 Filed 7–6–04; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3586]**

### State of Ohio; Amendment #2

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 29, 2004, the above numbered declaration is hereby amended to include Carroll, Crawford, Delaware, Geauga, Guernsey, Licking, Logan, Richland, Stark, and Tuscarawas Counties as disaster areas due to damages caused by severe storms, and flooding occurring on May 18, 2004, and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Ashtabula, Auglaize, Champaign, Coshocton, Franklin, Hardin, Harrison, Holmes, Knox, Marion, Morrow, Seneca, Shelby, Union, and Wyandot in the State of Ohio may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 2, 2004, and for economic injury the deadline is March 3, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 29, 2004.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 04–15360 Filed 7–6–04; 8:45 am]

BILLING CODE 8025–01–P

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202–395–6974.

(SSA)

Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Payment of Certain Travel Expenses—20 CFR 404.999(d) and 416.1499—0906–0434.* This regulation mandates travel expense reimbursement by a State or Federal agency for claimants traveling to a consultative examination, or for claimants, their representatives, and non-subpoenaed witnesses who must travel over 75 miles to appear at a disability hearing. State and Federal personnel review the listing and the receipts to verify the amount of reimbursement. The respondents are claimants for Title II/XVI benefits and/or their representatives and non-subpoenaed witnesses.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 50,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 10 minutes.

*Estimated Annual Burden:* 8,333 hours.

2. *Request for Social Security Earnings Information—20 CFR 404.810 and 401.100—0960–0525.* The Social Security Act provides that a wage earner, or someone authorized by a wage earner, may request Social Security earnings information from the Social Security Administration, using form SSA–7050. SSA uses the information collected on the form to verify that the requestor is authorized to access the earnings record and to produce the earnings statement. The respondents are wage earners and organizations and legal representatives authorized by the wage earner.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 87,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 11 minutes.

*Estimated Annual Burden:* 15,950 hours.

3. *Plan for Achieving Self-Support—20 CFR 416.1180–1182 and .1225–1227—0960–0559.* The information on form SSA–545 is collected by SSA when a Supplemental Security Income (SSI) applicant/recipient desires to use available income and resources to obtain education and/or training in order to become self-supporting. The information is used to evaluate the recipient's plan for achieving self-support to determine whether the plan may be approved under the provisions of the SSI program. The respondents are SSI applicants/recipients who are blind or disabled.

*Type of Request:* Extension of OMB-approved information collection.

*Number of Respondents:* 7,000.
*Frequency of Response:* 1.
*Average Burden Per Response:* 2 hours.
*Estimated Annual Burden:* 14,000 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Requests for Self-Employment Information, Employee Information, Employer Information—20 CFR, Subpart A, 422.120—0960–0508.* SSA uses Forms SSA–L2765, SSA–L3365 and SSA-L4002 to request correct information when an employer, employee or self-employed person reports an individual's earnings without a Social Security Number (SSN) or with an incorrect name or SSN. The respondents are employers, employees or self-employed individuals who are requested to furnish additional identifying information.

*Type of Request:* Revision of an OMB-approved information collection.
*Number of Respondents:* 3,000,000.
*Frequency of Response:* 1.
*Average Burden Per Response:* 10 minutes.
*Estimated Annual Burden:* 500,000 hours.

2. *Function Report-Child: Birth to 1st Birthday (SSA–3375), Age 1 to 3rd Birthday (SSA–3376), Age 3 to 6th Birthday (SSA–3377), Age 6 to 12th Birthday (SSA–3378), and Age 12 to 18th Birthday (SSA–3379)—20 CFR 416.912—0960–0542.* State Agency adjudicative teams use the information gathered by these forms in combination with other medical function evidence to form a complete picture of a child's ability to function. This information is used to help determine if a child is disabled, especially in cases in which disability cannot be found on medical grounds alone. The respondents are applicants for Title XVI childhood disability benefits and their caregivers.

*Type of Request:* Extension of an OMB-approved information collection.
*Number of Respondents:* 650,000.
*Frequency of Response:* 1.
*Average Burden Per Response:* 20 minutes.
*Estimated Annual Burden:* 216,667 hours.

3. *Function Report-Third Party—20 CFR 404.1512 and 416.912—0960–0635.* The Social Security Act requires claimants to provide medical and other evidence to prove they are disabled. The Act also gives the Commissioner of Social Security the authority to make rules and regulations about the nature and extent of the evidence required to prove disability as well as the methods of obtaining this evidence. The information collected by form SSA–3380 is needed to determine disability under Title II (Old-Age, Survivors and Disability Insurance (OASDI) and/or Title XVI (SSI). The form records information about the disability applicant's illnesses, injuries, conditions, impairment-related limitations, and ability to function. The respondents are individuals who are familiar with the disability applicant's impairment, limitations, and ability to function.

**Note:** Please note the following burden data differ from that provided in the 60-day **Federal Register** notice, published April 5, 2004. SSA inadvertently published the wrong burden data in the first notice.

*Type of Request:* Revision of an OMB-approved information collection.
*Number of Respondents:* 1,500,000.
*Frequency of Response:* 1.
*Average Burden Per Response:* 30 minutes.
*Estimated Annual Burden:* 750,000 hours.

4. *Child-Care Dropout Questionnaire—20 CFR 404.211(e)(4)—0960–0474.* The information collected on Form SSA–4162 is used by SSA to determine whether an individual qualifies for child care exclusion in computing the individual's disability benefit amount. The respondents are applicants for disability benefits.

*Type of Request:* Extension of an OMB-approved information collection.
*Number of Respondents:* 2,000.
*Frequency of Response:* 1.
*Average Burden Per Response:* 5 minutes.
*Estimated Annual Burden:* 167 hours.

5. *Representative Payee Report—20 CFR 404.265, 416.665—0960–NEW.* The information collected on Form SSA–6234 is sent to all organizational representative payees (*i.e.*, institutions, agencies) to determine whether the payments received on behalf of the beneficiaries have been used for their current maintenance and personal needs; to ensure that the payee continues to be concerned about the beneficiary's welfare; and to ascertain if the beneficiary is being charged a fee appropriately and how much the fee is. The respondents are all organizational representative payees for beneficiaries receiving Social Security benefits or SSI payments.

*Type of Request:* New information collection.
*Number of Respondents:* 750,000.
*Frequency of Response:* 1.
*Average Burden Per Response:* 15 minutes.
*Estimated Annual Burden:* 187,500 hours.

6. *Appointment of Representation—20 CFR 404.1707, 410.684, and 416.1507—0960–0527.* The information collected by SSA on form SSA–1696–U4 is used to verify the applicant's appointment of a representative. It allows SSA to inform the representative of items which affect the applicant's claim. The affected public consists of applicants who notify SSA that they have appointed a person to represent them in their dealings with SSA when claiming a right to benefits.

*Type of Request:* Extension of an OMB-approved information collection.
*Number of Respondents:* 551,520.
*Frequency of Response:* 1.
*Average Burden Per Response:* 10 minutes.
*Estimated Annual Burden:* 91,920 hours.

Dated: June 29, 2004.

**Elizabeth A. Davidson,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 04–15263 Filed 7–6–04; 8:45 am]
BILLING CODE 4191–02–P

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### State Coordination Grants; Solicitation for Proposals

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of request for proposals.

**SUMMARY:** This solicitation is for states to submit proposals for the State Coordination Grants component of the United We Ride initiative (UWR). The intent of the UWR initiative is to break down the barriers among Federal programs as they relate to transportation and set the stage for local partnerships. State Coordination Grants may be used to assist states in (1) conducting a comprehensive state assessment using the UWR Framework for Action; (2) developing a comprehensive state action plan for Coordinating Human Service Transportation; or (3) for those states who already have a comprehensive state action plan, grants can be used for implementing one or more of the elements identified within the Framework for Action (for those states that have an established Action Plan).

The UWR Framework for Action is a self-assessment tool for states and communities to conduct comprehensive state assessments to identify areas of success and highlight the actions still needed to improve the coordination of human service transportation. The self-assessment tool is designed to address the needs of people with disabilities, older adults, and individuals with lower-incomes. For further information on the Framework for Action, please visit: *www.fta.dot.gov*.

**DATES:** Proposals must be submitted August 23, 2004.

**ADDRESSES:** Proposals are to be submitted electronically to *UnitedWeRide@fta.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Solomon at PH: 202–366–0242; FAX: 202–366–3136; United We Ride Grants, 400 7th Street, SW., Room 9114, Washington, DC; or *UnitedWeRide@fta.dot.gov*.

**SUPPLEMENTARY INFORMATION:** The U.S. Departments of Transportation (DOT), Health and Human Services (HHS), Labor (DOL) and Education (DoED), have launched United We Ride (UWR), a five part initiative to enhance the coordination on human service transportation. UWR intends to break down the barriers between programs and set the stage for local and state partnerships that generate common sense solutions and deliver A-plus performance for those individuals who depend on transportation services to participate fully in community life. The UWR five initiatives include: (1) The Framework for Action, (2) A National Leadership Forum on Human Service Transportation Coordination, (3) State Leadership Awards, (4) State Coordination Grants, and (5) Help Along the Way.

The Congress and the Executive Branch are interested in ensuring that various human service transportation activities funded by various Federal programs are better coordinated. The General Accounting Office issued a report on "Transportation Disadvantaged Populations" (June 2003) that identified 62 different Federal Programs across eight Federal agencies that provide funding that may be used to support community transportation services. The Report points out that there are multiple public and private agencies that provide human service transportation in any one community, and services vary greatly in terms of eligibility requirements, hours or scope of operation, specific destinations and quality.

Given the multiplicity of programs and the significant dollar amounts spent, more effective coordination is needed to ensure better service to more people. This is especially true when Federal, state, and local budgets for human service activities are under extreme financial pressure.

As also indicated by GAO, many objectives have been achieved; however the fragmentation and lack of coordination within supporting agencies continue to be a challenge.

**Program Goals for State Coordination Grants**

1. Increase overall capacity of states to deliver comprehensive and coordinated human service transportation that meet the needs of transportation-disadvantaged population (*i.e.*, individuals with lower incomes, older adults, and persons with disabilities across the lifespan).

2. Increase cross agency/department collaboration to facilitate coordination, enhance services, at the same time address duplication and redundancies of programs and services.

**Eligibility of Applicants**

We will accept an electronic proposal from each state. The proposal must include a clear demonstration of collaboration among multiple state agencies.

The multiple state agencies within each state should designate a "lead" agency. The "lead" agency is responsible for the application, implementation, reporting and evaluation process.

**Purpose**

State Coordination Grants are intended to assist states that want to strengthen or jump start efforts to coordinate human service transportation. The Framework for Action and its accompanying Facilitator's Guide enables leaders at the state level to guide a coordinating council, an interagency working group, through a transportation coordination assessment and action planning process. State grants may be used to assist states in (1) Conducting a comprehensive state assessment using the UWR Framework for Action; (2) developing a comprehensive State Action Plan for Coordinating Human Service Transportation; or (3) implementing one or more of the elements identified within the Framework for Action (for those states that have an established Action Plan).

**Examples of how states may use state coordination grants funds:**

- Conduct a statewide assessment of current needs, resources and services related to human service transportation using the Framework for Action.
- Base on the Framework for Action assessment, develop Action Plans that improve coordination of human service transportation for individuals with disabilities, older adults, and persons with lower incomes.
- States may help local communities complete the Framework for Action.
- Address one or more elements identified in the State Action Plan.
- Conduct statewide seminars/conferences to establish statewide dialogue that leads to effective action steps for future coordination of human service transportation issues.
- Replicate a successful model in one or more communities across the state (*i.e.*, Transit Pass program; Volunteer Driver; Travel Training; etc.).
- Integrate technology into present transportation system to address the needs of coordination of human service transportation.
- Integrate technology to address the needs of coordination on human service transportation.
- Test a mobility management strategy.

**Assistance to Grantee**

States receiving grants may also receive technical assistance from technical assistance centers funded by the four U.S. Departments. Specific centers include the Community Transportation Assistance Program (CTAP), the Rural Transportation Assistance Program (RTAP), Easter Seals Project ACTION, Intelligent Transportation Systems Peer to Peer Program, and the Multi-State Technical Assistance Program. The range of services available include, but are not limited to, assistance with coalition building, assessment, strategic planning, training, policy development, customer outreach, implementation strategies, and evaluation. Technical assistance is provided via phone, email, and during on-site visits when appropriate.

**Proposal Submission**

Your proposal should be sent electronically and typed in Microsoft Word. The proposal should include responses to the following questions. Submit your response to all six questions double-spaced, Times Roman, 12-point font not exceeding 5 pages (not including the budget). E-mail your proposals to *UnitedWeRide@fta.dot.gov*.

1. Briefly describe the state's mission as it relates to the coordination of human service transportation.

2. Briefly describe how this grant will address and support your plans to (a) Conduct a comprehensive state

assessment using the UWR Framework for Action; (b) develop a comprehensive State Action Plan for Coordinating Human Service Transportation; or (c) for those states that have a comprehensive action plan, the grant can be used to implement one or more of the elements identified within the Framework for Action. For those states that have a comprehensive statewide action plan, and will be implementing elements outlined in the Framework for Action, include Page 41 of the Framework for Action Self Assessment Tool and a copy of the State's Action Plan.

3. Describe the level of coordination/collaboration with any other partners (providers, advocates, private for profit, non-profit organizations, or government).

4. Briefly describe how the state plan will meaningfully involve consumers in the development and implementation of human service transportation grant activities.

5. Submit a narrative of your proposed project and a budget that includes line items.

**Note:** Grant funds may not be used to support capital equipment, the provision of services, or operating cost for services.

6. States that did not participate in the United We Ride Leadership Forum in February (2004) must include a letter of commitment from the Governor's office.

**Criteria for Rating and Selecting Proposals**

1. The extent to which the project's goals, objectives, and measurable outcomes for improving human service transportation are included in a grant implementation plan to (a) Conduct a comprehensive state assessment using the UWR Framework for Action; (b) develop a comprehensive state action plan for Coordinating Human Service Transportation; or (c) implement one or more of the elements identified within the Framework for Action (for those states that have an established Action Plan).

2. The extent to which the proposal is based on the elements identified in the Framework for Action: Building the Fully Coordinated Human Service Transportation System.

**Note:** This criteria only applies to states that have a comprehensive state action plan and are choosing the option "c", which is to implement elements outlined in the Framework for Action.

Those elements include:

a. *Making Things Happen by Leadership and Partnership,* in which the Governor and state officials would serve as catalysts for envisioning, organizing, and sustaining a coordinated system that provides mobility and access to transportation for all who need it.

b. *Taking Stock of State Needs and Moving Forward,* in which a completed and regularly updated transportation assessment process will identify assets, expenditures, services provided, service gaps, duplication of services, specific mobility needs of the various target populations, and opportunities for improvement.

c. *Putting Customers First,* in which customers and their advocates and local agencies systematically would engage in the assessment, planning, resource allocation, and decision making for coordinating transportation services.

d. *Adapting Funding for Greater Mobility,* in which state agencies will work together to create funding mechanisms that support shared ownership of funding responsibilities while completing reporting and tracking requirements for various funding streams.

e. *Technology Moves Coordination to the Next Level,* in which technology would be used to design and manage coordinated transportation systems in real time with greater efficiency and effectiveness.

3. The extent to which applicants have or propose a plan that will demonstrate a high level of executive leadership and commitment, shared decision making, and policy adoption among agencies within the state. States should address how the plan will foster efforts to build collaboration and involvement with stakeholder organizations, including consumer and advocacy groups. Applicants should submit letters of commitment from partner agencies. Letters of commitment should be submitted in addition to the five-page application.

4. The extent to which the plan's proposal address issues across populations, which include people with disabilities, older adults, *and* individuals with lower-incomes.

5. The extent to which each applicant submits items requested in the **Proposal Submission** section.

**Eligibility/Expenses**

Grants funds may not be used for capital purchases, provision of services, or operation of services. Grant funds may be used to support personnel for planning, training, coordination, and other administration activities required to enhance coordination among and across agencies within the state. Supplies, small equipment (computers, etc.), and travel are also eligible expenses.

**Review and Award Process**

Interagency panels from DOT/FTA, HHS, DOL, and DoED Regional offices will review each grant application. The Federal Transit Administrator will notify successful applicants. [The anticipated notification of grantee selections is 60 days from the **Federal Register** announcement date.] Regional offices will work with respective Washington based offices and technical assistance staff to assist states with implementation after the selections are announced. Selected recipients have pre-award authority as of the date of the announcement.

**Grant Periods and Awards**

One-year grant period (starting on the date of the grant contract obligation date and ending one year from that date)

Grants will be given to all states that submit proposals and meet the requirements outlined in the guidance. The total amount available for grants will be at least One Million Dollars ($1,000,000) for up to 50 awards. Funding will range from Twenty Thousand Dollars ($20,000) to Thirty-Five Thousand Dollars ($35,000) per grant.

Issued on: June 29, 2004.

**Jennifer L. Dorn,**

*Administrator.*

[FR Doc. 04–15254 Filed 7–6–04; 8:45 am]

BILLING CODE 4910–57–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD 2004 18498]**

### Information Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

**DATES:** Comments should be submitted on or before September 7, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mitch Hudson, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: (202) 366–9373; FAX: (202) 366–7485; or E-MAIL: *mitch.hudson@marad.dot.gov.* Copies of this collection also can be obtained from that office.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Requirements for Establishing U.S. Citizenship.

*Type of Request:* Extension of currently approved information collection.

*OMB Control Number:* 2133–0012.

*Form Numbers:* None.

*Expiration Date of Approval:* Three years from date of approval by the Office of Management and Budget.

*Summary of Collection of Information:* In accordance with the Merchant Marine Act, 1936, participants in the various programs offered by the Maritime Administration (MARAD) must be citizens of the United States within the meaning of Section 2 of the Shipping Act, 1916, as amended. In addition, the participants in the programs must file annually an affidavit with MARAD attesting to their continuing citizenship.

*Need and Use of the Information:* MARAD will review the Affidavits of U.S. Citizenship to determine if the applicants are eligible to participate in the programs offered by the agency.

*Description of Respondents:* The Affidavits of U.S. Citizenship are filed with MARAD by shipowners, charterers, equity owners, ship managers, etc.

*Annual Responses:* 300 responses.

*Annual Burden:* 1,500 hours.

*Comments:* Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://dms.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

(Authority: 49 CFR 1.66.)

By Order of the Maritime Administrator.

Dated: July 1, 2004.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 04–15339 Filed 7–6–04; 8:45 am]

BILLING CODE 4910–81–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number 2004 18541]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel AFTER HOURS.

**SUMMARY:** As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004-18541 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

**DATES:** Submit comments on or before August 6, 2004.

**ADDRESSES:** Comments should refer to docket number MARAD–2004 18541. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel AFTER HOURS is:

*Intended Use:* Carrying passengers for hire.

*Geographic Region:* Maine to Florida and Florida West Coast.

Dated: June 30, 2004.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 04–15338 Filed 7–6–04; 8:45 am]

BILLING CODE 4910–81–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number: 2004 18544]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel AMARYLLIS.

**SUMMARY:** As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–18544 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that

the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

**DATES:** Submit comments on or before August 6, 2004.

**ADDRESSES:** Comments should refer to docket number MARAD–2004 18544. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel AMARYLLIS is:

*Intended Use:* Catamaran sailing charters.

*Geographic Region:* New England.

Dated: June 30, 2004.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 04–15335 Filed 7–6–04; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number: 2004 18542]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ANCILLA II.

**SUMMARY:** As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–18542 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

**DATES:** Submit comments on or before August 6, 2004.

**ADDRESSES:** Comments should refer to docket number MARAD–2004 18542. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel ANCILLA II is:

*Intended Use:* Charter up to 6 persons.

*Geographic Region:* East Coast U.S.

Dated: June 30, 2004.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 04–15337 Filed 7–6–04; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number: 2004 18543]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PARADISE II.

**SUMMARY:** As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–18543 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

**DATES:** Submit comments on or before August 6, 2004.

**ADDRESSES:** Comments should refer to docket number MARAD–2004 18543. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments

will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

**SUPPLEMENTARY INFORMATION:** As described by the applicant, the intended service of the vessel PARADISE II is:

*Intended Use:* Pleasure cruises.

*Geographic Region:* Oregon.

Dated: June 30, 2004.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 04–15336 Filed 7–6–04; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number 2004 18540]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PRINCESS MARCIE.

**SUMMARY:** As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–18540 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

**DATES:** Submit comments on or before August 6, 2004.

**ADDRESSES:** Comments should refer to docket number MARAD–2004 18540. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel PRINCESS MARCIE is:

*Intended Use:* Intend to charter vessel as a recreational vessel for coastwise trade.

*Geographic Region:* USA East Coast.

Dated: June 30, 2004.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 04–15334 Filed 7–6–04; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2004–17436; Notice 2]**

### Kia Motor Corporation; Grant of Petition for Decision of Inconsequential Noncompliance

Kia Motor Corporation (Kia) has determined that the rims on certain vehicles that it produced in 2001 through 2003 do not comply with S5.2(a) and S5.2(c) of 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, "Tire selection and rims for motor vehicles other than passenger cars." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Kia has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of Kia's petition was published with a 30-day comment period on April 20, 2004 in the **Federal Register** (69 FR 21187). NHTSA received no comments.

S5.2 of FMVSS No. 120 requires that each rim be marked with certain information on the weather side, including S5.2(a): a designation which indicates the source of the rim's published nominal dimensions, and S5.2(c): the symbol DOT. Kia produced approximately 69,160 model year 2002 and 2003 Sedona 4-door multipurpose passenger vehicles between May 1, 2001 and October 2, 2003, and 47,314 model year 2003 and 2004 Sorento 4-door multipurpose passenger vehicles, all with rims that do not contain the markings required by S5.2(a) and S5.2(c).

According to Kia, the affected rims are 6JJ × 15″ (Sedona) aluminum alloy and 7JJ × 16″ (Sorento), which are commonly available and utilized in the United States. The rims have the correct specification for mounting the 215/70R15 tires specified for all Sedona models and the P245/70R16 tires specified for all Sorento models, and are capable of supporting the GVWR of the vehicle. Kia states that no accidents or injuries have occurred, and no customer complaints have been received related to the lack of the markings or any problem that may have resulted from the lack of the markings. Kia further states that the missing markings do not affect the performance of the wheels or the tire and wheel assemblies.

NHTSA agrees that the noncompliance is inconsequential to motor vehicle safety. The rims are marked in compliance with S5.2(b) rim size designation; S5.2(d) manufacturer identification; and S5.2(e) month, day and year or month and year of manufacture. The rims are also marked with the Kia part number. The tire size is marked on the tire sidewalls, and the owner's manual and tire inflation pressure label contain the appropriate tire size to be installed on the original equipment rims. Therefore, there is little likelihood of a tire and rim mismatch as a result of the missing rim markings. With regard to the omission of the DOT symbol, the agency regards the noncompliance with paragraph S5.2(c) as a failure to comply with the certification requirements of 49 U.S.C.

30115, and not a compliance failure requiring notification and remedy.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Kia's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

**Authority:** (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8).

Issued on: June 29, 2004.

**Kenneth N. Weinstein,**

*Associate Administrator for Enforcement.*

[FR Doc. 04–15277 Filed 7–6–04; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 34491]**

### Dallas, Garland & Northeastern Railroad—Lease and Operation Exemption—Union Pacific Railroad Company

Dallas, Garland & Northeastern Railroad (DGNO), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate, pursuant to an agreement with Union Pacific Railroad Company (UP) 11 miles of UP rail line between milepost 629.50 near CentrePort, TX, and milepost 640.50 at Mockingbird Yard, and the Mockingbird Yard.

Because DGNO's projected annual revenues will exceed $5 million, DGNO certified to the Board on April 2, 2004, that it sent the required notice of the transaction on March 30, 2004, to the national offices of all labor unions representing employees on the line and posted a copy of the notice at the workplace of the employees on the affected lines on April 1, 2004. *See* 49 CFR 1150.42(e).

The transaction was scheduled to be consummated on June 21, 2004, the effective date of the exemption (which is more than 60 days after DGNO's certification to the Board that it had complied with the Board's rule at 49 CFR 1150.42(e)).

If the verified 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. 34491, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Gary A. Laakso, DGNR Vice President Regulatory Counsel, 5300 Broken Sound Blvd., NW, Boca Raton, FL 33487, and Louis E. Gitomer, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: June 28, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 04–15201 Filed 7–6–04; 8:45 am]

BILLING CODE 4915–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas)

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Monday, August 9, 2004, at 3 p.m., Central Daylight Time.

**FOR FURTHER INFORMATION CONTACT:** Audrey Jenkins at 1–888–912–1227, or (718) 488–2085.

**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 a meeting of the Area 5 Taxpayer Advocacy Panel will be held Monday, August 9, 2004, at 3 p.m., Central daylight time via a telephone conference call. You can submit written comments to the panel by faxing the comments to (718) 488–2062, or by mail to Taxpayer Advocacy Panel, 10 Metro Tech Center, 625 West Fulton Street, Brooklyn, NY 11201, or you can contact us at *www.improveirs.org*. This meeting is not required to be open to the public, but because we are always interested in community input, we will accept public comments. Please contact Audrey Jenkins at 1–888–912–1227 or (718) 488–2085 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: July 1, 2004.

**Bernard Coston,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 04–15418 Filed 7–6–04; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Earned Income Tax Credit Committee of the Taxpayer Advocacy Panel

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Earned Income Tax Credit Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Committee will be discussing issues pertaining to the IRS administration of the Earned Income Tax Credit.

**DATES:** The meeting will be held Wednesday, July 21, 2004.

**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 Earned Income Tax Credit Committee of the Taxpayer Advocacy Panel will be held Wednesday, July 21, 2004 from 2 p.m. to 3 p.m. ET via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance by contacting Audrey Y. Jenkins. To confirm attendance or for more information, Ms. Jenkins may be reached at 1–888–912–1227 or (718) 488–2085. If you would like a written statement to be considered, send written comments to Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201 or post your comments to the website: *www.improveirs.org*.

The agenda will include various IRS issues.

Dated: June 30, 2004.

**Bernard Coston,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 04–15419 Filed 7–6–04; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the State of California)

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted in San Francisco, CA. The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, August 4, 2004 and Thursday, August 5, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mary Peterson O'Brien at 1–888–912–1227, or 206–220–6096.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday, August 4, 2004 from 1 p.m. Pacific Time to 4 p.m. Pacific Time and Thursday, August 5, 2004 from 8 a.m. Pacific Time to 4 p.m. Pacific Time at 55 Cyril Magnin Street, San Francisco, CA, 94102. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary Peterson O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *www.improveirs.org*. Due to limited space, notification of intent to participate in the meeting must be made with Mary Peterson O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: July 1, 2004.

**Bernard Coston,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 04–15420 Filed 7–6–04; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Cancellation of Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Washington, Hawaii, Alaska, Idaho, Oregon, Wyoming, Montana, Utah, New Mexico, Nevada, Las Vegas and Colorado)

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice.

**SUMMARY:** The open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel to be conducted (via teleconference) has been cancelled.

**DATES:** The meeting will be held Monday, July 19, 2004.

**FOR FURTHER INFORMATION CONTACT:** Judi Nicholas at 1–888–912–1227, or 206–220–6096.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be held Monday, July 19, 2004 from 2 p.m. Pacific Time to 3 p.m. Pacific Time via a telephone conference call published on Monday, July 19, 2004, has been cancelled. For further information contact Judi Nicholas. Mrs. Nicholas can be reached at 1–888–912–1227 or 206–220–6096 or write to 915 Second Avenue, M/S W406, Seattle, WA 98174, or post comments to the web site: *http://www.improveirs.org*.

Dated: July 1, 2004.

**Bernard Coston,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 04–15421 Filed 7–6–04; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, July 27, 2004.

**FOR FURTHER INFORMATION CONTACT:** Marisa Knispel at 1–888–912–1227 (toll-free), or 718–488–3557 (non toll-free).

**SUPPLEMENTARY INFORMATION:** An open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, July 27, 2004 from 11 a.m. EDT to 12 p.m. EDT via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please write to Marisa Knispel, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201 or fax it to (718) 488–2062. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557, or, you may post comments to the web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: June 29, 2004.

**Bernard E. Coston,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 04–15422 Filed 7–6–04; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia and the District of Columbia)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, August 3, 2004, from 3 p.m. to 4:30 p.m. EDT.

**FOR FURTHER INFORMATION CONTACT:** Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Tuesday, August 3, 2004 from 3 p.m. to 4:30 p.m. EDT via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: July 1, 2004.

**Bernard Coston,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 04–15423 Filed 7–6–04; 8:45 am]

**BILLING CODE 4830–01–U**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, July 20, 2004, at 1:30 p.m., Eastern Daylight Time.

**FOR FURTHER INFORMATION CONTACT:** Barbara Toy at 1–888–912–1227, or 414–297–1611.

**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 Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Tuesday, July 20, 2004, from 1:30 to 3 p.m. Eastern daylight time via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006–MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–297–1623, or you can contact us at *www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy.

Ms. Toy can be reached at 1–888–912–1227 or 414–297–1611, or FAX 414–297–1623.

The agenda will include the following: monthly committee summary report, discussion of issues brought to the joint committee, office report, and discussion of next meeting.

Dated: June 30, 2004.

**Bernard Coston,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 04–15417 Filed 7–6–04; 8:45 am]

**BILLING CODE 4830–01–U**

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Submission for OMB Review; Comment Request—Purchase of Branch Office(s) and/or Transfer of Assets/Liabilities

**AGENCY:** Office of Thrift Supervision (OTS), Treasury.

**ACTION:** Notice and request for comment.

**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 of 1995. OTS is soliciting public comments on the proposal.

**DATES:** Submit written comments on or before August 6, 2004.

**ADDRESSES:** Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Mark D. Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov;* and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet site at *www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

**FOR FURTHER INFORMATION CONTACT:** To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov,* (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

*Title of Proposal:* Purchase of Branch Office(s) and/or Transfer of Assets/Liabilities.

*OMB Number:* 1550–0025.

*Form Number:* OTS Forms 1584, 1585, and 1589.

*Regulation requirement:* 12 CFR 552.13 and 563.22.

*Description:* Information provided to OTS is evaluated to determine whether the proposed assumption of liabilities and/or transfer of assets transactions complies with applicable laws, regulations, and policy, and will not have an adverse effect on the risk exposure to the insurance fund.

*Type of Review:* Renewal.

*Affected Public:* Savings Associations.

*Estimated Number of Respondents:* 68.

*Estimated Frequency of Response:* Event-generated.

*Estimated Burden Hours per Response:* 24 hours.

*Estimated Total Burden:* 1,632 hours.

*Clearance Officer:* Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

*OMB Reviewer:* Mark D. Menchik, (202) 395–3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: June 29, 2004.

By the Office of Thrift Supervision.

**James E. Gilleran,**

*Director.*

[FR Doc. 04–15268 Filed 7–6–04; 8:45 am]

**BILLING CODE 6720–01–P**

# Corrections

Federal Register
Vol. 69, No. 129
Wednesday, July 7, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 040112010–4114–02; I.D. 122203A]**

**RIN 0648–AN17**

## Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Amendment 13

*Correction*

In rule document 04–8884 beginning on page 22906 in the issue of Tuesday, April 27, 2004, make the following correction:

**§ 648.85 [Corrected]**

On page 22975, in § 648.85, in the second column, the table titled "EASTERN U.S./CANADA AREA" is corrected in part to read as follows:

EASTERN U.S./CANADA AREA

| Point | N. lat. | W. long. |
|---|---|---|
| * * * | * | * |
| USCA 15 ..... | 40° 30′ | 66° 40′ |
| USCA 14 ..... | 40° 30′ | 65° 44.3′ |
| * * * | * | * |

[FR Doc. C4–8884 Filed 7–6–04; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Wednesday,
July 7, 2004

Part II

# Federal Communications Commission

47 CFR Part 1

**Assessment and Collection of Regulatory Fees for Fiscal Year 2004; Final Rule**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 1**

**[MD Docket No. 04–73; FCC 04–146]**

## Assessment and Collection of Regulatory Fees for Fiscal Year 2004

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission will revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 2004. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees under sections 9(b)(2) and 9(b)(3), respectively, for annual "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees.

**DATES:** Effective August 6, 2004.

**FOR FURTHER INFORMATION CONTACT:** Roland Helvajian, Office of Managing Director at (202) 418–0444 or Rob Fream, Office of Managing Director at (202) 418–0408.

**SUPPLEMENTARY INFORMATION:** *Adopted:* June 21, 2004.

*Released:* June 24, 2004.

By the Commission: Commissioner Copps, concurring and issuing a statement; Commissioner Adelstein approving in part, concurring in part, and issuing statement.

TABLE OF CONTENTS



## I. Introduction

1. In this *Report and Order* ("R&O"), we conclude a proceeding to collect $272,958,000 in regulatory fees for Fiscal Year (FY) 2004. These fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.[1]

[1] 47 U.S.C. 159(a).

## II. Discussion

### *A. Development of FY2004 Fees*

#### 1. Calculation of Revenue and Fee Requirements

2. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via regulatory fees (Attachment C).[2] For FY2004, this allocation was done using FY2003 revenues as a base. From this base, a revenue amount for each fee category was calculated. Each fee category was then adjusted upward by 1.5 percent to reflect the increase in regulatory fees from FY2003 to FY2004. These FY2004 amounts were then divided by the number of payment units in each fee category to determine the unit fee.[3] In instances of small fees, such as licenses that are renewed over a

[2] It is important to note that the required increase in regulatory fee payments of approximately 1.5 percent in FY 2004 is reflected in the revenue that is expected to be collected from each service category. Because this expected revenue is adjusted each year by the number of estimated payment units in a service category, the actual fee itself is sometimes increased by a number other than 1.5 percent. For example, in industries where the number of units is declining and the expected revenue is increasing, the impact of the fee increase may be greater.

[3] In most instances, the fee amount is a flat fee per licensee or regulatee. However, in some instances the fee amount represents a unit subscriber fee (such as for Cable, Commercial Mobile Radio Service (CMRS) Cellular/Mobile and CMRS Messaging), a per unit fee (such as for International Bearer Circuits), or a fee factor per revenue dollar (Interstate Telecommunications Service Provider fee).

multiyear term, the resulting unit fee was also divided by the term of the license. These unit fees were then rounded in accordance with 47 U.S.C. 159(b)(2).

2. Additional Adjustments to Payment Units

3. In calculating the FY2004 regulatory fees proposed in Attachment D, we further adjusted the FY2003 list of payment units (Attachment B) based upon licensee databases and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure accuracy of these estimates. In some instances, Commission licensee databases were used, while in other instances, actual prior year payment records and/or industry and trade association projections were used in determining the payment unit counts.[4] Where appropriate, we adjusted and/or rounded our final estimates to take into consideration variables that may impact the number of payment units, such as waivers and/or exemptions that may be filed in FY2004, and fluctuations in the number of licensees or station operators due to economic, technical or other reasons. Therefore, for example, when we note that our estimated FY2004 payment units are based on FY2003 actual payment units, we may have rounded that number for FY2004 or adjusted it slightly to account for these variables.

4. Additional factors are considered in determining regulatory fees for AM and FM radio stations. These factors are facility attributes and the population served by the radio station. The calculation of the population served is determined by coupling current U.S. Census Bureau data with technical and engineering data, as detailed in Attachment E. Consequently, the population served, as well as the class and type of service (AM or FM), determines the regulatory fee amount to be paid.

3. Relationship of Regulatory Fees to Costs

5. A number of parties challenge the proposed regulatory fees by claiming that the fees are not appropriately based on the Commission's regulatory costs.[5] They argue, in particular, that the proposed fee for their particular service does not properly reflect the costs for the level of Commission regulatory activity attributable to that service.[6] For example, they maintain that reduced regulatory oversight of their services should result in reduced fees. Further, CTIA and Tyco claim that the proposed fees for CMRS and international bearer circuits, respectively, are improper because, *inter alia*, the Commission has failed to develop a cost accounting system as required by section 9(i) of the Act.[7] Verizon, however, disagrees with these contentions, and points out that section 9 does not require the Commission to set fees that are proportional to regulatory burdens on a service by service basis.[8] Verizon asserts that this would be an "unworkable task" for the Commission.[9] Verizon further maintains that imposing increased fees on those payers who face increased regulation would amount to a double penalty for those carriers.[10]

6. As we have in the past, we again reject arguments that regulatory fees must be precisely calibrated, on a service-by-service basis, to the actual costs of the Commission's regulatory activities for that service.[11] We find that parties maintaining that reduced Commission regulatory activity in connection with any service should equate to a reduction in regulatory fees for that service have misconstrued the requirements of section 9.

7. Pursuant to section 9(a) the Act, 47 U.S.C. 159(a), the Commission is authorized to collect regulatory fees "to recover the costs of * * * enforcement activities, policy and rulemaking activities, user information services, and international activities." Fees are to be derived by determining the full-time equivalent number of employees performing the activities described, "adjusted to take into account factors that are reasonably related to the benefits provided to the payer of the fee by the Commission's activities * * *" 47 U.S.C. 159(b)(1)(A). This provision authorizes the Commission to take into account overall staff costs in implementing its continuing obligation to ensure that the fee schedule is consistent with section 9(b)(1)(a), and it also makes clear that the Commission is free to depart from strictly cost-based fees.

8. In this regard, the initial Schedule of Regulatory Fees that Congress enacted in section 9(g) reflects the "costs adjusted for benefits" approach permitted under section 9. For example, Congress required that satellite fees be based on the number of satellites the regulatee has in operation; however, the number of satellites may or may not relate to the actual costs in terms of FTEs of regulating that particular entity. Similarly, the statutory fee schedule generally reflects higher fees for types of regulatees that are authorized to use larger amounts of, or more desirable, spectrum, or that are larger and have more customers. For example, in the statute radio and television fees are based on the size of the markets served and carriers' fees are based on the numbers of subscribers or access lines.

9. Moreover, adjustments to the Fee Schedule authorized by section 9 do not, in every instance, implicate costs. Mandatory adjustments to the congressionally enacted Fee Schedule, as set forth in section 9(b)(2), are "proportionate increases or decreases" to reflect the specific amount required to be collected each year in appropriations Acts, as well as fee adjustments to reflect "unexpected increases or decreases in the numbers of licensees or units subject to payment" of regulatory fees. Section 9(b)(3), "Permitted amendments", requires the Commission to add, delete or reclassify services in the fee schedule to reflect additions, deletions or changes in the nature of its services "as a consequence of Commission rulemaking proceedings or changes in law." Section 9(b)(3) also requires the Commission to amend, by rule, the Fee Schedule "if the Commission determines that the schedule requires amendment to comply with the requirements" of section 9(b)(1)(A), cited above.[12] Neither of these provisions requires amendment

[4] The databases we consulted include, but are not limited to, the Commission's Universal Licensing System (ULS), International Bureau Filing System (IBFS), and Consolidated Database System (CDBS). We also consulted industry sources including but not limited to *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc, as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast*. For additional information on source material, see Attachment B.

[5] *See e.g.*, CTIA Comments at n. 4; Globalstar Comments at 3–7; Tyco Comments at 11–13; XO Communications Comments at 2–3; ORBCOMM Replies at 2–3; RTG Replies at 5–6; Space Imaging Replies at 3–4.

[6] *See e.g.*, Space Imaging Replies at 3–4; Globalstar Comments at 3; FLAG Replies at 3; ORBCOMM Replies at 2–3.

[7] *See* CTIA Comments at n. 4; Tyco Comments at 5. *See* also 47 U.S.C. 159(i).

[8] Verizon Comments at 2.

[9] *Id.* at 3.

[10] *Id.* at 2.

[11] The Commission has consistently interpreted the requirements of Section 9 in this manner. *See e.g., Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, 12 FCC Rcd 17161, 17171–2 (1997) (*1997 Regulatory Fee Report and Order*); *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, 10 FCC Rcd. 13512, 13524 (1995) (*1995 Regulatory Fee Report and Order*); *Assessment and Collection of Regulatory Fees for Fiscal Year 1998*, Report and Order, MD Docket No. 98–36, FCC 98–115, 1998 WL 320272, para. 15 (1998) (*1998 Regulatory Fee Report and Order*).

[12] *See* 47 U.S.C. 159(b)(3).

of the fee schedule to mirror all changes in regulatory costs.

10. We note further that attempting to adjust fees to mirror exactly the costs of each particular service would be unworkable. The fee process specified by section 9 is by necessity a "zero-sum" proposition, since the reduction of fees in one category must be counterbalanced by increases in other categories to ensure that the total amount specified by Congress is collected. These increases would, of course, not necessarily reflect any increase in the costs related to the other services.

11. More generally, section 9 fees are designed to recover the amount that Congress has required us to collect, and include the full amount of specified regulatory costs from regulatees as well as costs not directly related to those entities subject to fees. Regulatory fees recover: (a) Direct costs, such as salary and expenses; (b) indirect costs, such as overhead functions; and (c) support costs, such as rent, utilities, or equipment, to name a few. Regulatory fees also recover costs attributable to regulatees that Congress has exempted from the fees as well as costs attributable to licensees granted fee waivers. Regulatory fees take into account as well factors reasonably related to the benefits provided to the payer of the fee by the Commission. We find that Congress intended that the "benefits" to be recovered through fees were not limited strictly to the benefits derived from the Commission regulation of a specific service, or lack thereof, as parties argue. Rather, section 9(b)(1)(A) cites benefits such as service area coverage, shared use versus exclusive use, and "other factors that the Commission determines are necessary in the public interest." [13] Thus, there is no statutory requirement to tie each fee to the specific costs associated with each service.

12. CTIA and Tyco also object to the proposed fees based on the Commission's failure to develop a cost accounting system.[14] The accounting system requirement set forth in section 9(i) applies when "necessary" to making the limited category of adjustments authorized by section (b)(3), "Permitted amendments". Permitted amendments must be consistent with the "costs adjusted for benefits" approach set out in section 9(b)(1)(A). The Commission has FTE data on a macro-service level by fee activity as required by section 9(b)(1)(A). We find that this cost data, modified by the appropriate "benefits" analysis, results in a regulatory fee schedule that comports with the requirements of section 9, including section 9(i). The Commission has, in the past, attempted to devise and implement a cost accounting system to be used in connection with regulatory fees. In 1997, the Commission developed a cost accounting system that was based on staff reporting of the numbers of hours spent in various activities for each pay period.[15] Reliance on these reports proved problematic.[16] In FY 1999, the Commission discontinued attempts to base the schedule on the available cost data.[17] In later explaining the decision to abandon the cost-based methodology, the Commission stated that it "found that developing a regulatory fee structure based on available but insufficiently detailed cost information sometimes did not permit us to recover the amount that Congress required us to collect. In some instances, the large increases in the cost of regulation could not be adjusted to an acceptable and balanced level." [18] Nevertheless, we find that the macro-level FTE data available is sufficient to inform the cost basis portion of our regulatory fees. We therefore reject CTIA's and Tyco's arguments. And, as noted above, the Commission is authorized to make permitted amendments to bring the Fee Schedule into compliance with section 9(b)(1)(A), a provision that clearly permits the Commission to depart from strictly cost-based fees. Going forward, we will continue to use Permitted amendments to amend the fee schedule, as appropriate, where our cost data or benefits analysis, or both, require us to do so to comply with the requirements of section 9(b)(1)(A).

*B. Local Multipoint Distribution Service (LMDS)*

13. In the FY2003 NPRM,[19] we sought comment on the appropriate fee classification of the Local Multipoint Distribution Service (LMDS).[20] Some commenters urged that LMDS be classified in the microwave fee category. We declined to do so because technological developments and emerging commercial applications suggested that usage of LMDS could evolve differently than services in the microwave fee category.[21] We recognized, however, that "substantive distinctions exist between MDS and LMDS, and that they should not be placed in the same fee category." [22] Therefore, we created a separate LMDS fee category and stated that we would "initiate a specific proceeding that addresses the policies and fee structure governing LMDS and other wireless services." In the FY2004 NPRM, we again sought comment on the appropriate fee classification for LMDS. We received comments from XO Communications, Inc. ("XO"), and reply comments from Rural Telecommunications Group, Inc. ("RTG").

14. XO makes two primary arguments and one alternative request. First, it claims that the proposed regulatory fees imposed on LMDS are disproportionate to the costs associated with regulating the service and that they are too high in relationship to the FCC's administrative burden in overseeing LMDS service.[23] As we explained, *supra* at Section II.A.3., we reject arguments that regulatory fees must be precisely calibrated, on a service-by-service basis, to the actual costs of the Commission's regulatory activities for that service.

15. Second, XO argues that we should, for purposes of establishing

[13] *See* 47 U.S.C. 159(b)(1)(A).

[14] CTIA Comments at footnote 4; Tyco Comments at 5.

[15] *See 1997 Regulatory Fee Report and Order*, 12 FCC Rcd. at 17165–70; *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, MD Docket No. 96–186, FCC 97–49, *Notice of Proposed Rulemaking*, 1997 WL 90978, paras. 9, 15–16 (adopted Feb. 17, 1997; released Mar. 5, 1997)(1997 Regulatory Fee NPRM).

[16] In the FY 1997 proceeding, the Commission determined that some fee categories, especially those for small regulatees, received disproportionately high cost allocations. The Commission adjusted for these high cost allocations by redistributing the costs among fee categories, and established a 25 percent limit on the amount by which fee categories could be increased. *See 1997 Regulatory Fee Report and Order* at 17175–77. For FY 1998, the Commission continued to rely on cost accounting data to identify its regulatory costs and to develop fees based on these costs, and retained the 25 percent limit on the amount by which fee categories could be increased. *See 1998 Regulatory Fee Report and Order*, at para. 8.

[17] *See Assessment and Collection of Regulatory Fees for Fiscal Year 1999, Report and Order*, 14 FCC Rcd. 9868 (1999) (1999 Regulatory Fee Report and Order).

[18] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2002*, 17 FCC Rcd 13203, 13206 (2002).

[19] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Notice of Proposed Rulemaking*, 18 FCC Rcd 6088–89 paragraphs 6–9 (2003) (FY 2003 NPRM).

[20] In both 2001 and 2002, we denied requests to move LMDS from the Multipoint Distribution Service (MDS) fee category to the microwave fee category. *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2001, *Report and Order*, 16 FCC Rcd 13525 (2001); Assessment and Collection of Regulatory Fees for Fiscal Year 2001, *Memorandum Opinion and Order*, 17 FCC Rcd 24920 (2002) (FY 2001 Memorandum Opinion and Order).

[21] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15988 paragraph 9 (2003) (FY 2003 Report and Order).

[22] *Id.* Although we separated MDS and LMDS into separate fee categories, we set the regulatory fee amounts for both services at $265 per license.

[23] XO Comments at 2–3.

regulatory fees, group like services under the same classification or impose similar regulatory fees.[24] Specifically, it proposes that we classify LMDS as a microwave service, to which the proposed $50 per license per year fee applies, rather than subjecting LMDS licensees to the proposed $270 per license per year fee applicable to the Multipoint Distribution Service ("MDS").[25] XO states that, contrary to the assertions in the *FY2003 Report and Order*, LMDS is not different than other microwave services and that it is operationally, functionally, and legally similar to the 24 and 39 GHz services.[26] The upperband services, according to XO, are also competitive substitutes for one another and can be used to "complement" one another.[27] In the alternative, XO requests that if we retain a separate fee category for LMDS, we should strive to create regulatory parity and competitive neutrality in our regulations by imposing the same regulatory fees as are imposed on other microwave licensees.[28] RTG, in its reply comments, supports XO's contentions and adds that by assessing the same fee on the LMDS and MDS categories, the Commission effectively requires LMDS licensees to pay regulatory fees more than five times those of other upperband services.[29] RTG also notes that because many LMDS licensees are small and rural companies that utilize this spectrum for point-to-point links and for CMRS backhaul, the assessment of higher annual regulatory fees (when compared to similar services) will unduly harm such licensees.[30]

16. We find no basis for changing our proposed fee schedule to reduce the annual LMDS fee by more than 80 percent, thereby requiring a proportional increase in the fees for all other fee payors. First, as a matter of statutory interpretation, section 9 does not require that competitive services be assessed comparable regulatory fees. Second, LMDS licenses are, as a factual matter, quite different than other Part 101 fixed microwave services in the upper frequency bands (above 15 GHz), except for those in the 24 and 39 GHz bands that will be or have been auctioned.[31] While these three services are licensed on a geographic basis allowing licensees to place multiple stations within the authorized service areas, most microwave stations are currently licensed on a site-by-site basis thereby requiring, depending on the frequency band, multiple individual licenses to serve a particular geographic area or multiple points therein. Third, even when the fees for LMDS licensees are compared with the fees for licensees in the 24 and 39 GHz bands, we do not find that the current assessments result in disproportionate burdens for LMDS licensees. LMDS Block A licensees are authorized for 1150 MHz of spectrum, more than 10 times the amount of spectrum authorized with an individual 24 and 39 GHz license. Using the authorized bandwidth for each license as a proxy, we note that the LMDS fee for Block A licenses is actually lower on a per megahertz basis than 24 and 39 GHz licenses under both the FY2003 and proposed FY2004 fee schedules. We note that under this method of analysis, LMDS Block B licenses, authorized for 150 MHz in the 31,000–31,075/31,225–31,300, pay $1.85 per MHz under the proposed schedule. We will address this anomaly in our next year's regulatory fee proceeding. Accordingly, we are maintaining the current fee categories and assessing the proposed amounts for the current fiscal year.

*C. Commercial Mobile Radio Service (CMRS) Messaging and Cellular/Mobile Service Providers*

17. In the *FY2004 NPRM*, we proposed to maintain the CMRS Messaging subscriber regulatory fee rate at the FY 2003 level to avoid further contributing to the financial hardships associated with a declining subscriber base. We received no comments or reply comments on this matter. Consequently, we will maintain the CMRS messaging regulatory fee rate in FY2004 at $0.08 per subscriber, the same level as in FY2003.

18. The Rural Cellular Association ("RCA") filed comments addressing the proposed rate of $0.26 per unit subscriber fee for CMRS Cellular/Mobile service providers. RCA contends that the proposed per unit fee is the same as in FY2003, despite a 6.5 percent increase in CMRS cellular and mobile units from 141.8 million to 151.0 million.[32] RCA maintains that although the congressional revenue requirement has increased by 1.5 percent, the per unit subscriber fee should go down because the number of CMRS units has grown. In its reply comments, Verizon Wireless agrees with RCA and proposes a reduction in the proposed fee to $0.25 per subscriber unit.[33]

19. Since preparing the *FY2004 NPRM*, we have received revised CMRS cellular and mobile unit estimates that result in a reduction in the per unit fee from $0.26 to $0.25. Based on our revised estimate of 153.0 million units, the CMRS cellular and mobile fee rate will be $0.25 per subscriber unit.

*D. Non-Geostationary Orbit Space Stations*

20. New Operating Globalstar LLC ("Globalstar"), Space Imaging LLC ("Space Imaging") and ORBCOMM LLC ("ORBCOMM") filed comments asking the Commission to reduce the proposed FY2004 regulatory fee for non-geostationary orbit ("NGSO") satellite system licensees.[34] Globalstar maintains that the Commission has proposed a nearly 50% increase in the FY2004 fee for NGSO satellite systems of the FY2003 fee, a result of the decrease from seven to five in the number of estimated payment units calculated by the Commission between FY2003 and FY2004.[35] Globalstar argues that the smaller number of NGSO operators in FY2004 should reduce the level of Commission regulatory activity relating to NGSOs and should therefore result in a reduced regulatory fee.[36] Globalstar argues further that the 50% increase in fees for NGSO satellite licensees is not proportionate to the increase in appropriations or to the increase in fees

[24] XO Comments at 4–5.

[25] *Id.* at 5. XO mistakenly asserts that the fees imposed on LMDS licenses are assessed on a "per station" basis. Id. In fact, these fees are assessed on a "per call sign" basis. *See NPRM* Attachment D, "FY2004 Schedule of Regulatory Fees."

[26] *Id.* at 4.

[27] *Id.*

[28] *Id.* at 5.

[29] Replies of RTG at 5.

[30] Replies of RTG at 5–6.

[31] The auction of 24 GHz Service licenses (Auction No. 56) is scheduled to begin July 28, 2004. *See Public Notice*, DA 04–1271 (released May 5, 2004); *see also* Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to Licensed Fixed Services at 24 GHz, WT Docket No. 99–327, *Report and Order*, 15 FCC Rcd 16934 (2000). The Commission auctioned 39 GHz licenses in Auction No. 30. *See* 39 GHz Band Auction Closes," *Public Notice*, 15 FCC Rcd 13648 (WTB 2000); *see also* Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands, ET Docket No. 95–183, *Report and Order and Second Notice of Proposed Rule Making*, 12 FCC Rcd 18600 (1997). We also note that most Multiple Address Systems spectrum (MAS) licenses were licensed by auction and on a geographic area basis, but in the lower 900 MHz band. *See* "Multiple Address Systems Spectrum Auction Closes," *Public Notice*, 16 FCC Rcd 21011 (WTB 2001); Amendment of the Commission's Rules Regarding Multiple Address Systems, WT Docket No. 97–81, *Report and Order*, 15 FCC Rcd 11956, *Erratum*, 15 FCC Rcd 16415 (2000) (designating certain MAS spectrum to be licensed by auction and on a geographic basis). Additional information regarding Commission auctions may be obtained via the FCC's Web site at *http://wireless.fcc.gov/auctions/*.

[32] Rural Cellular Association Comments at 2–3.

[33] Verizon Wireless Replies at 4.

[34] Comments of Globalstar at 1; Space Imaging at 1; ORBCOMM at 1.

[35] Globalstar Comments at 1–2.

[36] *Id.*, at 4.

charged in other fee categories.[37] Globalstar urges the Commission to revise the NGSO satellite regulatory fees downward by reducing the revenue requirement for NGSOs, combining the revenue requirements for GSO and NGSO satellite licensees, or maintaining the FY2003 regulatory fee for NGSOs.[38] Satellite Imaging and ORBCOMM support Globalstar's arguments.

21. The increase in the NGSO satellite system fee is the direct result of a decrease from seven to five in the number of estimated payment units calculated by the Commission between FY2003 and FY2004. As we explained, *supra* at footnote 2, because the annual expected revenue is adjusted each year by the number of estimated payment units, the actual fee may increase by a number other than the 1.5%. Moreover, as we discussed, *supra* at section II.A.3., section 9 does not require that regulatory fees be precisely calculated, on a service-by-service basis, to the actual costs of the Commission's regulatory activities for that service.[39]

22. Our procedures for determining the annual regulatory fee amounts for each of our fee categories is detailed in the Discussion section of this *Report and Order*. We recognize that annual fee amounts in categories populated by small numbers of payment units can fluctuate considerably when payment units enter or exit the fee service category. We remind regulatees of this fact in our regulatory fee proceedings each year.[40]

23. Nonetheless, we recognize that a 43% fee increase is significant, especially considering the absolute dollar amount of the NGSO category's per-unit fee. An unexpected fee increase of 43% introduces an aspect of financial uncertainly in any industry, regardless of its financial state.

24. Given the small number of licenses in this fee category, we therefore conclude that relief is warranted for NGSO licensees. In FY2003, the fee assessed per operational system in non-geostationary orbit (NGSO) was $108,375. In our *FY2004 NPRM*, we proposed a per unit fee of $154,425. Because we have concluded that relief for this fee category is warranted, we will assess a FY2004 fee of $131,400 per license.[41] This will provide a financially challenged industry some relief.

25. The FY2004 NGSO per-system regulatory fee is therefore set at $131,400, rather than the $154,425 amount that was in the proposed FY2004 fee schedule. We will revise the fee schedule so that the lost revenue from the NGSO category is recouped by allocating a very small assessment across all regulatory fee categories.

*E. International Bearer Circuits*

26. Tyco Telecommunications (U.S.) Inc. ("Tyco") challenges the regulatory fee for the international bearer circuit category and the manner in which the Commission determines the fee rate for this category. Tyco argues: (1) The Commission's capacity-based methodology for determining regulatory fees for international bearer circuits favors older, lower-capacity systems to the detriment of newer, higher-capacity systems; (2) the current methodology does not account for the reduced regulation of private submarine cable operators; and (3) the Commission's method of imposing fees on a company's "lit and sold" (also known as "active") bearer circuit capacity is at odds with how private submarine cable operators actually sell capacity today, thereby requiring operators to expend time to determine whether and when fees apply to them based on the Commission's definition of "active."[42]

27. Tyco proposes that the following changes be made to the regulatory fee regime: (1) Separate the private submarine cable operator subcategory from the existing international bearer circuit fee category by creating a new private submarine cable operator category; (2) allocate the revenue requirement now proposed for all international bearer circuit operators between the two new fee categories by determining the respective regulatory burden caused by the two new categories of payees; and (3) adopt a flat, per-cable-landing-license fee for private submarine cable operators.

28. The Satellite Industry Association ("SIA") and FLAG Telecom Group Limited ("FLAG") support Tyco's position. SIA notes that satellite operators also provide international circuits on a non-common carrier basis and requests that the Commission reform its international bearer circuit regulatory fee regime to reflect the disparate regulatory costs generated by common carriers and non-common carriers.[43] Specifically, SIA states that the new fee category proposed by Tyco should include non-common carrier satellite providers as well as private submarine cable providers.[44] FLAG supports the imposition of a flat regulatory fee on cable landing licensees.[45]

29. We conclude that the legal arguments made by Tyco, SIA and FLAG warrant further consideration. However, we did not solicit comment in our *FY2004 NPRM* on the many complex issues raised by the commenters concerning our international bearer circuit fee category. We therefore do not have a record to take action on these issues at this time. We agree with the commenters that the use of a fee system based on licenses, rather than circuits, would be administratively simpler for both the Commission and carriers.[46] We are also concerned that basing the fees on the active circuits may provide disincentives to carriers to initiate new services and to use new facilities efficiently.[47] A more complete record on these issues is needed. Consequently, we plan to raise these issues and seek comment in our *FY2005 NPRM* on possible changes to the circuit-based fees structure for international carriers.

30. Commenters also raised procedural issues concerning the calculation and obligation to pay regulatory fees. For example, FLAG states that it is difficult for private submarine cable operators to price their offerings to customers because it is frequently difficult to determine with certainty which party—operator or customer—in a particular transaction is responsible for paying the necessary regulatory fees.[48] Upon the release of

[37] *Id.*, at 5.

[38] *Id.*, at 7–8.

[39] Moreover, we find that a number of ongoing or recently completed activities at the Commission in FY2004 have an impact on the NGSO fee category, including: (1) Rulemaking proceedings concerning (a) NGSO spectrum, (b) realignment of big low earth orbit ("Big LEO") satellite systems, (c) space station licensing reform, (d) bond issuances, (e) E911 Call Center Reporting Requirements—primarily affecting NGSOs in the mobile satellite service; (2) satellite milestone reviews for 2 GHz systems; (3) orbital debris matters; and (4) U.S. representation and participation in International Telecommunications Union ("ITU") Working Groups and Study Groups regarding shared spectrum policy.

[40] *See* footnote 2 of this *Report and Order*.

[41] This is an amount roughly halfway between the FY2003 regulatory fee for NGSO satellite systems ($108,375) and the initial fee amount in our proposed FY2004 Fee Schedule ($154,425).

[42] Tyco Comments at pages i–ii and 13–14.

[43] SIA Replies at 4.

[44] *Id.* at 3.

[45] FLAG Replies at 3.

[46] Tyco Comments at 15–17, 23–24; FLAG Replies at 1–2.

[47] Tyco Comments at 10.

[48] *Id.* at 1–2. Tyco also argues that the calculation used to derive bearer circuit fees may systematically underestimate the amount of active capacity subject to regulatory fees, because, currently, only U.S.-licensed common carriers and common carrier satellite operators are required to file circuit status reports. We find that circuit status reports as well as the actual payments from the previous year provide a reasonable basis for our estimates. We note that in a separate proceeding the Commission has sought comment on whether non-common carriers should also be required to file circuit status reports. *See* Reporting Requirements for U.S. Providers of International Telecommunications Service; Amendment of Part 43 of the Commission's

our *FY2004 Report and Order*, we will issue a Public Notice that provides further guidance on the procedural points raised by the commenters with regards to regulatory fee payments for international bearer circuits.

*F. Secondary Broadcast Services*

31. Mr. Chris Kidd submitted comments regarding the proposed regulatory fees for secondary broadcast services, such as FM boosters and translators. Mr. Kidd states that FM translators should be placed in a distinct fee category rather than sharing a fee category with FM Boosters and argues that FM boosters should be added to the fee category with low power television ("LPTV"), TV Translators and TV Boosters.[49] According to Mr. Kidd, FM translators have a higher degree of business and programming restrictions placed on them than do TV translators, as well as an effective radiated power ("ERP") restriction, making them a less desirable license to hold and therefore warranting a lower regulatory fee.[50]

32. We find that there is an inadequate record to warrant revising our two existing fee categories for secondary broadcast services. We originally devised these categories on the basis of the nature of service (a category for television and a category for FM radio) due to differing characteristics of these services. We have no reason to change this finding at this time. Further, we note that the need for some of the restrictions placed on FM translators is the direct result of their tendency to interfere with the operation of other services within their range of signal reach. Despite the restrictions, FM translators are still subject to interference complaints, all of which must be addressed and resolved by the Commission. For these reasons, we do not find a basis to make changes to our existing fee categories for secondary broadcast services.

*G. Procedural Changes for Notification, Assessment and Collection of Regulatory Fees*

33. Last year, we proposed that we would not disseminate general public notices to regulatees through surface mail informing them of when regulatory fees are due. We explained that with the widespread use of the Internet, we believe that disseminating public notices through surface mail is not an efficient use of our time and resources. We believe we can better serve the public by providing this type of general information on our Web site, while exploring ways to disseminate specific regulatory fee bills or assessments through surface mail. We made the same proposal this year in our *FY2004 NPRM* and received no comments on the matter.

34. Accordingly, we will provide public notices, fact sheets and all necessary regulatory fee payment procedure information on our Web site at *http://www.fcc.gov/fees*, just as we have for the past several years; but we will no longer disseminate public notices through surface mail. In the event that regulatees do not have access to the Internet, hardcopies of public notices and other relevant materials will be mailed upon request to anyone who contacts the FCC Consumer Center at (888) 225–5322.

35. In our *FY2004 NPRM*, we also proposed to disseminate fee assessments to five categories of licensees: Media services licensees, satellite space station licensees, interstate telecommunications service providers, cable television system operators and commercial mobile radio service operators. We stated that we were making these proposals and exploring options for these service categories in an effort to improve the efficacy of our fee collection process. Based on comments received in this proceeding and the current resources available to the Commission, we set forth below how we will proceed with these service categories.

1. Media Services Licenses

36. In FY2003, the Commission mailed fee assessment notifications to media services licensees for the first time.[51] We propose to repeat this endeavor this year in the same or similar fashion. We received no comments specific to our proposal to repeat the mail out. Therefore, we will repeat the endeavor this year with one exception. Last year, we sent two separate mailings of postcards on a facility ID basis, thereby giving licensees two opportunities to update or correct information. Because of our success with last year's fee assessment postcard initiative, we will only mail a single round of postcards on a facility ID basis this year.

37. As was the case last year, we will mail the postcards to licensees and any of their other points of contact on file (the actual payers of their prior year regulatory fees, such as their corporate headquarters, legal representatives, *etc.*). By doing so, licensees and their other points of contact will all be furnished with the same information for each facility ID in question so that they can designate among themselves the payer of this year's fee. Mailing postcards to different addresses on file for each facility ID also enables parties for each facility ID the opportunity to visit a Commission-authorized Web site to (1) update or correct information on the postcard, and (2) certify their fee-exempt status, if any. The Web site will be made available this summer. In addition to the postcards directing parties to a Web site to makes updates or corrections to information, the postcards will also include the telephone number for the FCC CORES Help Desk at (877) 480–3201, Option 4, which can be called to obtain clarification on procedures.

38. We stress to media services licensees that assessment postcards are being mailed to these licensees to assist them in completing the Form 159, and that this form must accompany the fee payment. The postcard is not intended to be a substitute for a Form 159. Media services licensees must still submit a completed Form 159 with their fee payments, despite having received an assessment postcard. We are unable to process regulatory fee payments submitted without a completed Form 159.

39. We also emphasize that the most important data element to include on the Form 159 is the station's *facility ID*. The facility ID is a unique identifier that never changes over the course of a station's existence. Despite the Form 159 filing instructions that call for each station's call sign and facility ID to be provided, we received many Form 159s from media services entities that provided only a station's call sign.

2. Satellite Space Station Licensees

40. Last year, we mailed regulatory fee assessment letters for the first time to satellite space station licensees. In our *FY2004 NRPM*, we proposed to repeat this mailing again this year.

41. Despite our original proposal, we will not send assessment letters to satellite licensees this year. Rather, our experience with last year's fee assessment effort has given us the ability to mail regulatory fee bills through surface mail to licensees in our

Rules, *Notice of Proposed Rulemaking*, IB Docket No. 04–112, FCC 04–70, released April 12, 2004.

[49] Mr. Chris Kidd Comments at 4–5.

[50] Mr. Chris Kidd Comments at 4.

[51] Fee assessments were issued for AM and FM Radio Stations, AM and FM Construction Permits, FM Translators/Boosters, VHF and UHF Television Stations, VHF and UHF Television Construction Permits, Satellite Television Stations, Low Power Television (LPTV) Stations, and LPTV Translators/Boosters. Fee assessments were not issued for broadcast auxiliary stations in FY2003, nor will they be issued for them in FY2004.

two satellite space station service categories. Specifically, geostationary orbit space station ("GSO") and direct broadcast satellite ("DBS") service licensees will receive bills requesting regulatory fee payment for satellites that (1) were licensed by the Commission and operational on or before October 1, 2003; and (2) were not co-located with and technically identical to another operational satellite on October 1, 2003 (*i.e.*, were not functioning as a spare satellite). NGSO licensees will receive bills requesting regulatory fee payment for systems that were licensed by the Commission and operational on or before October 1, 2003. It is important to note that a "bill" is distinct from an "assessment" in that a "bill" is automatically entered into the agency's financial system as a fee obligation owed to the Commission. The Accounts Receivable, or bill, will reflect the estimated amount for each license and will have a due date of the last day of the filing window. The Commission is taking this step as part of its efforts to modernize its financial practices. Having the bill's obligation already entered as an Accounts Receivable makes the agency's process of determining penalties or denial-of-service due to non-payment quicker and more efficient than making similar determinations for those who receive assessments, which are not automatically entered into the agency's Accounts Receivable system. The Commission intends to eventually bill all fee payers.

42. Note that bills sent to GSO, DBS and NGSO licensees will only be for the satellite or system aspects of their respective operations. These licensees may have regulatory fee obligations in other service categories (such as earth stations, broadcast facilities, *etc.*) and are expected to meet their full fee obligations for their entire portfolio of licensees held.

3. Interstate Telecommunications Service Providers

43. In our *FY2004 NPRM*, we stated that we will continue to generate and send pre-completed Form 159–W assessments to Interstate Telecommunications Service Providers ("ITSP") to assist them in their payment of regulatory fees. We received no comments or reply comments on this matter.

44. In FY2001, the Commission began sending pre-completed FCC Form 159–W assessments to carriers in an effort to assist them in paying the Interstate Telecommunications Service Provider (ITSP) regulatory fee.[52] The fee amount on FCC Form 159–W was calculated from the FCC Form 499–A report, which carriers are required to submit by April 1st of each year. Subsequently, in FY2002 and FY2003, the FCC Form 159–W was refined to simplify the regulatory fee payment process.[53] Although in FY 2004 we will continue to generate and mail pre-completed FCC Form 159–W's, this year we will also consider these mailings as "bills" rather than assessments. Other than the distinction that these "bills" will be entered into the Commission's financial system, there will be no procedural changes in using FCC Form 159–W to submit payment of FY2004 ITSP regulatory fees.

4. Commercial Mobile Radio Service (CMRS) Cellular and Mobile Services

45. In our *FY2004 NPRM*, we proposed to mail assessments to Commercial Mobile Radio Services (CMRS) cellular and mobile service providers using information from the Numbering Resource Utilization Forecast (NRUF) report. We proposed that subscriber data from the NRUF report be used to compute and assess a regulatory fee obligation. We solicited comments on the feasibility of this assessment proposal. CTIA and the Rural Cellular Association (RCA) request clarification of our proposal to send assessment letters to CMRS providers based on Numbering Resource Utilization Forecast (NRUF) reports.[54] Cingular and Dobson oppose the use of NRUF data.[55] For the reasons stated below, we will use NRUF "assigned" telephone number counts[56] reported for the period ending December 31, 2003.[57] We note that the use of December 31 is consistent with our past practice of requiring regulatory fee payments to be based on subscriber counts as of December 31.

46. Cingular states that NRUF assigned number counts do not reflect porting and therefore may be an inaccurate subscriber count proxy.[58] We find that Cingular's concern is valid and we will therefore adjust the NRUF "assigned" number counts to net Type 0 ports ("in" and "out") so that our assessment will more accurately reflect a carrier's actual subscriber count. Cingular also notes that, as a result of number pooling, many wireless carriers receive their new numbers as thousand-number blocks and that, within each block, up to 100 numbers can be retained by the donating carrier.[59] Retained numbers, however, are reported in the NRUF as assigned to the holder of the thousand block thereby resulting in an undercount for the donating carrier and an overage for the recipient. At this time, we are unable to address this issue. CMRS providers, however, may correct our estimated counts and therefore will not be harmed should their actual subscriber count be lower than their NRUF assigned count (netted for porting).

47. Accordingly, we will use NRUF report data and our Local Number Portability (LNP) database to compile an estimated subscriber count of active, assigned telephone numbers, net of ported numbers. The proposed regulatory fee payment will be based on this net figure. We will send out two assessment letters to CMRS Cellular and Mobile providers using data from the NRUF report. The first assessment letter will include assigned number counts (netted for porting), which will include a list of the carrier's Operating Company Numbers (OCNs) upon which the assessment is based. The letters will not include assigned number counts by OCNs, but rather an aggregate of assigned numbers for each carrier.

48. If a carrier determines that there is a discrepancy between the number of estimated subscribers we have calculated using the NRUF and LNP databases and what the carrier believes to be its total, the carrier may correct our estimate of the aggregate total directly on the letter and state a reason for the discrepancy. If the OCNs identified on the accompanying letter do not belong to the carrier, the OCNs which do not belong on the list should be indicated, and the total number of subscribers as of December 31, 2003

[52] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2001, *Report and Order*, 16 FCC Rcd 13590 (2001) at 67. *See* also FCC Public Notice—Common Carrier Regulatory Fees (August 3, 2001) at 4.

[53] Beginning in FY2002, Form 159–W included a payment section at the bottom of the form that allowed carriers the opportunity to send in Form 159–W in lieu of completing Form 159 Remittance Advice Form.

[54] CTIA and RCA Comments.

[55] Cingular Wireless LLC Comments and Dobson Communications Corporation Replies.

[56] "*Assigned numbers* are numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific end users or customers for their use, or numbers not yet working but having a customer service order pending. Numbers that are not yet working and have a service order pending for more than five days shall not be classified as assigned numbers." 47 CFR 52.15(f)(iii).

[57] For most entities, this submission was due February 1, 2004.

[58] Cingular Comments at 3–4.

[59] *Id.* at 4–5. Cingular states that in two populous California codes (310 and 909), the "contamination threshold" has been increased to 25%, so that, in each thousand block a carrier receives, up to 250 numbers already may be retained.

should be provided. If some of the subscribers are no longer customers, but have been assigned to another company, please indicate the company which has acquired these subscribers. This information, including any changes in the estimated aggregate total (carrier must provide a reason for the change), changes in OCNs, and the name of the company that has acquired some of the subscribers, should be mailed to: Federal Communications Commission, 445 12th Street, SW., Room 1–C848, Washington, DC 20554 by July 21, 2004. We will review the letters, and decide whether to accept the revised totals. Based upon this feedback, we will send out a second assessment letter that will coincide with the payment period of regulatory fees. This second assessment letter with aggregate totals will constitute the basis upon which FY2004 regulatory fees will be paid. Carriers will not have an opportunity to correct the aggregate subscriber count on the second assessment letter. When making the regulatory fee payment by mail, carriers must include the second assessment letter along with FCC Form 159 Remittance Advice. Of course, paying electronically using Fee Filer, carriers will not have to send in the second assessment letter.

49. Letters of assessment, with assigned number counts (netted for porting), will be mailed to carriers that filed an NRUF report. Since not all carriers are required to file NRUF reports, it is conceivable that some carriers will not be sent a letter of assessment. For those carriers, the current methodology [60] in place for CMRS Wireless services will apply. They should use their subscriber count as of December 31, 2003 and submit payment accordingly on FCC Form 159. However, whether a carrier receives a letter of assessment or computes the subscriber count itself, the Commission reserves its right, under the Communications Act, to audit the number of subscribers upon which regulatory fees were paid. In the event that the Commission determines that the number of subscribers is inaccurate or that an insufficient reason is given for making a correction on a letter of assessment, we reserve the right to assess a carrier for the difference between what was paid and what should have been paid.

50. In its comments, Cingular also argues that the use of NRUF data for regulatory fee assessments would violate the Paperwork Reduction Act (PRA) because the Office of Management and Budget (OMB) never approved the use of NRUF for purposes other than number optimization.[61] Cingular argues that the use of the NRUF information in the regulatory fee context "would have significant consequences for the accuracy of the data as a surrogate for any individual carrier's current subscriber or telephone number count." [62]

51. We note that in *Tozzi*,[63] the U.S. District Court for the District of Columbia rejected essentially the same argument. There, plaintiffs argued that the EPA could not use data collected under an OMB-approved information collection for a new purpose "without first obtaining a separate OMB approval," [64] and that using the data for a use different than that approved by OMB 'constitutes a substantive or material modification,' which requires approval from OMB." [65] The court rejected these arguments,[66] and found that the plaintiffs "failed to show that OMB must separately approve all new uses of data that agencies have previously collected." [67] The court stated that that "this kind of Government action [a new use for information collected] does not fall under the category of harms the PRA was enacted to address." [68] We therefore reject Cingular's argument.

5. Cable Subscriber—Billing

52. In our *FY2004 NPRM*, we proposed to modify our payment unit assessment methodology and our fee collection procedures for the cable industry by assessing regulatory fees for individual cable operators based on cable subscriber counts that the operators have reported in publicly available data sources. The primary data sources we proposed to reference were the *Broadcasting and Cable Yearbook 2003–2004* ("Yearbook") [69] and industry statistics published by the National Cable and Telecommunications Association ("NCTA"). [70]

53. We proposed that the 25 largest multiple-system operators ("MSOs"), as listed on NCTA's web page, would base their fee obligations on their subscriber counts as reported by NCTA. Cable operators listed in the Yearbook would base their fee obligations upon their basic subscriber counts as reported in the *Yearbook*. Cable operators not in NCTA's top 25 MSOs and not listed in the *Yearbook* would certify their aggregate basic subscriber counts as of December 31, 2003 on the Remittance Advice FCC Form 159 with the understanding that we would corroborate the certified counts with other publicly available data sources.[71] NCTA and the American Cable Association ("ACA") support our overall proposed assessment methodology, though both parties urge the Commission to provide an opportunity for cable operators listed in the data sources to rectify their subscriber numbers.[72] Based on our original proposal and the comments received, we now provide the following guidance to cable operators.

a. Fee Assessment and Collection Procedures for NCTA's 25 Largest MSOs and Cable Operators Reported in the 2003–2004 Edition of the Yearbook

54. NCTA's 25 largest MSOs and cable operators reported in the 2003–2004 edition of the *Yearbook* will receive two rounds of fee assessment letters via surface mail—an *initial* assessment and a *final* assessment. The first assessment will be based on the number of basic cable subscribers reported by NCTA or in the *Yearbook*—the 25 largest MSOs shall refer to the subscriber counts reported by NCTA and all other operators shall refer to the subscriber counts reported in the *Yearbook*.

55. We assume that the subscriber counts reported by NCTA and the *Yearbook* will coincide closely with the

[60] Federal Communications Commission, Regulatory Fees Fact Sheet, "What You Owe—Commercial Wireless Services, July 2003, page 1.

[61] Cingular Comments at 7–9, citing 44 U.S.C. 3506(c)(1)(B)(iii) (each information collection must inform the public of "the reasons the information is being collected" and "the way such information is to be used"). The NRUF report is a Paperwork Reduction Act (PRA) information collection approved by OMB under OMB Control No. 3060–0895. *See Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission*, 69 FR 5545 (Feb. 5, 2004) ("The information will be used by the Commission, state regulatory commissions, and the NANP Administrator to monitor numbering resource utilization and to project the date of area code and NANP exhaust.")

[62] Cingular Comments at 8.

[63] *Tozzi* v. *U.S. Environmental Protection Agency*, No. Civ. 98–0169(TFH) (D.D.C. Apr. 21, 1998) (1998 WL 1661504)

[64] *Id.* at *2.

[65] *Id.* at *2–*3.

[66] *Id.* at *3 (observing that "the EPA has not made a substantive or material modification of the use of the data. * * * The information itself is not modified in any way. The way in which it is collected is not modified in any way.").

[67] *Id.*

[68] *Id.*

[69] *Broadcasting and Cable Yearbook 2003–2004*, by Reed Elsevier, Inc., Newton, MA, 2003. Subscriber counts reported in Section C, "Multiple System Operators, Independent Owners and Cable Systems," page C–3.

[70] NCTA maintains an updated list of the 25 largest multiple-system operators at its Web site located at *http://www.ncta.com*.

[71] Sources consulted by the Commission may include but not be limited to *Cable TV Investor* by Kagan World Media and *Television and Cable Factbook* by Warren Communications.

[72] NCTA Comments at 3, and ACA Comments at 1.

number of subscribers served by cable operators as of December 31, 2003. However, if the number of subscribers on the initial assessment differs from the number of subscribers served as of December 31, 2003, we ask that cable operators amend their assessment letters by correcting the number of basic subscribers served and mail the amended letter back to the Commission at 445 12th Street, S.W., Room 1–C807, Washington, DC 20554. The amended assessment letter should indicate the specific reasons for the difference and indicate how and when the difference occurred (*e.g.* acquisition or sale of cable system, name of buying/selling entity, date of transaction, *etc.*). The amended letter should be mailed to the Commission address above by July 21, 2004. If cable operators do not contact us, we will assume the initial assessment is correct and we will expect the fee payment to be based on the number of subscribers on the initial assessment. As in previous years, operators will certify their subscriber counts in Block 30 of the FCC Form 159 Remittance Advice when making their regulatory fee payments.

56. We will review the amended assessment and will either accept the amendment, or contact the operator for more information. Upon establishing an agreed upon subscriber count, we will mail a final assessment letter that states the agreed upon subscriber count. If the cable operator and the Commission are unable to establish an agreed upon subscriber count by the due date of regulatory fees, the operator will be expected to submit payment for the number of subscribers on the initial assessment.

b. Fee Assessment and Collection Procedures for Cable Operators Not Listed in NCTA's 25 Largest MSOs and Not Reported in the 2003–2004 Edition of the Yearbook

57. Cable operators not listed in NCTA's 25 Largest MSOs and not reported in the *Yearbook* will not receive assessment letters. If an operator's subscriber base is not reported by NCTA or in the *Yearbook*, it should simply provide its aggregate basic subscriber count as of December 31, 2003 and certify this subscriber count in Block 30 of the FCC Form 159 Remittance Advice. It is not necessary to provide a listing of the Community Unit Identifier Numbers ("CUIDs"), nor a breakdown of individual subscriber counts for each CUID. A certified aggregate subscriber count for the operator's system(s) will suffice.

58. Cable operators who do not have access to the Internet to view the NCTA list or *Yearbook* may contact the FCC CORES Help Desk at (877) 480–3201, Option 4, to obtain their publicized subscriber count, if available, in either data source.

59. In our *FY2004 NPRM*, we proposed to institute a new *de minimis* fee exemption for cable operators serving 250 or fewer subscribers.[73] Upon further analysis of our proposal, we find that it is not feasible to implement. An exemption of this magnitude—and one tied to a payment unit amount rather than a dollar amount—is inconsistent with the Commission's general $10 fee exemption that is in place for all regulatees. If we implemented a 250 subscriber *de minimis* exemption for cable subscribers, regulatees in other industries understandably would seek similar treatment. The task of managing similar yet different *de minimis* exemptions across multiple fee categories in different industries would prove to be too cumbersome for the Commission to perform when determining the fee sufficiency of various licensees. For these reasons, we decline to adopt our proposal for *de minimis* fee exemption relief designed exclusively for cable television system operators.

*H. Future Streamlining of the Regulatory Fee Assessment and Collection Process*

60. In our *FY2004 NPRM*, we welcomed comments on a broad range of options concerning our commitment to reviewing, streamlining and modernizing our statutorily required fee-assessment and collection procedures. Our areas of particular interest included: (1) The process for notifying licensees about changes in the annual regulatory fee schedule and how it can be improved; (2) the most effective way to disseminate regulatory fee assessments and bills, *i.e.* through surface mail, e-mail, or some other mechanism; (3) the fee payment process, including how the agency's electronic payment system can be improved and whether to make use of Fee Filer mandatory over a particular monetary level or for licensees holding a certain number of licenses; and (4) the timing of fee payments, including whether we should alter the existing fee payment "window" in any way.

61. Kenneth J. Brown filed comments on this issue. Mr. Brown argues that we should include an FCC telephone number on the assessment postcards that will be mailed to media services entities to assist small businesses with no connection to the Internet.[74] Last year's assessment postcards only included a Commission-authorized web address entities could access to make various updates or corrections to the information on file for their facility ID. In addition to the web address, we will include the FCC CORES Help Desk telephone number on this year's fee assessment postcards.

62. Mr. Brown also notes that the assessment postcards state that the fee cited is the base fee only for the facility ID in question, and does not include any fee(s) for supplemental services such as broadcast auxiliary service.[75] Last year, we mailed postcards for all primary media services and all supplemental media services with the exception of the broadcast auxiliary service. We will repeat this exercise this year. The postcards will again be mailed out on a facility ID basis. We find that it is clear to the recipient of the postcard that the cited fee is only for the facility ID in question. As a point of clarification, the text of this year's postcards will make it apparent to recipients that the cited fee is only for the facility ID in question and does not include the recipient's fee obligation(s) for any supplemental services.

63. Finally, Mr. Brown responded to our solicitation for comments on migrating licensees to Fee Filer—our electronic payment software application available on the Commission's Web site. Mr. Brown opposed any such mandatory migration to Fee Filer. He noted that last year the mandatory Internet browser to access all of the features of the Universal Licensing System (the FCC's licensing database for wireless services) and the mandatory Internet browser to access Fee Filer were not the same edition of browsers.[76]

64. We will not at this time establish any thresholds (monetary amount of fee obligation, number of licenses held, *etc.*) for making use of Fee Filer mandatory. However, we strongly encourage regulatees to make their fee payments via Fee Filer regardless of the amount of fee obligation or number of licenses held. Through its evolution, Fee Filer has become an easy and convenient way to make fee payments on a timely basis. Regulatees who use Fee Filer do not expose themselves to the risk of unexpected slow mail delivery that could cause fee payments to be filed late

[73] ACA requested that the de minimum exemption be expanded to include cable operators serving less than 1,000 subscribers. *See* ACA comments, *passim*. In light of our decision that implementation of a de minimus exemption of any size is not feasible, ACA's argument is moot.

[74] Mr. Kenneth J. Brown Comments at 1.

[75] Mr. Kenneth J. Brown Comments at 1.

[76] Mr. Kenneth J. Brown Comments at 2.

and hence be subject to a 25% late payment penalty.

65. Regarding Mr. Brown's statement about mandatory browser requirements, while interface problems may prevent the Commission's Universal Licensing System (ULS) and Fee Filer Systems from being accessible via all models and editions of browsers, that does not mean that the Commission imposes browser requirements to access these automated systems. The ULS and Fee Filer systems were developed in different Commission offices, for different purposes, and are maintained by different technical support staff.

66. The specific issue identified by Mr. Brown is that editions of Netscape's browsers in the 4.X series do not interface well with Fee Filer. Netscape first made its 4.X browsers available to the public in 2001 and these versions of Netscape's browsers are now rarely in use.[77] The Commission has been aware of the interface problem and attempted without success to resolve it. When customers access the Fee Filer system via a Netscape browser in the 4.X series, we prompt them with an automated message that they may experience interface problems and recommend that they upgrade their browser to a newer edition. Considering that 4.X is three years old, and that the life expectancy of a browser edition is considerably less than three years, the Commission believes that it is a wiser use of its resources to alert customers to the interface issue and encourage browser upgrades rather than spend further resources to resolve an interface problem with a legacy browser edition.

*I. Procedures for Payment of Regulatory Fees*

1. *De minimis* Fee Payment Liability

67. Regulatees whose *total* regulatory fee liability, including all categories of fees for which payment is due by an entity, amounts to less than $10 are exempt from payment of regulatory fees in FY2004.

2. Standard Fee Calculations and Payment Dates

68. As in prior years, the responsibility for payment of fees by service category is as follows:

(a) Media services: The responsibility for the payment of regulatory fees rests with the holder of the permit or license as of October 1, 2003. However, in instances where a license or permit is transferred or assigned after October 1, 2003, responsibility for payment rests with the holder of the license or permit at the time payment is due.

(b) Wireline (Common Carrier) Services: Fees must be paid for any authorization issued on or before October 1, 2003. However, where a license or permit is transferred or assigned after October 1, 2003, responsibility for payment rests with the holder of the license or permit at the time payment is due,

(c) Wireless Services: Commercial Mobile Radio Service (CMRS) cellular, mobile, and messaging services (fees based upon a subscriber, unit or circuit count): The number of subscribers, units or circuits on December 31, 2003 will be used as the basis from which to calculate the fee payment. For small multi-year wireless services, the regulatory fee will be due at the time of authorization or renewal of the license, which is generally for a period of five or ten-years and paid throughout the year.

(d) Cable Services (fees based upon a subscriber count): The number of subscribers, units or circuits on December 31, 2003 will be used as the basis from which to calculate the fee payment.[78] CARS licensees: Fees must be paid for any authorization issued on or before October 1, 2003.

(e) International Services: Earth stations, geostationary orbit space stations, international public fixed radio services and international broadcast stations: Payment is calculated per operational station. Non-geostationary orbit satellite systems: Payment is calculated per operational system. The responsibility for the payment of regulatory fees rests with the holder of the permit or license on October 1, 2003. However, in instances where a license or permit is transferred or assigned after October 1, 2003, responsibility for payment rests with the holder of the license or permit at the time payment is due. International bearer circuits: Payment is calculated per active circuit as of December 31, 2003.

69. The Commission strongly recommends that entities submitting more than twenty-five (25) Form 159-C's use the electronic Fee Filer program when sending in their regulatory fee payment. The Commission will, for the convenience of payers, accept fee payments made in advance of the normal formal window for the payment of regulatory fees.

*J. Enforcement*

70. Finally, as a reminder to all licensees, section 159(c) of the Communications Act requires us to impose an additional charge as a penalty for late payment of any regulatory fee. As in years past, *a late payment penalty of 25 percent of the amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees.* Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including the provisions set forth in the Debt Collection Improvement Act of 1996 ("DCIA"). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission's Rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. Partial underpayments of regulatory fees are treated in the following manner. The licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or was submitted after the deadline date, the 25 percent late charge penalty will be assessed on the portion that is submitted after the filing window.

71. Furthermore, we recently amended our regulatory fee rules effective October 1, 2004, to provide that we will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made. See 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910. Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the delinquent payer.

## III. Procedural Matters

72. Authority for this proceeding is contained in sections 4(i) and (j), 8, 9, and 303(r) of the Communications Act

[77] Netscape currently offers the 6.X and 7.X editions of its browsers. Currently, fewer than 1% of customer visits to Fee Filer are done so via Netscape browsers in the 4.X series, and as newer editions of browsers are made available, fewer users will hold onto the 4.X series.

[78] Cable system operators and MSOs that are not listed in any of the data sources indicated in this item are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. **Note:** Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on "a typical day in the last full week" of December 2003, rather than on a count as of December 31, 2003.

of 1934, as amended.[79] It is ordered that the rule changes specified herein be adopted. It is further ordered that the rule changes made herein will become effective August 6, 2004. A Final Regulatory Flexibility Analysis (FRFA) has been performed and is found in Attachment A, and it is ordered that the Commission's Consumer And Governmental Affairs Bureau, Reference Information Center, send this to the Chief Counsel for Advocacy of the Small Business Administration (SBA). Finally, it is ordered that this proceeding is *terminated.*

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Attachment A—Final Regulatory Flexibility Analysis**

A. As required by the Regulatory Flexibility Act (RFA),[80] the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules in the present *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2004.* Written public comments were sought on the FY 2004 fees proposal, including comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[81]

**I. Need for, and Objectives of, the Proposed Rules**

B. This rulemaking proceeding is initiated to amend the Schedule of Regulatory Fees in the amount of $272,958,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its revised Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

**II. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

C. None.

**III. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

73. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[82] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[83] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[84] A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[85]

74. *Small Businesses.* Nationwide, there are a total of 22.4 million small businesses, according to SBA data.[86]

75. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.[87]

76. *Small Governmental Jurisdictions.* The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[88] As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.[89] This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

77. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[90] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.[91] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

78. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[92] According to Commission data,[93] 1,337 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed action.

79. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[94] According to Commission

[79] *See* 47 U.S.C. 154(i)–(j), 159, and 303(r).

[80] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[81] *See* 5 U.S.C. 604.

[82] 5 U.S.C. 603(b)(3).

[83] 5 U.S.C. 601(6).

[84] 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[85] 15 U.S.C. 632.

[86] *See* SBA, Programs and Services, SBA Pamphlet No. CO–0028, at page 40 (July 2002).

[87] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[88] 5 U.S.C. 601(5).

[89] U.S. Census Bureau, Statistical Abstract of the United States: 2000, Section 9, pages 299–300, Tables 490 and 492.

[90] 15 U.S.C. 632.

[91] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small-business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. *See* 13 CFR 121.102(b).

[92] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110 (changed from 513310 in October 2002).

[93] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, Page 5–5 (Aug. 2003) (hereinafter "Trends in Telephone Service"). This source uses data that are current as of December 31, 2001.

[94] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

data,[95] 609 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 carriers, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 35 carriers have reported that they are "Other Local Service Providers." Of the 35, an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our proposed action.

80. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[96] According to Commission data,[97] 133 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 127 have 1,500 or fewer employees and six have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our proposed action.

81. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[98] According to Commission data,[99] 625 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 590 have 1,500 or fewer employees and 35 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposed action.

82. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[100] According to Commission data,[101] 761 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 757 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our proposed action.

83. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[102] According to Commission data,[103] 261 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed action.

84. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[104] According to Commission data,[105] 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

85. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[106] According to Commission data,[107] 37 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our proposed action.

86. *800 and 800-Like Service Subscribers.*[108] Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[109] The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use.[110] According to our data, at the end of January, 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,692,955 or fewer small entity 800 subscribers; 7,706,393 or fewer small entity 888 subscribers; and 1,946,538 or fewer small entity 877 subscribers.

87. *International Service Providers.* The Commission has not developed a small business size standard specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has $12.5 million or less in average

[95] "Trends in Telephone Service" at Table 5.3.

[96] 13 CFR 121.201, NAICS code 517310 (changed from 513330 in October 2002).

[97] "Trends in Telephone Service" at Table 5.3.

[98] 13 CFR 121.201, NAICS code 517310 (changed to 513330 in October 2002).

[99] "Trends in Telephone Service" at Table 5.3.

[100] 3 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

[101] "Trends in Telephone Service" at Table 5.3.

[102] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

[103] "Trends in Telephone Service" at Table 5.3.

[104] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

[105] "Trends in Telephone Service" at Table 5.3.

[106] 13 CFR 121.201, NAICS code 517310 (changed from 513330 in October 2002).

[107] "Trends in Telephone Service" at Table 5.3.

[108] We include all toll-free number subscribers in this category, including those for 888 numbers.

[109] 13 CFR 121.201, NAICS code 517310 (changed from 513330 in October 2002).

[110] FCC, Common Carrier Bureau, Industry Analysis Division, Study on Telephone Trends, Tables 21.2, 21.3, and 21.4 (Feb. 19, 1999).

annual receipts.[111] For the first category of Satellite Telecommunications, Census Bureau data for 1997 show that there were a total of 324 firms that operated for the entire year.[112] Of this total, 273 firms had annual receipts of under $10 million, and an additional 24 firms had receipts of $10 million to $24,999,999. Thus, the majority of Satellite Telecommunications firms can be considered small.

88. The second category—Other Telecommunications—includes "establishments primarily engaged in * * * providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems." [113] According to Census Bureau data for 1997, there were 439 firms in this category that operated for the entire year.[114] Of this total, 424 firms had annual receipts of $5 million to $9,999,999 and an additional six firms had annual receipts of $10 million to $24,999,990. Thus, under this second size standard, the majority of firms can be considered small.

89. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging" [115] and "Cellular and Other Wireless Telecommunications." [116] Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.[117] Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[118] Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[119] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[120] Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

90. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers. This category comprises establishments "primarily engaged in providing direct access through telecommunications networks to computer-held information compiled or published by others." [121] Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less.[122] According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year.[123] Of these, 2,659 firms had annual receipts of under $10 million, and an additional 67 firms had receipts of between $10 million and $24,999,999.[124] Thus, under this size standard, the great majority of firms can be considered small entities.

91. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category "Cellular and Other Wireless Telecommunications." [125] Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[126] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[127] Thus, under this category and size standard, the great majority of firms can be considered small. According to the most recent *Trends in Telephone Service* data, 719 carriers reported that they were engaged in the provision of cellular service, personal communications service, or specialized mobile radio telephony services, which are placed together in the data.[128] We have estimated that 294 of these are small, under the SBA small business size standard.[129]

92. *Common Carrier Paging.* The SBA has developed a small business size standard for wireless firms within the broad economic census categories of "Cellular and Other Wireless Telecommunications." [130] Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.[131] Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or

[111] 13 CFR 121.201, NAICS codes 517410 and 517910 (changed from 513340 and 513390 in October 2002).

[112] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 513340 (issued October 2000).

[113] Office of Management and Budget, North American Industry Classification System, page 513 (1997) (NAICS code 513390, changed to 517910 in October 2002).

[114] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 513390 (issued October 2000).

[115] 13 CFR 121.201, NAICS code 513321 (changed to 517211 in October 2002).

[116] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[117] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

[118] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

[119] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

[120] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

[121] Office of Management and Budget, North American Industry Classification System, page 515 (1997). NAICS code 514191, "On-Line Information Services" (changed to current name and to code 518111 in October 2002).

[122] 13 CFR 121.201, NAICS code 518111.

[123] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191 (issued October 2000).

[124] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191 (issued October 2000).

[125] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[126] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

[127] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

[128] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, page 5–5 (August 2003). This source uses data that are current as of December 31, 2001.

[129] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, page 5–5 (August 2003). This source uses data that are current as of December 31, 2001.

[130] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[131] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

more.[132] Thus, under this category and associated small business size standard, the great majority of firms can be considered small.

93. In the Paging Second Report and Order, the Commission adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[133] A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[134] The SBA has approved this definition.[135] An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold.[136] Fifty-seven companies claiming small business status won 440 licenses.[137] An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold.[138] One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.[139] Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, 608 private and common carriers reported that they were engaged in the provision of either paging or "other mobile" services.[140] Of these, we estimate that 589 are small, under the SBA-approved small business size standard.[141] We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

94. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years.[142] The SBA has approved these definitions.[143] The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity. An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

95. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for "Cellular and Other Wireless Telecommunications" services.[144] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[145] According to the most recent *Trends in Telephone Service* data, 719 carriers reported that they were engaged in wireless telephony.[146] We have estimated that 294 of these are small under the SBA small business size standard.

96. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[147] For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[148] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[149] No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[150] On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.[151]

97. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as

[132] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

[133] Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Second Report and Order, 12 FCC Rcd 2732, 2811–2812, paras. 178–181 (Paging Second Report and Order); *see also* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085–10088, paras. 98–107 (1999).

[134] Paging Second Report and Order, 12 FCC Rcd at 2811, para. 179.

[135] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[136] *See* "929 and 931 MHz Paging Auction Closes," Public Notice, 15 FCC Rcd 4858 (WTB 2000).

[137] *See* "929 and 931 MHz Paging Auction Closes," Public Notice, 15 FCC Rcd 4858 (WTB 2000).

[138] *See* "Lower and Upper Paging Band Auction Closes," Public Notice, 16 FCC Rcd 21821 (WTB 2002).

[139] *See* "Lower and Upper Paging Bands Auction Closes," Public Notice, 18 FCC Rcd 11154 (WTB 2003).

[140] *See* Trends in Telephone Service, Industry Analysis Division, Wireline Competition Bureau, Table 5.3 (Number of Telecommunications Service Providers that are Small Businesses) (May 2002).

[141] 13 CFR 121.201, NAICS code 517211.

[142] Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS), Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

[143] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[144] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[145] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[146] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, page 5–5 (August 2003). This source uses data that are current as of December 31, 2001.

[147] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7850–7852, paras. 57–60 (1996); *see also* 47 CFR 24.720(b).

[148] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7852, para. 60.

[149] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[150] FCC News, "Broadband PCS, D, E and F Block Auction Closes," No. 71744 (released January 14, 1997).

[151] *See* "C, D, E, and F Block Broadband PCS Auction Closes," *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

"small" or "very small" businesses.[152] Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

98. *Narrowband Personal Communications Services.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less.[153] Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.[154] To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.[155] A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million.[156] A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.[157] The SBA has approved these small business size standards.[158] A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.[159] Three of these claimed status as a small or very small entity and won 311 licenses.

99. *Lower 700 MHz Band Licenses.* We adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.[160] We have defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[161] A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[162] Additionally, the lower 700 MHz Service has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is "entrepreneur," which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[163] The SBA has approved these small size standards.[164] An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.[165] A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.[166] Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.[167]

100. *Upper 700 MHz Band Licenses.* The Commission released a Report and Order, authorizing service in the upper 700 MHz band.[168] This auction, previously scheduled for January 13, 2003, has been postponed.[169]

101. *700 MHz Guard Band Licenses.* In the 700 MHz Guard Band Order, we adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[170] A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[171] Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[172] SBA approval of these definitions is not required.[173] An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and

[152] *See* "C and F Block Broadband PCS Auction Closes; Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 2339 (2001).

[153] Implementation of Section 309(j) of the Communications Act—Competitive Bidding Narrowband PCS, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 175, 196, para. 46 (1994).

[154] *See* "Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total $617,006,674," *Public Notice*, PNWL 94–004 (released August 2, 1994); "Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total $490,901,787," *Public Notice*, PNWL 94–27 (released November 9, 1994).

[155] Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476, para. 40 (2000).

[156] Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476, para. 40 (2000).

[157] Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476, para. 40 (2000).

[158] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[159] *See* "Narrowband PCS Auction Closes," *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

[160] *See* Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order*, 17 FCC Rcd 1022 (2002).

[161] *See* Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order*, 17 FCC Rcd 1022, 1087–88, para. 172 (2002).

[162] *See* Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order*, 17 FCC Rcd 1022, 1087–88, para. 172 (2002).

[163] *See* Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order*, 17 FCC Rcd 1022, 1088, para. 173 (2002).

[164] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

[165] *See* "Lower 700 MHz Band Auction Closes," *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

[166] *See* "Lower 700 MHz Band Auction Closes," *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

[167] *See* "Lower 700 MHz Band Auction Closes," *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

[168] Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Memorandum Opinion and Order*, 16 FCC Rcd 1239 (2001).

[169] *See* "Auction of Licenses for 747–762 and 777–792 MHz Bands (Auction No. 31) Is Rescheduled," *Public Notice*, 16 FCC Rcd 13079 (WTB 2003).

[170] *See* Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order*, 15 FCC Rcd 5299 (2000).

[171] *See* Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order*, 15 FCC Rcd 5299, 5343, para. 108 (2000).

[172] *See* Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order*, 15 FCC Rcd 5299, 5343, para. 108 (2000).

[173] *See* Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order*, 15 FCC Rcd 5299, 5343, para. 108 n.246 (for the 746–764 MHz and 776–794 MHz bands, the Commission is exempt from 15 U.S.C. 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

closed on September 21, 2000.[174] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[175]

102. *Specialized Mobile Radio.* The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. [176] The Commission awards "very small entity" bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years.[177] The SBA has approved these small business size standards for the 900 MHz Service.[178] The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.[179] A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.[180]

103. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.[181] In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold.[182] Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

104. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

105. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.[183] According to the Census Bureau data for 1997, only twelve firms out of a total of 1,238 such firms that operated for the entire year in 1997, had 1,000 or more employees.[184] If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business standard.

106. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted a small business size standard for defining "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[185] This small business standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[186] A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[187] The SBA has approved these small size standards.[188] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[189] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.[190] Thirty-nine small businesses

[174] *See* "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice*, 15 FCC Rcd 18026 (2000).

[175] *See* "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

[176] 47 CFR 90.814(b)(1).

[177] 47 CFR 90.814(b)(1).

[178] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999. We note that, although a request was also sent to the SBA requesting approval for the small business size standard for 800 MHz, approval is still pending.

[179] *See* "Correction to Public Notice DA 96–586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses To Provide 900 MHz SMR in Major Trading Areas,'" *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

[180] *See* "Multi-Radio Service Auction Closes," *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

[181] *See*, "800 MHz Specialized Mobile Radio (SMR) Service General Category (851–854 MHz) and Upper Band (861–865 MHz) Auction Closes; Winning Bidders Announced," *Public Notice*, 15 FCC Rcd 17162 (2000).

[182] *See*, "800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 1736 (2000).

[183] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[184] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513322 (October 2000).

[185] Amendment of Part 90 of the Commission's Rules To Provide For the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order*, 12 FCC Rcd 10943, 11068–70, paras. 291–295 (1997).

[186] *Id.* at 11068, paras. 291.

[187] *Id.*

[188] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

[189] *See generally* "220 MHz Service Auction Closes," *Public Notice*, 14 FCC Rcd 605 (WTB 1998).

[190] *See* "FCC Announces It Is Prepared To Grant 654 Phase II 220 MHz Licenses After Final Payment

Continued

won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[191] A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.[192]

107. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we could use the definition for "Cellular and Other Wireless Telecommunications." This definition provides that a small entity is any such entity employing no more than 1,500 persons.[193] The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. Moreover, because PMLR licensees generally are not in the business of providing cellular or other wireless telecommunications services but instead use the licensed facilities in support of other business activities, we are not certain that the Cellular and Other Wireless Telecommunications category is appropriate for determining how many PLMR licensees are small entities for this analysis. Rather, it may be more appropriate to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.[194]

108. The Commission's 1994 Annual Report on PLMRs [195] indicates that at the end of fiscal year 1994, there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the revised rules in this context could potentially impact every small business in the United States.

109. *Fixed Microwave Services.* Fixed microwave services include common carrier,[196] private operational-fixed,[197] and broadcast auxiliary radio services.[198] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.[199] The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

110. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years.[200] An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[201] The SBA has approved these small business size standards.[202] The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies proposed herein.

111. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[203] The auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[204] An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[205] The

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Is Made," *Public Notice*, 14 FCC Rcd 1085 (WTB 1999).

[191] *See* "Phase II 220 MHz Service Spectrum Auction Closes," *Public Notice*, 14 FCC Rcd 11218 (WTB 1999).

[192] *See* "Multi-Radio Service Auction Closes," *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

[193] *See* 13 CFR 121.201, NAICS code 517212.

[194] *See generally* 13 CFR 121.201.

[195] Federal Communications Commission, 60th Annual Report, Fiscal Year 1994, at paragraph 116.

[196] *See* 47 CFR 101 *et seq.* (formerly, Part 21 of the Commission's Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

[197] Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. *See* 47 CFR Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[198] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

[199] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[200] *See* Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands, ET Docket No. 95–183, *Report and Order*, 12 FCC Rcd 18600 (1997), 63 FR 6079 (Feb. 6, 1998).

[201] *Id.*

[202] See Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998) (Vol P); *See* Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Hector Barreto, Administrator, Small Business Administration, dated January 18, 2002 (WTB).

[203] *See* Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making*, 12 FCC Rcd 12545, 12689–90, para. 348 (1997).

[204] *See* Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making*, 12 FCC Rcd 12545, 12689–90, para. 348 (1997).

[205] *See* Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed

SBA has approved these small business size standards in the context of LMDS auctions.[206] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small business winning that won 119 licenses.

112. *218–219 MHz Service.* The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (MSAs).[207] Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, we defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[208] In the 218–219 MHz Report and Order and Memorandum Opinion and Order, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.[209] A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.[210] The SBA has approved of these definitions.[211] At this time, we cannot estimate the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this analysis that in future auctions, many, and perhaps all, of the licenses may be awarded to small businesses.

113. *Location and Monitoring Service (LMS).* Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[212] A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $3 million.[213] These definitions have been approved by the SBA.[214] An auction for LMS licenses commenced on February 23, 1999, and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses. We cannot accurately predict the number of remaining licenses that could be awarded to small entities in future LMS auctions.

114. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[215] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).[216] The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons.[217] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

115. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.[218] We will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons.[219] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

116. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.[220] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has

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Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making*, 12 FCC Rcd 12545, 12689–90, para. 348 (1997).

[206] *See* Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

[207] *See* "Interactive Video and Data Service (IVDS) Applications Accepted for Filing," *Public Notice*, 9 FCC Rcd 6227 (1994).

[208] Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Fourth Report and Order*, 9 FCC Rcd 2330 (1994).

[209] Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, *Report and Order and Memorandum Opinion and Order*, 15 FCC Rcd 1497 (1999).

[210] *Id.*

[211] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

[212] Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, 13 FCC Rcd 15182, 15192 paragraph 20 (1998); *see also* 47 CFR 90.1103.

[213] Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, 13 FCC Rcd at 15192, para. 20; *see also* 47 CFR 90.1103.

[214] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated February 22, 1999.

[215] The service is defined in section 22.99 of the Commission's Rules, 47 CFR 22.99.

[216] BETRS is defined in section 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

[217] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[218] The service is defined in section 22.99 of the Commission's Rules, 47 CFR 22.99.

[219] 13 CFR 121.201, NAICS codes 513322 (changed to 517212 in October 2002).

[220] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

average gross revenues for the preceding three years not to exceed $3 million dollars.[221] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

117. *Offshore Radiotelephone Service.* This service operates on several ultra high frequencies (UHF) television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[222] There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services.[223] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[224]

118. *Multiple Address Systems (MAS).* Entities using MAS spectrum, in general, fall into two categories: (1) those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines "small entity" for MAS licenses as an entity that has average gross revenues of less than $15 million in the three previous calendar years.[225] "Very small business" is defined as an entity that, together with its affiliates, has average gross revenues of not more than $3 million for the preceding three calendar years.[226] The SBA has approved of these definitions.[227] The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service. In addition, an auction for 5,104 MAS licenses in 176 EAs began November 14, 2001, and closed on November 27, 2001.[228] Seven winning bidders claimed status as small or very small businesses and won 611 licenses.

119. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definitions developed by the SBA would be more appropriate. The applicable definition of small entity in this instance appears to be the "Cellular and Other Wireless Telecommunications" definition under the SBA rules. This definition provides that a small entity is any entity employing no more than 1,500 persons.[229] The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

120. *Incumbent 24 GHz Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons.[230] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[231] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[232] Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent[233] and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

121. Future 24 GHz Licensees. With respect to new applicants in the 24 GHz band, we have defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $15 million.[234] "Very small business" in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[235] The SBA has approved these definitions.[236] The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

122. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).[237] In connection with the 1996 MDS auction, the Commission defined "small business" as an entity that, together with its affiliates, has average

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[221] Amendment of the Commission's Rules Concerning Maritime Communications, PR Docket No. 92–257, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853 (1998).

[222] This service is governed by Subpart I of Part 22 of the Commission's Rules. *See* 47 CFR 22.1001–22.1037.

[223] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[224] *Id.*

[225] *See* Amendment of the Commission's Rules Regarding Multiple Address Systems, *Report and Order*, 15 FCC Rcd 11956, 12008, para. 123 (2000).

[226] Id.

[227] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated June 4, 1999.

[228] *See* "Multiple Address Systems Spectrum Auction Closes," *Public Notice*, 16 FCC Rcd 21011 (2001).

[229] *See* 13 CFR 121.201, NAICS code 517212.

[230] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[231] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5, NAICS code 513322 (issued October 2000).

[232] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[233] Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

[234] Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules To License Fixed Services at 24 GHz, *Report and Order*, 15 FCC Rcd 16934, 16967, para. 77 (2000) (24 GHz Report and Order); *see also* 47 CFR 101.538(a)(2).

[235] 24 GHz Report and Order, 15 FCC Rcd at 16967, para. 77; *see also* 47 CFR 101.538(a)(1).

[236] *See* Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Gary M. Jackson, Assistant Administrator, Small Business Administration, dated July 28, 2000.

[237] Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Report and Order*, 10 FCC Rcd 9589, 9593, para. 7 (1995) (MDS Auction R&O).

gross annual revenues that are not more than $40 million for the preceding three calendar years.[238] The SBA has approved of this standard.[239] The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).[240] Of the 67 auction winners, 61 claimed status as a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities.[241]

123. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution,[242] which includes all such companies generating $12.5 million or less in annual receipts.[243] According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.[244] Of this total, 1,180 firms had annual receipts of under $10 million, and an additional 52 firms had receipts of $10 million or more but less than $25 million.[245] Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the proposed rules and policies.

124. Finally, while SBA approval for a Commission-defined small business size standard applicable to ITFS is pending, educational institutions are included in this analysis as small entities.[246] There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, we tentatively conclude that at least 1,932 ITFS licensees are small businesses.

125. *Cable and Other Program Distribution.* This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. The SBA has developed small business size standard for this census category, which includes all such companies generating $12.5 million or less in revenue annually.[247] According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.[248] Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies proposed herein.

126. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.[249] The most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995.[250] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies proposed herein.

127. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[251] The Commission has determined that there are 67,700,000 subscribers in the United States.[252] Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[253] Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450.[254] The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[255] and therefore are unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

128. *Open Video Services.* Open Video Service (OVS) systems provide subscription services.[256] The SBA has created a small business size standard for Cable and Other Program Distribution.[257] This standard provides that a small entity is one with $12.5 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of these are currently providing

[238] 47 CFR 21.961(b)(1).

[239] *See* Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Bureau, from Gary Jackson, Assistant Administrator for Size Standards, Small Business Administration, dated March 20, 2003 (noting approval of $40 million size standard for MDS auction).

[240] Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. *See* MDS Auction R&O, 10 FCC Rcd at 9608, paragraph 34.

[241] 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "other telecommunications" (annual receipts of $12.5 million or less). *See* 13 CFR 121.201, NAICS code 517910.

[242] 13 CFR 121.201, NAICS code 517510.

[243] Id.

[244] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4 (issued October 2000).

[245] Id.

[246] In addition, the term "small entity" under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). We do not collect annual revenue data on ITFS licensees.

[247] 13 CFR 121.201, NAICS code 513220 (changed to 517510 in October 2002).

[248] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)", Table 4, NAICS code 513220 (issued October 2000).

[249] 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. Implementation of Sections of the 1992 Cable Act: Rate Regulation, *Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393 (1995), 60 FR 10534 (February 27, 1995).

[250] Paul Kagan Associates, Inc., *Cable TV Investor*, February 29, 1996 (based on figures for December 30, 1995).

[251] 47 U.S.C. 543(m)(2).

[252] *See* FCC Announces New Subscriber Count for the Definition of Small Cable Operator, *Public Notice*, DA 01–158 (January 24, 2001).

[253] 47 CFR 76.901(f).

[254] *See* FCC Announces New Subscriber Count for the Definition of Small Cable Operators, *Public Notice*, DA–01–0158 (released January 24, 2001).

[255] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. *See* 47 CFR 76.909(b).

[256] *See* 47 U.S.C. 573.

[257] 13 CFR 121.201, NAICS code 513220 (changed to 517510 in October 2002).

service.[258] Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies proposed herein.

129. *Cable Television Relay Service.* This service includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has defined a small business size standard for Cable and other Program Distribution, consisting of all such companies having annual receipts of no more than $12.5 million.[259] According to Census Bureau data for 1997, there were 1,311 firms in the industry category Cable and Other Program Distribution, total, that operated for the entire year.[260] Of this total, 1,180 firms had annual receipts of $10 million or less, and an additional 52 firms had receipts of $10 million or more but less than $25 million.[261] Thus, under this standard, we estimate that the majority of providers in this service category are small businesses that may be affected by the proposed rules and policies.

130. *Multichannel Video Distribution and Data Service.* MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. No auction has yet been held in this service, although an action has been scheduled for January 14, 2004.[262] Accordingly, there are no licensees in this service.

131. *Amateur Radio Service.* These licensees are believed to be individuals, and therefore are not small entities.

132. *Aviation and Marine Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.[263] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million.[264] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

133. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under part 95 of our rules.[265] These services include Citizen Band Radio Service (CB), General Mobile Radio Service (GMRS), Radio Control Radio Service (R/C), Family Radio Service (FRS), Wireless Medical Telemetry Service (WMTS), Medical Implant Communications Service (MICS), Low Power Radio Service (LPRS), and Multi-Use Radio Service (MURS).[266] There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being proposed. Since all such entities are wireless, we apply the definition of cellular and other wireless telecommunications, pursuant to which a small entity is defined as employing 1,500 or fewer persons.[267] Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the proposed rules.

134. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[268]

[258] *See http://www.fcc.gov/csb/ovs/csovscer.html* (current as of March 2002).

[259] 13 CFR 121.201, NAICS code 517510.

[260] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4 (issued October 2000).

[261] *Id.*

[262] "Auctions of Licenses in the Multichannel Video Distribution and Data Service Rescheduled for January 14, 2004," *Public Notice*, DA 03–2354 (August 28, 2003).

[263] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[264] Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853 (1998).

[265] 47 CFR part 90.

[266] The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by Subpart D, Subpart A, Subpart C, Subpart B, Subpart H, Subpart I, Subpart G, and Subpart J, respectively, of Part 95 of the Commission's rules. *See generally* 47 CFR part 95.

[267] 13 CFR 121.201, NAICS Code 517212.

[268] With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's Rules, 47 CFR 90.15–90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 state and local governments are licensed to highway maintenance service to provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15–90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief

There are a total of approximately 127,540 licensees in these services. Governmental entities [269] as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.[270]

**IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements**

136. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 ("FCC Remittance Advice"), and pay a regulatory fee based on the number of licenses or call signs.[271] Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499-A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.*, cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

137. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. Licensees may also file electronically to minimize the burden of submitting multiple copies of the FCC Form 159. Applicants who pay small fees in advance and provide fee information as part of their application must use FCC Form 159.

138. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.[272] If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.[273] Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.[274] Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.*, and the *Debt Collection Improvement Act of 1996*, Public Law 194–134. Appropriate enforcement measures as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[275]

139. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.[276] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

**V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

140. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. As described in Section III of this FRFA, *supra*, we have created procedures in which all fee-filing licensees and regulatees use a single form, FCC Form 159, and have described in plain language the general filing requirements. We have sought comment on other alternatives that might simplify our fee procedures or otherwise benefit small entities, while remaining consistent with our statutory responsibilities in this proceeding.

141. The *Omnibus Appropriations Act for FY 2004*, Public Law 108–199, requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to section 9(a) of the Communications Act, as amended, has required the Commission to collect for Fiscal Year (FY) 2004.[277] As noted, we seek comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small entities.

142. We have previously used cost accounting data for computation of regulatory fees, but found that some fees which were very small in previous years would have increased dramatically and would have a disproportionate impact on smaller entities. The methodology we are proposing in this *Report and Order* minimizes this impact by limiting the amount of increase and shifting

organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33–90.55.

[269] 47 CFR 1.1162.

[270] 5 U.S.C. 601(5).

[271] The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (*e.g.*, Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

[272] 47 CFR 1.1164.

[273] 47 CFR 1.1164(c).

[274] Public Law 104–134, 110 Stat. 1321 (1996).

[275] 31 U.S.C. 7701(c)(2)(B).

[276] 47 CFR 1.1166.

[277] 47 U.S.C. 159(a).

costs to other services which, for the most part, are larger entities.

143. Several categories of licensees and regulatees are exempt from payment of regulatory fees. See, *e.g.*, footnote 271, *supra*.

*Report to Small Business Administration:* The Commission will send a copy of this *Report and Order*, including a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. The Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

*Report to Congress:* The Commission will send a copy of this Final Regulatory Flexibility Analysis (FRFA), along with this *Report and Order*, in a report to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

**Attachment B—Sources of Payment Unit Estimates for FY 2004**

In order to calculate individual service fees for FY 2004, we adjusted FY 2003 payment units for each service to more accurately reflect expected FY 2004 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. The databases we consulted include the Commission's Universal Licensing System (ULS), International Bureau Filing System (IBFS), and Consolidated Database System. The industry sources we consulted include, but are not limited to, *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc, as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast*.

We tried to obtain verification for these estimates from multiple sources and, in all cases; we compared FY 2004 estimates with actual FY 2003 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 2004 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 2004 payment units are based on FY 2003 actual payment units, it does not necessarily mean that our FY 2004 projection is *exactly* the same number as FY 2003. It means that we have either rounded the FY 2004 number or adjusted it slightly to account for these variables.

| Fee category | Sources of payment unit estimates |
|---|---|
| Land Mobile (All), Microwave, 218–219 MHz, Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed. | Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis. |
| CMRS Mobile Services | Based on Wireless Telecommunications Bureau estimates. |
| CMRS Messaging Services | Based on Wireless Telecommunications Bureau estimates. |
| AM/FM Radio Stations | Based on estimates from Media Services Bureau estimates and actual FY 2003 payment units. |
| UHF/VHF Television Stations | Based on Media Services Bureau estimates and actual FY 2003 payment units. |
| AM/FM/TV Construction Permits | Based on Media Services Bureau estimates and actual FY 2003 payment units. |
| LPTV, Translators and Boosters | Based on actual FY 2003 payment units. |
| Broadcast Auxiliaries | Based on actual FY 2003 payment units. |
| MDS/LMDS/MMDS | Based on Wireless Telecommunications Bureau estimates and actual FY 2003 payment units. |
| Cable Television Relay Service (CARS) Stations. | Based on actual FY 2003 payment units. |
| Cable Television System Subscribers | Based on Media Services Bureau (previously Cable Services Bureau), industry estimates of subscribership, and actual FY 2003 payment units. |
| Interstate Telecommunication Service Providers | Based on actual FY 2003 interstate revenues reported on Telecommunications Reporting Worksheet, adjusted for FY 2004 revenue growth/decline for industry, and estimations by the Wireline Competition Bureau. |
| Earth Stations | Based on actual FY 2003 payment estimates and projected FY 2004 units. |
| Space Stations (GSOs & NGSOs) | Based on International Bureau licensee data base estimates. |
| International Bearer Circuits | Based on International Bureau estimates. |
| International HF Broadcast Stations, International Public Fixed Radio Service. | Based on International Bureau estimates. |

ATTACHMENT C.—CALCULATION OF FY 2004 REVENUE REQUIREMENTS AND PRO-RATA FEES

[Regulatory fees for the first ten categories below are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.]

| Fee category | FY 2004 payment units | Years | FY 2003 revenue estimate | Pro-rated FY 2004 revenue requirement** | Computed new FY 2004 regulatory fee | Rounded new FY 2004 regulatory fee | Expected new FY 2004 revenue |
|---|---|---|---|---|---|---|---|
| PLMRS (exclusive use) | 3,400 | 10 | 330,000 | 334,916 | 10 | 10 | 340,000 |
| PLMRS (shared use) | 46,000 | 10 | 2,665,000 | 2,704,697 | 6 | 5 | 2,300,000 |
| Microwave | 3,000 | 10 | 1,525,000 | 1,547,716 | 52 | 50 | 1,500,000 |
| 218–219 MHz (formerly IVDS) | 3 | 10 | 1,500 | 1,522 | 51 | 50 | 1,500 |
| Marine (ship) | 3,900 | 10 | 660,000 | 669,831 | 17 | 15 | 585,000 |

ATTACHMENT C.—CALCULATION OF FY 2004 REVENUE REQUIREMENTS AND PRO-RATA FEES—Continued

[Regulatory fees for the first ten categories below are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.]

| Fee category | FY 2004 payment units | Years | FY 2003 revenue estimate | Pro-rated FY 2004 revenue requirement** | Computed new FY 2004 regulatory fee | Rounded new FY 2004 regulatory fee | Expected new FY 2004 revenue |
|---|---|---|---|---|---|---|---|
| GMRS | 15,000 | 5 | 265,000 | 268,947 | 4 | 5 | 375,000 |
| Aviation (aircraft) | 3,100 | 10 | 155,000 | 157,309 | 5 | 5 | 155,000 |
| Marine (coast) | 962 | 10 | 100,000 | 101,490 | 11 | 10 | 96,200 |
| Aviation (ground) | 1,600 | 5 | 127,500 | 129,399 | 16 | 15 | 120,000 |
| Amateur vanity call signs | 7,800 | 10 | 159,740 | 162,119 | 2.08 | 2.08 | 162,119 |
| AM Class A | 69 | 1 | 195,000 | 198,560 | 2,878 | 2,875 | 198,375 |
| AM Class B | 1,699 | 1 | 2,384,800 | 2,428,337 | 1,429 | 1,425 | 2,421,075 |
| AM Class C | 990 | 1 | 828,300 | 843,421 | 852 | 850 | 841,500 |
| AM Class D | 1,888 | 1 | 2,728,350 | 2,778,159 | 1,471 | 1,475 | 2,784,800 |
| FM Classes A, B1 & C3 | 3,220 | 1 | 5,544,000 | 5,701,258 | 1,771 | 1,775 | 5,715,500 |
| FM Classes B, C, C0, C1 & C2 | 3,022 | 1 | 6,875,050 | 7,056,607 | 2,335 | 2,325 | 7,026,150 |
| AM construction permits | 73 | 1 | 21,840 | 33,855 | 464 | 465 | 33,945 |
| FM construction permits | 162 | 1 | 373,700 | 268,430 | 1,657 | 1,650 | 267,300 |
| Satellite TV | 122 | 1 | 126,000 | 129,369 | 1,060 | 1,050 | 128,100 |
| Satellite TV construction permit | 3 | 1 | 2,575 | 1,553 | 518 | 520 | 1,560 |
| VHF markets 1–10 | 43 | 1 | 2,536,600 | 2,595,946 | 60,371 | 60,375 | 2,596,125 |
| VHF markets 11–25 | 64 | 1 | 2,593,500 | 2,653,885 | 41,467 | 41,475 | 2,654,400 |
| VHF markets 26–50 | 77 | 1 | 2,199,125 | 2,246,372 | 29,174 | 29,175 | 2,246,475 |
| VHF markets 51–100 | 123 | 1 | 2,114,775 | 2,160,482 | 17,565 | 17,575 | 2,161,725 |
| VHF remaining markets | 235 | 1 | 930,050 | 954,129 | 4,060 | 4,050 | 951,750 |
| VHF construction permits | 6 | 1 | 74,000 | 27,974 | 4,662 | 4,650 | 27,900 |
| UHF markets 1–10 | 90 | 1 | 1,521,600 | 1,600,803 | 17,787 | 17,775 | 1,599,750 |
| UHF markets 11–25 | 81 | 1 | 1,236,000 | 1,309,989 | 16,173 | 16,175 | 1,310,175 |
| UHF markets 26–50 | 117 | 1 | 1,041,675 | 1,088,742 | 9,305 | 9,300 | 1,088,100 |
| UHF markets 51–100 | 170 | 1 | 900,475 | 944,964 | 5,559 | 5,550 | 943,500 |
| UHF remaining markets | 183 | 1 | 270,750 | 303,743 | 1,660 | 1,650 | 301,950 |
| UHF construction permits | 34 | 1 | 373,500 | 193,319 | 5,686 | 5,675 | 192,950 |
| Broadcast auxiliaries | 25,000 | 1 | 250,000 | 254,564 | 10 | 10 | 250,000 |
| LPTV/translators/boosters | 2,900 | 1 | 1,092,445 | 1,112,389 | 384 | 385 | 1,116,500 |
| CARS stations | 1,000 | 1 | 130,500 | 132,882 | 133 | 135 | 135,000 |
| Cable television systems | 65,000,000 | 1 | 44,550,000 | 45,363,307 | 0.70 | 0.70 | 45,500,000 |
| Interstate telecommunication service providers | 58,500,000,000 | 1 | 125,370,000 | 127,658,761 | 0.0021822 | 0.00218 | 127,530,000 |
| CMRS mobile services (cellular/public mobile) | 153,000,000 | 1 | 36,868,000 | 38,695,143 | 0.253 | 0.25 | 38,250,000 |
| CMRS messaging services | 14,500,000 | 1 | 1,576,000 | 1,160,693 | 0.08 | 0.08 | 1,160,000 |
| MDS/MMDS | 1,600 | 1 | 956,915 | 434,894 | 272 | 270 | 432,000 |
| LMDS | 340 | 1 | 258,375 | 92,582 | 272 | 270 | 91,800 |
| International bearer circuits | 2,800,000 | 1 | 6,942,000 | 7,068,733 | 2.52 | 2.52 | 7,056,000 |
| International public fixed | 1 | 1 | 1,725 | 1,756 | 1,756 | 1,750 | 1,750 |
| Earth stations | 3,400 | 1 | 661,290 | 673,363 | 198 | 200 | 680,000 |
| International HF broadcast | 5 | 1 | 3,650 | 3,717 | 743 | 745 | 3,725 |
| Space stations (geostationary) | 77 | 1 | 8,671,875 | 8,830,189 | 114,678 | 114,675 | 8,829,975 |

## ATTACHMENT C.—CALCULATION OF FY 2004 REVENUE REQUIREMENTS AND PRO-RATA FEES—Continued

[Regulatory fees for the first ten categories below are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.]

| Fee category | FY 2004 payment units | Years | FY 2003 revenue estimate | Pro-rated FY 2004 revenue requirement** | Computed new FY 2004 regulatory fee | Rounded new FY 2004 regulatory fee | Expected new FY 2004 revenue |
|---|---|---|---|---|---|---|---|
| Space stations (non-geostationary) | 5 | 1 | 758,625 | 657,000 | 131,400 | 131,400 | 657,000 |
| Total estimated revenue to be collected | | | 268,951,805 | 273,737,819 | | | 272,821,674 |
| Total revenue requirement | | | | 272,958,000 | | | 272,958,000 |
| Difference | | | | 779,819 | | | (136,326) |

**1.01471 factor applied based on the amount Congress designated for recovery through regulatory fees (Pub. L. 108–7 and 47 U.S.C. 159(a)(2)).

## ATTACHMENT D.—FY 2004 SCHEDULE OF REGULATORY FEES

[Regulatory fees for the first eleven categories below are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.]

| Fee category | Annual regulatory fee (U.S. $'s) |
|---|---|
| PLMRS (per license) (Exclusive Use) (47 CFR part 90) | 10 |
| Microwave (per license) (47 CFR part 101) | 50 |
| 218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95) | 50 |
| Marine (Ship) (per station) (47 CFR part 80) | 15 |
| Marine (Coast) (per license) (47 CFR part 80) | 10 |
| General Mobile Radio Service (per license) (47 CFR part 95) | 5 |
| Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category) | 5 |
| PLMRS (Shared Use) (per license) (47 CFR part 90) | 5 |
| Aviation (Aircraft) (per station) (47 CFR part 87) | 5 |
| Aviation (Ground) (per license) (47 CFR part 87) | 15 |
| Amateur Vanity Call Signs (per call sign) (47 CFR part 97) | 2.08 |
| CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) | .25 |
| CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90) | .08 |
| Multipoint Distribution Services (MMDS/MDS) (per call sign) (47 CFR part 21) | 270 |
| Local Multipoint Distribution Service (per call sign) (47 CFR part 101) | 270 |
| AM Radio Construction Permits | 465 |
| FM Radio Construction Permits | 1,650 |
| TV (47 CFR part 73) VHF Commercial: | |
| Markets 1–10 | 60,375 |
| Markets 11–25 | 41,475 |
| Markets 26–50 | 29,175 |
| Markets 51–100 | 17,575 |
| Remaining Markets | 4,050 |
| Construction Permits | 4,650 |
| TV (47 CFR part 73) UHF Commercial: | |
| Markets 1–10 | 17,775 |
| Markets 11–25 | 16,175 |
| Markets 26–50 | 9,300 |
| Markets 51–100 | 5,550 |
| Remaining Markets | 1,650 |
| Construction Permits | 5,675 |
| Satellite Television Stations (All Markets) | 1,050 |
| Construction Permits—Satellite Television Stations | 520 |
| Low Power TV, TV/FM Translators & Boosters (47 CFR part 74) | 385 |
| Broadcast Auxiliaries (47 CFR part 74) | 10 |
| CARS (47 CFR part 78) | 135 |
| Cable Television Systems (per subscriber) (47 CFR part 76) | .70 |
| Interstate Telecommunication Service Providers (per revenue dollar) | .00218 |
| Earth Stations (47 CFR part 25) | 200 |
| Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100) | 114,675 |
| Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) | 131,400 |
| International Bearer Circuits (per active 64KB circuit) | 2.52 |
| International Public Fixed (per call sign) (47 CFR part 23) | 1,750 |
| International (HF) Broadcast (47 CFR part 73) | 745 |

**FY 2004 Schedule of Regulatory Fees (Continued)**

FY 2004 RADIO STATION REGULATORY FEES

| Population served | AM Class A | AM Class B | AM Class C | AM Class D | FM Classes A, B1 & C3 | FM Classes B, C, C0, C1 & C2 |
|---|---|---|---|---|---|---|
| ≤25,000 | 600 | 450 | 350 | 425 | 525 | 675 |
| 25,001–75,000 | 1,200 | 900 | 525 | 625 | 1,050 | 1,175 |
| 75,001–150,000 | 1,800 | 1,125 | 700 | 1,075 | 1,450 | 2,200 |
| 150,001–500,000 | 2,700 | 1,925 | 1,050 | 1,275 | 2,225 | 2,875 |
| 500,001–1,200,000 | 3,900 | 2,925 | 1,750 | 2,125 | 3,550 | 4,225 |
| 1,200,001–3,000,000 | 6,000 | 4,500 | 2,625 | 3,400 | 5,775 | 6,750 |
| >3,000,000 | 7,200 | 5,400 | 3,325 | 4,250 | 7,350 | 8,775 |

**Attachment E—Factors, Measurements and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages**

*AM Stations*

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (RMS) figure milliVolt per meter (mV/m) @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in sections 73.150 and 73.152 of the Commission's rules.[278] Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3 [279]. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the city grade (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

*FM Stations*

The greater of the horizontal or vertical effective radiated power (ERP) (kW) and respective height above average terrain (HAAT) (m) combination was used. Where the antenna height above mean sea level (HAMSL) was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the Commission's rules to predict the distance to the city grade (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials.[280] The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

**Attachment F**

*Parties Filing Comments on the Notice of Proposed Rulemaking*

Chris Kidd
XO Communications, Inc. ("XO")
National Cable & Telecommunications Association ("NCTA")
Cingular Wireless LLC ("Cingular")
Rural Cellular Association ("RCA")
New Operating Globalstar LLC ("Globalstar")
Cellular Telecommunications and Internet Association ("CTIA")
Tyco Communications (US) Inc. ("Tyco")
American Cable Association ("ACA")
Kenneth J. Brown

*Parties Filing Reply Comments*

FLAG Telecom Group Limited ("FLAG")
Rural Telecommunications Group, Inc. ("RTG")
Verizon Wireless ("Verizon")
Space Imaging LLC ("Space Imaging")
ORBCOMM LLC & ORBCOMM License Corp. ("ORBCOMM")
Verizon ("Verizon")
The Satellite Industry Association ("SIA")
Dobson Communications Corporation ("Dobson")

ATTACHMENT G.—FY 2003 SCHEDULE OF REGULATORY FEES

| Fee category | Annual regulatory fee (U.S. $'s) |
|---|---|
| PLMRS (per license) (Exclusive Use) (47 CFR part 90) | 10 |
| Microwave (per license) (47 CFR part 101) | 25 |
| 218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95) | 30 |
| Marine (Ship) (per station) (47 CFR part 80) | 15 |

[278] 47 CFR 73.150 and 73.152.

[279] *See Map of Estimated Effective Ground Conductivity in the United States*, 47 CFR 73.190 Figure R3.

[280] 47 CFR 73.313.

ATTACHMENT G.—FY 2003 SCHEDULE OF REGULATORY FEES—Continued

| Fee category | Annual regulatory fee (U.S. $'s) |
|---|---|
| Marine (Coast) (per license) (47 CFR part 80) | 10 |
| General Mobile Radio Service (per license) (47 CFR part 95) | 5 |
| Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category) | 5 |
| PLMRS (Shared Use) (per license) (47 CFR part 90) | 5 |
| Aviation (Aircraft) (per station) (47 CFR part 87) | 5 |
| Aviation (Ground) (per license) (47 CFR part 87) | 15 |
| Amateur Vanity Call Signs (per call sign) (47 CFR part 97) | 1.63 |
| CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) | .26 |
| CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90) | .08 |
| Multipoint Distribution Services (MMDS/MDS) (per call sign) (47 CFR part 21) | 265 |
| Local Multipoint Distribution Service (per call sign) (47 CFR, part 101) | 265 |
| AM Radio Construction Permits | 455 |
| FM Radio Construction Permits | 1,850 |
| TV (47 CFR part 73) VHF Commercial: | |
| Markets 1–10 | 57,650 |
| Markets 11–25 | 43,225 |
| Markets 26–50 | 30,125 |
| Markets 51–100 | 18,075 |
| Remaining Markets | 4,450 |
| Construction Permits | 4,625 |
| TV (47 CFR part 73) UHF Commercial: | |
| Markets 1–10 | 15,850 |
| Markets 11–25 | 12,875 |
| Markets 26–50 | 8,075 |
| Markets 51–100 | 4,975 |
| Remaining Markets | 1,425 |
| Construction Permits | 8,300 |
| Satellite Television Stations (All Markets) | 1,000 |
| Construction Permits—Satellite Television Stations | 515 |
| Low Power TV, TV/FM Translators & Boosters (47 CFR part 74) | 365 |
| Broadcast Auxiliary (47 CFR part 74) | 10 |
| CARS (47 CFR part 78) | 90 |
| Cable Television Systems (per subscriber) (47 CFR part 76) | .66 |
| Interstate Telecommunication Service Providers (per revenue dollar) | .00199 |
| Earth Stations (47 CFR part 25) | 210 |
| Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100) | 115,625 |
| Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) | 108,375 |
| International Bearer Circuits (per active 64KB circuit) | 2.67 |
| International Public Fixed (per call sign) (47 CFR part 23) | 1,725 |
| International (HF) Broadcast (47 CFR part 73) | 730 |

**FY 2003 Schedule of Regulatory Fees**

FY 2003 RADIO STATION REGULATORY FEES

| Population served | AM Class A | AM Class B | AM Class C | AM Class D | FM Classes A, B1 & C3 | FM Classes B, C, C0, C1 & C2 |
|---|---|---|---|---|---|---|
| ≤25,000 | 600 | 450 | 325 | 400 | 475 | 625 |
| 25,001–75,000 | 1,200 | 900 | 475 | 600 | 950 | 1,100 |
| 75,001–150,000 | 1,800 | 1,125 | 650 | 1,000 | 1,300 | 2,025 |
| 150,001–500,000 | 2,700 | 1,925 | 975 | 1,200 | 2,025 | 2,650 |
| 500,001–1,200,000 | 3,900 | 2,925 | 1,625 | 2,000 | 3,200 | 3,900 |
| 1,200,001–3,000,000 | 6,000 | 4,500 | 2,450 | 3,200 | 5,225 | 6,250 |
| >3,000,000 | 7,200 | 5,400 | 3,100 | 4,000 | 6,650 | 8,125 |

**Concurring Statement of Commissioner Michael Copps**

*Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2004*

I respectfully concur in today's decision. This year the Commission again relies on across-the-board proportionate increases from the previous year's schedule of fees. I am concerned that the Commission does not address when or how it would adjust the regulatory fees pursuant to section 9(b)(3) of the Act. I recognize the difficulty the Commission has had in developing a cost accounting system to be used in connection with regulatory fees. Nevertheless, as technology advances and our regulatory activities change, we must continue to look for ways to improve our regulatory fee methodology to ensure that we continue

to comply fully with the Act's requirements.

**Statement of Commissioner Jonathan Adelstein Approving in Part, Concurring in Part**

*Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2004; MD Docket No. 04–73*

Last year, I provided in detail a number of concerns with the methodology used by the Commission in determining regulatory fees. I appreciate the efforts in this item to respond to some of the problems that I raised at that time and the item's candor in assessing the Commission's difficulties in implementing a more granular cost-based accounting system. I also want to thank the staff of the Office of General Counsel and the Office of the Managing Director for their continued dialogue on these complicated issues.

Implementation of section 9 of the Act raises a number of challenges for the Commission in that it allows for both cost-based and benefits-based adjustments but puts in place criteria for certain changes to the regulatory fee schedule. Clearly, the Commission does have some discretion in making adjustments to the fees, and the Commission is free to depart from strictly cost-based fees. However, I can only concur to certain portions of the Report and Order because I remain concerned about the impracticality of the Commission considering significant changes that undoubtedly occur from time to time in the costs of regulatory fees for individual services.

**Rule Changes**

■ Part 1 of title 47 of the Code of Federal Regulations is amended to read as follows:

## PART 1—PRACTICE AND PROCEDURE

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

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309, and 325(e).

■ 2. Section 1.1152 is revised to read as follows:

**§ 1.1152 Schedule of annual regulatory fees and filing locations for wireless radio services.**

| Exclusive use services (per license) | Fee amount [1] | Address |
|---|---|---|
| 1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR, Part 90): | | |
| (a) New, Renew/Mod (FCC 601 & 159) | $10.00 | FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| (b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) | 10.00 | FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| (c) Renewal only (FCC 601 & 159) | 10.00 | FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245. |
| (d) Renewal only (Electronic Filing) (FCC 601 & 159) | 10.00 | FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| 220 MHz Nationwide: | | |
| (a) New, Renew/Mod (FCC 601 & 159) | 10.00 | FCC, P.O. Box 358130 Pittsburgh, PA 15251–5130. |
| (b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) | 10.00 | FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| (c) Renewal only (FCC 601 & 159) | 10.00 | FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245. |
| (d) Renewal only (Electronic Filing) (FCC 601 & 159) | 10.00 | FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| 2. Microwave (47 CFR Pt. 101) (Private): | | |
| (a) New, Renew/Mod (FCC 601 & 159) | 50.00 | FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| (b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) | 50.00 | FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| (c) Renewal only (FCC 601 & 159) | 50.00 | FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245. |
| (d) Renewal only (Electronic Filing) (FCC 601 & 159) | 50.00 | FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| 3. 218–219 MHz Service: | | |
| (a) New, Renew/Mod (FCC 601 & 159) | 50.00 | FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| (b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) | 50.00 | FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| (c) Renewal only (FCC 601 & 159) | 50.00 | FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245. |
| (d) Renewal only (Electronic Filing) (FCC 601 & 159) | 50.00 | FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| 4. Shared Use Services: | | |
| Land Mobile (Frequencies) | | |
| Below 470 MHz—except 220 MHz): | | |
| (a) New, Renew/Mod (FCC 601 & 159) | 5.00 | FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| (b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) | 5.00 | FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| (c) Renewal only (FCC 601 & 159) | 5.00 | FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245. |
| (d) Renewal only (Electronic Filing) (FCC 601 & 159) | 5.00 | FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| General Mobile Radio Service: | | |
| (a) New, Renew/Mod (FCC 605 & 159) | 5.00 | FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| (b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159) | 5.00 | FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| (c) Renewal only (FCC 605 & 159) | 5.00 | FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245. |
| (d) Renewal only (Electronic Filing) (FCC 605 & 159) | 5.00 | FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| Rural Radio (Part 22): | | |
| (a) New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159). | 5.00 | FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| (b) Renewal, Minor Renew/Mod (Electronic Filing) (FCC 601 & 159). | 5.00 | FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| Marine Coast: | | |
| (a) New Renewal/Mod (FCC 601 & 159) | 10.00 | FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| (b) Renewal only (FCC 601 & 159) | 10.00 | FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245. |
| (c) Renewal only (Electronic Filing) (FCC 601 & 159) | 10.00 | FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| Aviation Ground: | | |
| (a) New, Renewal/Mod (FCC 601 & 159) | 15.00 | FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| (b) Renewal only (FCC 601 & 159) | 15.00 | FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245. |
| (c) Renewal only (Electronic Filing) (FCC 601 & 159) | 15.00 | FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| Marine Ship: | | |
| (a) New, Renewal/Mod (FCC 605 & 159) | 15.00 | FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130. |
| (b) New, Renewal/Mod (Electronic Filing) (FCC 605 & 159) | 15.00 | FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| (c) Renewal only (FCC 605 & 159) | 15.00 | FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245. |

| Exclusive use services (per license) | Fee amount [1] | Address |
|---|---|---|
| (d) Renewal only (Electronic Filing) (FCC 605 & 159) | 15.00 | FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994. |
| Aviation Aircraft: | | |
| (a) New, Renew/Mod (FCC 605 & 159) | 5.00 | FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130. |
| (b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159) | 5.00 | FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994. |
| (c) Renewal only (FCC 605 & 159) | 5.00 | FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245. |
| (d) Renewal only (Electronic Filing) (FCC 605 & 159) | 5.00 | FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994. |
| 5. Amateur Vanity Call Signs: | | |
| (a) Initial or Renew (FCC 605 & 159) | 2.08 | FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130. |
| (b) Initial or Renew (Electronic Filing) (FCC 605 & 159) | 2.08 | FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994. |
| 6. CMRS Mobile Services (per unit): | | |
| (FCC 159) | [2].25 | FCC, P.O. Box 358835, Pittsburgh, PA, 15251–5835. |
| 7. CMRS Messaging Services (per unit): | | |
| (FCC 159) | [3].08 | FCC, P.O. Box 358835, Pittsburgh, PA, 15251–5835. |
| 8. Multipoint Distribution: | | |
| (Includes MMDS and MDS) | 270 | FCC, Multipoint, P.O. Box 358835, Pittsburgh, PA, 15251–5835. |
| 9. Local Multipoint Distribution Service: | | |
| (Includes MMDS and MDS) | 270 | FCC, Multipoint, P.O. Box 358835, Pittsburgh, PA, 15251–5835. |

[1] Note that "small fees" are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table that is a small fee (categories 1 through 5) must be multiplied by the 5- or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. It should be further noted that application fees may also apply as detailed in § 1.1102 of this chapter.
[2] These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.
[3] These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.

■ 3. Section 1.1153 is revised to read as follows:

**§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.**

| Radio [AM and FM] (47 CFR, Part 73) | Fee amount | Address |
|---|---|---|
| 1. *AM Class A* | | |
| ≤25,000 population | $600 | FCC, Radio, P.O. Box 358835, Pittsburgh, PA, 15251–5835. |
| 25,001–75,000 population | 1,200 | |
| 75,001–150,000 population | 1,800 | |
| 150,001–500,000 population | 2,700 | |
| 500,001–1,200,000 population | 3,900 | |
| 1,200,001–3,000,000 population | 6,000 | |
| >3,000,000 population | 7,200 | |
| 2. *AM Class B* | | |
| ≤25,000 population | 450 | |
| 25,001–75,000 population | 900 | |
| 75,001–150,000 population | 1,125 | |
| 150,001–500,000 population | 1,925 | |
| 500,001–1,200,000 population | 2,925 | |
| 1,200,001–3,000,000 population | 4,500 | |
| >3,000,000 population | 5,400 | |
| 3. *AM Class C* | | |
| ≤25,000 population | 350 | |
| 25,001–75,000 population | 525 | |
| 75,001–150,000 population | 700 | |
| 150,001–500,000 population | 1,050 | |
| 500,001–1,200,000 population | 1,750 | |
| 1,200,001–3,000,000 population | 2,625 | |
| >3,000,000 population | 3,325 | |
| 4. *AM Class D* | | |
| ≤25,000 population | 425 | |
| 25,001–75,000 population | 625 | |
| 75,001–150,000 population | 1,075 | |
| 150,001–500,000 population | 1,275 | |
| 500,001–1,200,000 population | 2,125 | |
| 1,200,001–3,000,000 population | 3,400 | |
| >3,000,000 population | 4,250 | |
| 5. AM Construction Permit | 465 | |

| Radio [AM and FM] (47 CFR, Part 73) | Fee amount | Address |
|---|---|---|
| 6. *FM Classes A, B1 and C3* | | |
| ≤25,000 population | 525 | |
| 25,001–75,000 population | 1,050 | |
| 75,001–150,000 population | 1,450 | |
| 150,001–500,000 population | 2,225 | |
| 500,001–1,200,000 population | 3,550 | |
| 1,200,001–3,000,000 population | 5,775 | |
| >3,000,000 population | 7,350 | |
| 7. *FM Classes B, C, C0, C1 and C2* | | |
| ≤25,000 population | 675 | |
| 25,001–75,000 population | 1,175 | |
| 75,001–150,000 population | 2,200 | |
| 150,001–500,000 population | 2,875 | |
| 500,001–1,200,000 population | 4,225 | |
| 1,200,001–3,000,000 population | 6,750 | |
| >3,000,000 population | 8,775 | |
| 8. FM Construction Permits | 1,650 | |
| TV (47 CFR, Part 73) VHF Commercial | | |
| 1. Markets 1 thru 10 | 60,375 | FCC, TV Branch, P.O. Box 358835, Pittsburgh, PA, 15251–5835. |
| 2. Markets 11 thru 25 | 41,475 | |
| 3. Markets 26 thru 50 | 29,175 | |
| 4. Markets 51 thru 100 | 17,575 | |
| 5. Remaining Markets | 4,050 | |
| 6. Construction Permits | 4,650 | |
| UHF Commercial | | |
| 1. Markets 1 thru 10 | 17,775 | FCC, UHFCommercial, P.O. Box 358835, Pittsburgh, PA, 15251–5835. |
| 2. Markets 11 thru 25 | 16,175 | |
| 3. Markets 26 thru 50 | 9,300 | |
| 4. Markets 51 thru 100 | 5,550 | |
| 5. Remaining Markets | 1,650 | |
| 6. Construction Permits | 5,675 | |
| Satellite UHF/VHF Commercial | | |
| 1. All Markets | 1,050 | FCC, Satellite TV, P.O. Box 358835, Pittsburgh, PA 15251–5835. |
| 2. Construction Permits | 520 | |
| Low Power TV, TV/FM Translator,& TV/FM Booster (47 CFR Part 74) | 385 | FCC, Low Power, P.O. Box 358835, Pittsburgh, PA 15251–5835. |
| Broadcast Auxiliary | 10 | FCC, Auxiliary, P.O. Box 358835, Pittsburgh, PA 15251–5835. |

[1] Note that "small fees" are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table that is a small fee (categories 1 through 5) must be multiplied by the 5- or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. It should be further noted that application fees may also apply as detailed in § 1.1102 of this chapter.

■ 4. Section 1.1154 is revised to read as follows:

**§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.**

| Radio facilities | Fee amount | Address |
|---|---|---|
| 1. Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159). | $50.00 | FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994. |
| Carriers: | – | |
| 1. Interstate Telephone Service Providers (per interstate and international end-user revenues (see FCC Form 499–A). | .00218 | FCC, Carriers, P.O. Box 358835, Pittsburgh, PA, 15251–5835. |

[1] Note that "small fees" are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table that is a small fee (categories 1 through 5) must be multiplied by the 5- or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed.It should be further noted that application fees may also apply as detailed in § 1.1102 of this chapter.

■ 5. Section 1.1155 is revised to read as follows:

**§ 1.1155 Schedule of regulatory fees and filing locations for cable television services.**

| | Fee amount | Address |
|---|---|---|
| 1. Cable Television Relay Service | $135 | FCC, Cable P.O. Box 358835 Pittsburgh, PA 15251–5835. |
| 2. Cable TV System (per subscriber) | .70 | |

[1] Note that "small fees" are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table that is a small fee (categories 1 through 5) must be multiplied by the 5- or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. It should be further noted that application fees may also apply as detailed in § 1.1102 of this chapter.

■ 6. Section 1.1156 is revised to read as follows:

**§ 1.1156 Schedule of regulatory fees and filing locations for international services.**

| Radio facilities | Fee amount | Address |
|---|---|---|
| 1. International (HF) Broadcast | $745 | FCC, International, P.O. Box 358835, Pittsburgh, PA, 15251–5835. |
| 2. International Public Fixed | 1,750 | FCC, International P.O. Box 358835, Pittsburgh, PA, 15251–5835. |
| Space Stations (Geostationary Orbit) | 114,675 | FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA, 15251–5835. |
| Space Stations (Non-Geostationary Orbit) | 131,400 | FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA, 15251–5835. |
| Earth Stations Transmit/Receive & Transmit Only (per authorization or registration). | 200 | FCC, Earth Station, P.O. Box 358835, Pittsburgh, PA, 15251–5835. |
| Carriers International Bearer Circuits (per active 64KB circuit or equivalent). | 2.52 | FCC, International, P.O. Box 358835, Pittsburgh, PA, 15251–5835. |

[1] Note that "small fees" are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table that is a small fee (categories 1 through 5) must be multiplied by the 5-or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. It should be further noted that application fees may also apply as detailed in § 1.1102 of this chapter.

[FR Doc. 04–14769 Filed 7–6–04; 8:45 am]

BILLING CODE 6712–01–P

Federal Register

Wednesday,
July 7, 2004

Part III

# Securities and Exchange Commission

17 CFR Parts 200, 240, and 249
Collection Practices Under Section 31 of the Exchange Act; Final Rule

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 200, 240, and 249**

**RIN 3235–AJ02**

**[Release No. 34–49928; File No. S7–05–04]**

## Collection Practices Under Section 31 of the Exchange Act

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; request for comments on Paperwork Reduction Act burden estimates.

**SUMMARY:** The Securities and Exchange Commission is establishing new procedures that govern the calculation, payment, and collection of fees and assessments on securities transactions owed by national securities exchanges and national securities associations to the Commission pursuant to Section 31 of the Securities Exchange Act of 1934. Under these new procedures, each exchange or association must provide the Commission with data on its securities transactions. The Commission will calculate the amount of fees and assessments due based on the volume of these transactions and bill the exchange or association that amount. The Commission is also adopting a temporary rule that will enable it to calculate Section 31 fees and assessments using the new procedures for the whole of its fiscal year 2004.

**DATES:** *Effective Date:* August 6, 2004, except § 240.31T is effective August 6, 2004 to January 1, 2005.

*Compliance Date:* The first Form R31 required by Rule 31 (covering the month of July 2004) is due by August 13, 2004, the tenth business day of August. The Form R31 submissions required by temporary Rule 31T (for the months September 2003 to June 2004, inclusive) also are due by August 13, 2004.

*Comment Date:* Comments regarding the collection of information requirements within the meaning of the Paperwork Reduction Act of 1995 should be received by August 6, 2004.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/final.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–05–04 on the subject line; or
- Use the Federal eRulemaking Portal *http://www.regulations.gov*. Follow the instructions for submitting comments.

*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 S7–05–04. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/final.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Michael Gaw, Senior Special Counsel, 202–942–0158, or Christopher Solgan, Attorney, 202–942–7937; Division of Market Regulation; Securities and Exchange Commission; 450 5th Street, NW.; Washington, DC 20549–1001.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Beginning with fiscal year 2004 ("FY2004"), the Securities and Exchange Commission ("Commission") is required to prepare financial statements audited by an external auditor. This requirement was created by the Accountability of Tax Dollars Act of 2002 ("Accountability Act").[1] In anticipation of its external audit and to further the principles of the Accountability Act, the Commission reviewed its policies and procedures for collecting, processing, and documenting its accounts receivable, including the fees and assessments that national securities exchanges and national securities associations (collectively, "self-regulatory organizations" or "SROs") owe the Commission pursuant to Section 31 of the Securities Exchange Act of 1934 ("Exchange Act").[2]

Pursuant to Section 31(b) of the Exchange Act,[3] a national securities exchange must pay the Commission a fee based on the aggregate dollar amount of sales of securities transacted on the exchange.[4] Pursuant to Section 31(c),[5] a national securities association must pay the Commission a fee based on the aggregate dollar amount of sales of securities transacted by or through any member of the association otherwise than on a national securities exchange.[6] Section 31(d)[7] requires a national securities exchange to pay the Commission an assessment [8] for each "round turn transaction"[9] in a security future.[10]

The Commission has not previously defined "sales of securities" as used in Section 31 or mandated a formal procedure for aggregating trading volumes for purposes of determining Section 31 fees. Instead, the Commission has allowed the SROs to develop their own procedures. However, in view of the requirements of the Accountability Act, the Commission seeks to make the Section 31 calculation and collection process more transparent, accurate, and reliable. Therefore, in January 2004, the Commission proposed new Rule 31, Form R31, and temporary Rule 31T to establish a procedure for the calculation and collection of Section 31 fees and assessments.[11]

One of the most significant features of the Commission's proposed procedure is that the calculation of fees and assessments would for the first time be performed exclusively by the Commission. The centralization of the

[1] Public Law 107–289, 31 U.S.C. 3515. The Accountability Act requires each federal executive agency with appropriated budget authority of more than $25 million to prepare annual audited financial statements.

[2] 15 U.S.C. 78ee.

[3] 15 U.S.C. 78ee(b).

[4] One exchange—the International Securities Exchange ("ISE")—trades only options. Three exchanges—the New York Stock Exchange ("NYSE"), the Chicago Stock Exchange ("CHX"), and the National Stock Exchange ("NSX")—trade only equity securities. Five exchanges—the American Stock Exchange ("Amex"), the Boston Stock Exchange ("BSX"), the Chicago Board Options Exchange ("CBOE"), the Pacific Exchange ("PCX"), and the Philadelphia Stock Exchange ("Phlx")—trade both options and equity securities.

[5] 15 U.S.C. 78ee(c).

[6] Currently, only one national securities association—the National Association of Securities Dealers ("NASD")—is subject to this requirement. The National Futures Authority is also registered with the Commission as a national securities association but currently is not required to pay fees or assessments under Section 31.

[7] 15 U.S.C. 78ee(d).

[8] Paragraphs (b) and (c) of Section 31 require the Commission to collect "fees" on sales of securities (other than security futures and certain other enumerated securities). Paragraph (d) of Section 31 requires the Commission to collect "assessments" on transactions in security futures.

[9] A "round turn transaction" is one purchase and one sale of a contract of sale for future delivery. *See* 15 U.S.C. 78ee(d); 17 CFR 240.31(a)(15).

[10] Currently, only two national securities exchanges—NQLX and OneChicago—trade security futures.

[11] *See* Securities Exchange Act Release No. 49014 (January 20, 2004), 69 FR 4018 (January 27, 2004) (File No. S7–05–04) ("Proposing Release").

calculation function should provide a clearer basis for the amounts collected. Moreover, a single methodology will be used for all SROs, thereby making the calculation process more straightforward and easier to understand. Finally, the likelihood of errors due to inconsistent interpretation of the terms of Section 31 would be reduced.

The proposal also sought to codify the SRO procedures that have proven effective in generating auditable and dependable results, while curbing others that have proven unreliable or are impractical to audit. One practice that the Commission believes has proven effective is calculating Section 31 fees based on data provided by the exchanges to a registered clearing agency that allow securities transactions negotiated on the exchange to clear and settle. This is the mechanism currently used to calculate Section 31 fees for the national securities exchanges that trade options. All options that trade on an exchange are cleared and settled by the Options Clearing Corporation ("OCC"), a clearing agency registered under Section 17A of the Exchange Act.[12] OCC and the options exchanges have established arrangements whereby OCC tabulates the aggregate dollar amount of sales of options that occur on the exchanges, based on the data captured by OCC's systems. OCC then calculates the Section 31 fees owed by the exchanges for that trading volume.[13]

The Commission believes that clearing data provide an accurate measure of trading volume because there are strong incentives for all market participants to ensure their accuracy. A registered clearing agency cannot transfer the correct amount of funds and securities between participant accounts to settle transactions without accurate data. Accordingly, the market participants involved have a strong incentive to detect and correct any errors prior to settlement so as to prevent an incorrect amount of funds or securities from being transferred. The internal and external audits of registered clearing agencies, as well as regulatory reviews performed by the Commission, enhance the reliability of clearing data. For all these reasons, the Commission believes that, in codifying a procedure for the calculation and collection of Section 31 fees, clearing data should be the primary source of the trading volumes for both the equities exchanges and the options exchanges. Thus, pursuant to the rules adopted by the Commission today, clearing data will serve as the primary basis for the Commission's calculations of Section 31 fees and assessments. This approach follows the arrangements among OCC and the options and security futures exchanges, although the Commission rather than OCC will perform the actual calculations. In addition, national securities exchanges that trade equity securities are henceforth required to provide the Commission with clearing data captured by the National Securities Clearing Corporation ("NSCC") as their primary source of the sales volume subject to Section 31 fees.

Comments on the proposal were generally positive. The Securities Industry Association ("SIA") stated that "the SEC has devised a reasonable approach that generally should yield accurate numbers and will enable the SEC to verify that correct amounts are being collected."[14] CHX stated that it "understands the Commission's desire to implement a more defined process for the collection of this data and, in general, agrees with the Commission's proposal to use clearing data for that purpose."[15] NYSE stated that it "support[s] the Commission's desire to make uniform the way in which the collection process is conducted among the various [SROs] subject to the Section 31 fee" and that it "believes that the desired approach is feasible."[16] A joint comment submitted by OCC and five options exchanges called the Commission's decision to rely on clearing data "well founded."[17]

However, one commenter, BSE, disagreed with the Commission's proposal to rely primarily on clearing data to determine the aggregate dollar amount of sales of equity securities that are subject to Section 31 fees.[18] According to BSE, "the proposal will require numerous exceptions which could likely lead to it becoming unworkable and inherently unreliable." BSE argued instead that the most appropriate source of data is each exchange's trade reporting system. Furthermore, BSE claimed that, by allowing one SRO (NASD) to report its sales volume based on its trade reporting system,[19] the Commission was unfairly endorsing that SRO's trade reporting system over the systems of other SROs.

As discussed above, the Commission believes that clearing data provide an accurate measure of trading volume. While the Commission acknowledges that certain sales of equity securities subject to Section 31 fees are not cleared and settled by NSCC, and thus do not appear in NSCC's clearing data, their number is not so great as to impair the use of clearing data as the Commission's primary source of trading volume. In the near term, exchanges that are subject to Section 31 must supplement clearing data by providing data captured in their own trade reporting systems. In time, NSCC and the equities exchanges may develop new means to bring more of these trades into the clearing record. This should further simplify Section 31 calculations as well as strengthen the risk management function that NSCC performs on behalf of the equities exchanges and broker-dealer participants.

Under the procedure proposed by the Commission and being adopted today, NASD is required to tabulate aggregate sales volume based on its own trade reporting systems rather than by obtaining clearing data. This approach should not be viewed as favoring one SRO's trade reporting system over another's. While the Commission believes that clearing data is the most accurate record of covered sales when it is available, the structure of the over-the-counter ("OTC") equity market—transactions on which NASD is liable for Section 31 fees—makes clearing data unavailable for a large volume of sales. Many internalized trades in equity securities, for example, are never reported to NSCC. Furthermore, the OTC market includes a large number of electronic communication networks ("ECNs") that might not provide NSCC with a trade-by-trade record of their activity. ECNs generally clear and settle their trades using the facilities of NSCC but are not required to provide a trade-by-trade record. Many ECNs report their trades to NSCC in their capacity as, or through, "qualified special

[12] 15 U.S.C. 78q–1.

[13] In addition, OCC clears and settles all transactions in security futures occurring on the two national securities exchanges that trade security futures. OCC tabulates the total number of round turn transactions in security futures and pays the Section 31 assessments on behalf of these exchanges.

[14] Letter from Ernest A. Pittarelli, Chairman, Securities Industry Association Operations Committee, to Jonathan G. Katz, Secretary, Commission, dated March 5, 2004 ("SIA Comment").

[15] Letter from David A. Herron, Chief Executive Officer, CHX, to Jonathan G. Katz, Secretary, Commission, dated February 26, 2004 ("CHX Comment").

[16] Letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated March 17, 2004 ("NYSE Comment").

[17] Letter from Amex, CBOE, ISE, OCC, PCX, and Phlx to Jonathan G. Katz, Secretary, Commission, dated March 1, 2004 ("OCC Comment").

[18] *See* letter from John A. Boese, Vice President, BSE, to Jonathan G. Katz, Secretary, Commission, dated March 16, 2004 ("BSE Comment").

[19] *See infra* notes 46–47 and accompanying text.

representatives" ("QSRs").[20] QSRs may net their trades and report to NSCC only net changes in positions. Without trade-by-trade data, the aggregate dollar amount of sales of securities cannot be determined for purposes of Section 31.

Internalized trades and trades reported through a QSR represent a substantial number of all sales of securities for which NASD incurs a liability to the Commission under Section 31,[21] and the Commission does not believe it would be practical to require NASD to separate these trades from other trades for which NSCC can obtain a complete trade-by-trade record. Therefore, in a case such as this where there are significant gaps in the clearing data, the Commission believes, on balance, that the best alternative is to rely on the SRO's trade reporting systems for the aggregate sales volume. However, in a case where an exchange (such as BSE) that has only a small number of ECNs (or only one ECN) that report trades directly to NSCC as a QSR, the exchange should obtain the data that it can from NSCC and supplement the clearing data by using its trade reporting systems to provide the sales volume transacted by the ECNs. The Commission believes that this approach will provide the most accurate record of the exchange's volume.

## II. Details of New Rule 31 and Form R31

### *A. Description of Rule*

Except for the modifications discussed below, the Commission is adopting new Rule 31 as proposed. Most of the proposed definitions did not generate comment.

Under new Rule 31, "covered exchanges"[22] and "covered associations"[23] (collectively, "covered SROs"[24]) are required to pay Section 31 fees and assessments in the manner set forth in the rule. These terms do not impose new liabilities on any entity; in the absence of a Commission rule, the same entities would be required by the statute to pay Section 31 fees and assessments.

Paragraph (b)(1) of new Rule 31 requires a covered SRO to submit to the Commission a completed Form R31 within ten business days after the end of each month.[25] A covered exchange must provide on Form R31 the aggregate dollar amount of all "covered sales"[26] and the total number of "covered round turn transactions"[27] occurring on the exchange; a covered association must provide the aggregate dollar amount of all covered sales and the total number of covered round turn transactions occurring by or through any member of the association otherwise than on a national securities exchange.[28] The Commission will calculate the amount of Section 31 fees due from a covered SRO by multiplying the aggregate dollar amount of its covered sales by the "fee rate,"[29] and the amount of Section 31 assessments due from a covered SRO by multiplying the total number of covered round turn transactions by the "assessment charge."[30] The fee rate is set by the Commission in a procedure set forth in Section 31(j) of the Exchange Act;[31] the assessment charge is set by Section 31(d) of the Exchange Act[32] and cannot be changed by the Commission. Rule 31 does not alter the manner in which either the fee rate or the assessment charge is determined.

As provided in Section 31(e) of the Exchange Act,[33] Section 31 fees and assessments are due twice per year, by March 15 and September 30. These are the two "due dates" in Rule 31.[34] The September 30 due date covers the period January 1 to August 31 of the same calendar year; the March 15 due date covers the period September 1 to December 31 of the preceding calendar year. These are the two "billing periods" in Rule 31.[35] Before each of the due dates, the Commission will send a "Section 31 bill" to each covered SRO showing the total amount due from the covered SRO for the billing period, as calculated by the Commission. The amount of a covered SRO's Section 31 bill will equal the sum of the covered SRO's monthly liabilities under Section 31 for each month in the billing period.[36] A covered SRO is required to pay the Commission the full amount stipulated in its Section 31 bill by the due date.[37]

Form R31 requires a covered SRO to report trade data in separate parts, depending on how the trades are reported and settled. Part I of Form R31 requires a covered exchange to provide the aggregate dollar amount of covered sales and the total number of covered round turn transactions that: (1) Occurred on the exchange; (2) had a "charge date"[38] in the month of the report; and (3) the exchange reported to a "designated clearing agency."[39] Also in Part I, a covered exchange that trades "physical delivery exchange-traded options"[40] or security futures that are

[20] A QSR is a member of NSCC that operates, has an affiliate that operates, or clears for a broker-dealer that operates an automated execution system where the designated clearing agency member is on the contra-side of every transaction. *See* Form R31 Instructions; NSCC Rule 39.

[21] The Commission has been informed that there are in excess of 20 ECNs trading in the OTC markets that may account for up to 50% of OTC volume.

[22] A "covered exchange" is "any national securities exchange on which covered sales or covered round turn transactions occur." 17 CFR 240.31(a)(5).

[23] A "covered association" is "any national securities association by or through any member of which covered sales or covered round turn transactions occur otherwise than on a national securities exchange." 17 CFR 240.31(a)(4).

[24] *See* 17 CFR 240.31(a)(8).

[25] *See* 17 CFR 240.31(b)(1).

[26] A "covered sale" is "a sale of a security, other than an exempt sale or a sale of a security future, occurring on a national securities exchange or by or through any member of a national securities association otherwise than on a national securities exchange." 17 CFR 240.31(a)(6). *See also infra* notes 52–54 and accompanying text (discussing "exempt sales").

[27] A "covered round turn transaction" is "a round turn transaction in a security future, other than a round turn transaction in a future on a narrow-based security index, occurring on a national securities exchange or by or through a member of a national securities association otherwise than on a national securities exchange." 17 CFR 240.31(a)(7).

[28] A covered sale occurring by or through a member of an association on a national securities exchange would create liability under Section 31 for the exchange rather than the association.

[29] The "fee rate" is the fee rate applicable to covered sales under Section 31(b) or (c) of the Exchange Act, 15 U.S.C. 78ee(b) or (c), as adjusted from time to time by the Commission pursuant to Section 31(j), 15 U.S.C. 78ee(j). *See* 17 CFR 240.31(a)(12).

[30] The "assessment charge" is the amount owed by a covered SRO for a covered round turn transaction pursuant to Section 31(d) of the Exchange Act, 15 U.S.C. 78ee(d). *See* 17 CFR 240.31(a)(1).

[31] 15 U.S.C. 78ee(j).

[32] 15 U.S.C. 78ee(d).

[33] 15 U.S.C. 78ee(e).

[34] *See* 17 CFR 240.31(a)(10).

[35] *See* 17 CFR 240.31(a)(2).

[36] *See* 17 CFR 240.31(a)(17) and (c)(1).

[37] *See* 17 CFR 240.31(c)(3). The covered SRO may pay its Section 31 bill directly or through a designated clearing agency acting as agent of the covered SRO. *See infra* Section II(B)(1).

[38] The "charge date" is the date on which a covered sale or covered round turn transaction occurs for purposes of determining the liability of a covered SRO pursuant to Section 31. The charge date is: (i) The settlement date, with respect to any covered sale (other than a covered sale resulting from the exercise of an option settled by physical delivery or from the maturation of a security future settled by physical delivery) or covered round turn transaction that a covered SRO is required to report to the Commission based on data that the covered SRO receives from a designated clearing agency; (ii) the exercise date, with respect to a covered sale resulting from the exercise of an option settled by physical delivery; (iii) the maturity date, with respect to a covered sale resulting from the maturation of a security future settled by physical delivery; and (iv) the trade date, with respect to all other covered sales and covered round turn transactions. *See* 17 CFR 240.31(a)(3); *see also infra* notes 56–64 and accompanying text (discussing revisions made to definition of "charge date" in final rule).

[39] A "designated clearing agency" means a clearing agency registered under Section 17A of the Exchange Act, 15 U.S.C. 78q–1, that clears and settles covered sales or covered round turn transactions. *See* 17 CFR 240.31(a)(9).

[40] A "physical delivery exchange-traded option" is "a securities option that is listed and registered on a national securities exchange and settled by the

settled by physical delivery of the underlying securities must separately report the aggregate dollar amount of covered sales that resulting from options exercises or matured security futures.[41]

Rule 31 requires a covered SRO to provide in Part I of Form R31 only the data supplied to it by a designated clearing agency.[42] A designated clearing agency, upon request, must provide the data in its possession needed by the covered SRO to complete Part I.[43] Under Rule 31, two entities currently meet the criteria for being "designated clearing agencies": OCC, which clears and settles transactions in options and security futures, and NSCC, which clears and settles transactions in equity securities. A covered SRO that trades both options and equities must obtain data from both designated clearing agencies and must separately report that data in Part I of Form R31. This will allow the Commission to distinguish the covered SRO's covered sale volume in equities from its covered sale volume in options.

Parts II and III of Form R31 are designed to capture data on covered sales that are not reported (or are not reported on a trade-by-trade basis) to a designated clearing agency. Part II requires a covered exchange to report the aggregate dollar amount of covered sales that: (1) Occurred on the exchange; (2) had a charge date in the month of the report; (3) the exchange did not report to a designated clearing agency; and (4) the exchange captured in a "trade reporting system."[44] The covered exchange is required to separate its Part II covered sales into those that were reported to a designated clearing agency by a QSR and those that were "ex-clearing transactions."[45] Thus, a covered exchange that permits its members to report exchange trades to NSCC through a QSR would include such trades in Part II of Form R31 rather than Part I. Although these trades are reported to NSCC for settlement, they must be included in Part II rather than Part I because they were not reported to a designated clearing agency by the covered exchange itself, as Part I requires.

In addition, Part II requires a covered association to provide the aggregate dollar amount of covered sales that: (1) Occurred by or through a member of the association otherwise than on a national securities exchange; (2) had a charge date in the month of the report; and (3) the association captured in a trade reporting system.[46] Thus, even if the covered association reports some of its covered sales to a designated clearing agency, the association should not report any of these covered sales in Part I. Instead, the association should rely on its trade reporting systems to provide data in Part II on all covered sales captured by those systems.[47]

Part III of Form R31 requires a covered exchange to report the aggregate dollar amount of covered sales that: (1) Occurred on the exchange; (2) had a charge date in the month of the report; and (3) the exchange neither captured in a trade reporting system nor reported to a designated clearing agency. Part III also requires a covered association to report the aggregate dollar amount of covered sales that: (1) Occurred by or through a member of the association otherwise than on a national securities exchange; (2) had a charge date in the month of the report; and (3) the association did not capture in a trade reporting system. The Commission anticipates that there will be very few if any Part III covered sales reported by the covered exchanges, because all trading activity should be captured by the exchanges' trade reporting systems. In the OTC market, however, various covered sales currently are not captured in an NASD trade reporting system. Therefore, NASD must report the following in Part III:

- Any covered sales in odd lots (*i.e.*, less than 100 shares) that are not captured in a trade reporting system (and thus not reported in Part II);[48]
- Covered sales resulting from the exercise of options settled by physical delivery and not listed or traded on a national securities exchange;[49] and
- Covered sales where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security.[50]

Currently, these trades are not captured in any trade reporting system. NASD employs a paper-based reporting system to obtain the trade volume for these sales and to calculate the Section 31 fees due on such volume.

Not every sale of a security is subject to Section 31 fees, and not every transaction in a security future is subject to Section 31 assessments. The statute itself exempts certain sales of securities and round turn transactions in security futures, and the Commission has exempted others pursuant to the authority granted by Section 31(f) of the Exchange Act.[51] As discussed below, paragraph (a)(11) of Rule 31 sets forth a comprehensive list of all sales of securities (other than security futures) that are exempt from Section 31 fees ("exempt sales").

Paragraphs (a)(11)(i) to (v) restate exemptions set forth in paragraphs (a) to (e) of former Rule 31–1. Paragraph (a)(11)(vi), which exempts any sale of an option on a security index, combines an exemption granted by statute (for a sale of an option on a non-"narrow-based security index"[52]) with an exemption that the Commission has previously granted by rule (for a sale of an option

physical delivery of the underlying securities." 17 CFR 240.31(a)(16).

[41] *See infra* Section II(B)(3) (revising the Commission's proposal relating to covered sales resulting from exercises of physical delivery exchange-traded options and from matured security futures).

[42] *See* 17 CFR 240.31(b)(5).

[43] *See* 17 CFR 240.31(b)(4)(i). *See also infra* Section II(B)(9) (discussing possible liability of a designated clearing agency).

[44] A "trade reporting system" is "an automated facility operated by a covered SRO used to collect or compare trade data." 17 CFR 240.31(a)(18).

[45] An "ex-clearing transaction" is a securities transaction that is not reported to a designated clearing agency and clears and settles otherwise than through a designated clearing agency. *See* Form R31 Instructions. A cash, next day, or seller's option trade that is reported to NSCC should be reported in Part I; a cash, next day, or seller's option trade that is not reported to NSCC should be reported in Part II (assuming this trade were captured in a trade reporting system). *See infra* Section II(B)(7).

[46] In paragraphs (b)(3)(ii) and (iii) of proposed Rule 31, the Commission inadvertently used the term "trade comparison system" to describe the facility in which a covered association captures trade data. In Rule 31 as adopted, the Commission has corrected this to the defined term "trade reporting system."

[47] Currently, there is one covered association, NASD. It operates two trade reporting systems within the meaning of Rule 31, the Automated Confirmation Transaction Service ("ACT") and the Trade Reporting and Confirmation Service ("TRACS"). TRACS is the trade reporting system for the Alternative Display Facility ("ADF"), a pilot system that NASD operates for members that choose to quote or effect trades in Nasdaq securities otherwise than through Nasdaq's SuperMontage system or on an exchange. *See* Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49821 (July 21, 2002) (approving ADF pilot). ACT is the trade reporting system for all other OTC equity trades that must be trade-reported pursuant to NASD rules.

[48] *See* NASD Rules 4632(e)(2), 6130(a), and 6420(e)(2).

[49] *See* NASD Rules 4632(e)(6), 4642(e)(5), and 6420(e)(8) (providing that "purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market" need not be reported to ACT).

[50] *See* NASD Rules 4632(e)(5), 4642(e)(4), 6420(e)(5), and 6920(e)(2) (providing that transactions at a price unrelated to the current market—for example, to make a gift—need not be reported to ACT). A gift of a security without consideration is not a "sale" for purpose of Sections 31(c) of the Exchange Act, 15 U.S.C. 78ee(c), and is not subject to Section 31 fees. However, if consideration is given for the securities, even if that consideration is not at the current market price, the transaction is a covered sale, provided the securities in question are registered on a national securities exchange. *See* 15 U.S.C. 78ee(c).

[51] 15 U.S.C. 78ee(f).

[52] A "narrow-based security index" has the same meaning as in Section 3(a)(55)(B) and (C) of the Exchange Act, 15 U.S.C. 78c(a)(55)(B) and (C). *See* 17 CFR 240.31(a)(13).

on a narrow-based security index).[53] The net result is that the sale of an option on any security index—be it narrow-based or non-narrow-based—is exempt from Section 31 fees. Paragraph (a)(11)(vi) of new Rule 31 clarifies this point. Paragraph (a)(11)(vii) of new Rule 31 incorporates language from the statute that specifically exempts sales of bonds, debentures, and other evidences of indebtedness. Paragraph (a)(11)(viii) creates a new exemption for "registered riskless principal sales."[54]

Section 31 applies only to *sales* of securities, not to purchases of securities; a covered SRO incurs liability to the Commission under Section 31 for only one side (the sell side) of the transaction. Thus, all of the exemptions listed in paragraph (a)(11) of new Rule 31 are only for certain sales of securities because Section 31 does not impose fees on purchases of securities.

Currently, one type of security futures transaction is exempt from assessments under Section 31: a round turn transaction in a future on a narrow-based security index.[55] This exemption is incorporated directly into the definition of "covered round turn transaction" in paragraph (a)(7) of new Rule 31.

The Commission adopted the definitions in Rule 31 as proposed, with the following exceptions:

*Billing Period.* The Commission is making a minor revision to the definition of "billing period," by changing the words "to the close of" to "through" in two places. Thus, the two billing periods under Rule 31 are "January 1 through August 31" and "September 1 through December 31." The Commission believes that the final definition preserves the intended meaning but with greater economy of words.

*Charge Date.* One commenter stated: "In light of the totality of the burden and duplicity of effort which would result from the proposed rules, [the commenter] does not believe that the issue of charge dates adds significantly to the endeavor."[56] Two other commenters asked for clarification as to whether the equities exchanges should use the trade date or the settlement date as the charge date for covered sales under Rule 31.[57] One of these commenters noted that some SROs have traditionally used the trade date and may be reluctant to change.[58]

The Commission believes that the concept of a "charge date"—clearly defined and consistently applied across markets—is necessary for establishing an accurate and reliable system for calculating and collecting Section 31 fees and assessments. Section 31 establishes two billing periods over the course of the year (January 1 through August 31 and September 1 through December 31). Any system for calculating fees and assessments must, among other things, specify whether a trade that is negotiated at the end of August but not settled until the beginning of September "occurs" in August or September for purposes of Section 31. Covered SROs also must determine whether a trade "occurs" before or after a fee rate change, so that the appropriate aggregate dollar amounts of securities sales are multiplied by the correct fee rate. Under existing arrangements for the collection and payment of Section 31 fees, covered SROs make these determinations, albeit implicitly.[59] New Rule 31 codifies and makes explicit the charge date concept.[60]

However, the Commission believes that certain changes to the definition of "charge date" are appropriate. As discussed below,[61] the OCC Comment is prompting the Commission to revise the manner in which covered sales resulting from options exercises and matured security futures are being treated under Rule 31. The Commission believes that, in light of this revision, it would be helpful to clarify the definition of "charge date" to specify when covered sales resulting from options exercises or matured security futures "occur" for purposes of Section 31. The proposed definition was as follows:

> *Charge date* means the date on which a covered sale or covered round turn transaction occurs for purposes of determining the liability of a covered SRO pursuant to section 31 of the Act. The charge date is the settlement date with respect to a covered sale or a covered round turn transaction that a covered exchange reports to a designated clearing agency. The charge date is the trade date with respect to a covered sale occurring on a covered exchange that the exchange does not report to a designated clearing agency, and with respect to any covered sale occurring otherwise than on a national securities exchange.

The Commission is adopting the first sentence of the definition as proposed and replacing the remaining sentences as follows:

> The charge date is: (i) The settlement date, with respect to any covered sale (other than a covered sale resulting from the exercise of an option settled by physical delivery or from the maturation of a security future settled by physical delivery) or covered round turn transaction that a covered SRO is required to report to the Commission based on data that the covered SRO receives from a designated clearing agency; (ii) The exercise date, with respect to a covered sale resulting from the exercise of an option settled by physical delivery; (iii) The maturity date, with respect to a covered sale resulting from the maturation of a security future settled by physical delivery; and (iv) The trade date, with respect to all other covered sales and covered round turn transactions.

Under the proposed definition, the charge date of covered sales resulting from options exercises or matured security futures would have been the trade date. But because the physical delivery of equity securities underlying an option or security future is not effected by a trade on a public market, the Commission believes that it would be more appropriate to employ the terms "exercise date" and "maturity date," which are more specific to the type of transaction being undertaken. Trade date, exercise date, and maturity date are substantively similar in that, on these dates, instructions to effect a sale of securities are issued. They contrast with the settlement date, which is the date on which the movement of funds and securities between the accounts of the trade counterparties has been completed.

Rules 31 and 31T and Form R31 require covered exchanges to obtain from one or more designated clearing agencies a tabulation of the aggregate dollar amount of their covered sales and to report that data to the Commission in Part I of Form R31. For covered sales of options and equity securities that a covered exchange reports to a designated clearing agency, the Commission believes that the settlement date is the most practical charge date. A designated clearing agency knows the settlement date for every trade that it clears and settles. The Commission has determined to use the settlement date rather than the trade date as the charge

[53] *See* Securities Exchange Act Release No. 45371 (January 31, 2002), 67 FR 5199 (February 5, 2002).

[54] *See infra* Section II(B)(8).

[55] *See* former Rule 31–1(g) under the Exchange Act, 17 CFR 240.31–1(g).

[56] BSE Comment.

[57] *See* letter from Donald F. Donahue, President, National Securities Clearing Corporation, Inc., to Jonathan G. Katz, Secretary, Commission, dated May 12, 2004 ("NSCC Comment"); NYSE Comment.

[58] *See* NYSE Comment.

[59] As a general matter, NASD and the equities exchanges currently use the trade date as the basis for Section 31 calculations, while OCC, the options exchanges, and the security futures exchanges use the settlement date. However, for sales of securities resulting from the maturation of security futures or the exercise of physical delivery exchange-traded options, OCC bases its Section 31 calculations on the date of maturation or exercise.

[60] Rule 31 requires covered SROs to submit Form R31 on a monthly basis, so there will be 11 additional occasions (other than the August/September transition and any transitions caused by fee rate changes) when a discrepancy might arise as to when a sale "occurred."

[61] *See infra* Section II(B)(3).

date in these cases because it would be more burdensome for a designated clearing agency to track the trade date than the settlement date. This approach codifies the existing methods used by OCC to calculate Section 31 fees for the options exchanges and Section 31 assessments for the security futures exchanges. The Commission believes that the settlement date also should be used as the charge date for all covered sales that a covered exchange reports to NSCC.

For covered sales resulting from the exercise of an option settled by physical delivery or from the maturation of a security future settled by physical delivery,[62] the charge date is the exercise date or the maturity date, respectively. The Commission is employing exercise date and maturity dates as charge dates under these circumstances because OCC already tabulates these sales based on exercise date and maturity date, and codifying this approach will place the least amount of burden on the designated clearing agencies and covered SROs, while satisfying the Commission's need to obtain accurate data on covered exchanges' trading volume.

For all covered sales reported in Part II of Form R31, the charge date is the trade date. The Commission believes that it would be impractical for covered SROs to use the settlement date for such sales. Part II is designed to capture covered sales the records of which cannot be obtained, or cannot be obtained on a trade-by-trade basis, from a designated clearing agency. Instead, information on these covered sales will be obtained from a covered SRO's trade reporting system. For these trades, the Commission believes that the only practical choice for a charge date is the trade date. Part III data also will use the trade date for the charge date, with one exception: The charge date for covered sales resulting from the exercise of OTC options that settle by physical delivery will be the exercise date.[63]

By taking the approach of having different charge dates in different circumstances, a different fee could arise from essentially the same trade depending on whether it occurred on an exchange or OTC. Under Rule 31, a covered association will use the trade date as the charge date for all of its covered sales, while a covered exchange will use the settlement date for any covered sale that it reports to NSCC. The Commission notes that the potential for a different fee rate applying will arise only the few days before a fee rate change goes into effect. Moreover, the Commission believes that applying different charge dates to different covered SROs in these limited circumstances will create no significant arbitrage opportunities that might affect order-routing practices.[64]

*Fee Rate.* The Commission made minor, non-substantive changes to the definition of "fee rate." The Commission made this revision to harmonize the manner in which sections of the Exchange Act are cited throughout Rule 31.

*B. Issues Raised by Commenters*

The Commission received nine comments on the proposal.[65] Many of these comments discussed specific issues relating to the proposed rules. The Commission's responses to these comments appear below.

1. Section 31 Payments Made by Agent

The Commission proposed to require every covered SRO to pay its Section 31 fees or assessments directly to the Commission rather than through an agent, but requested comment on whether designated clearing agencies should be permitted to make payments on behalf of covered SROs.[66] Three comments disagreed with this proposal.[67] One comment, submitted jointly by OCC and five exchanges for which OCC clears and settles options transactions, stated that OCC presently calculates and pays Section 31 fees to the Commission on behalf of the options exchanges[68] and urged the Commission to continue to allow this arrangement.[69] After carefully considering the comments submitted, the Commission believes it is reasonable to continue the current practice of allowing a designated clearing agency to pay Section 31 fees and assessments on behalf of one or more covered exchanges. Therefore, the Commission has added the phrase "directly or through a designated clearing agency acting as agent" to paragraph (c)(3) of Rule 31 to specify that the payment need not be made directly by the covered SRO. However, ultimate responsibility for making the payment remains with the covered SRO. If the Commission does not receive the total amount stipulated in a covered exchange's Section 31 bill by the due date, the covered exchange—not the designated clearing agency—will be in violation of Rule 31 (or temporary Rule 31T).[70]

2. Timeframe for Submission of Form R31

Paragraph (b)(1) of Rule 31 requires every covered SRO to submit a completed Form R31 to the Commission within ten business days after the end

[62] There must be physical delivery of the underlying securities for there to be a covered sale. The cash settlement of a derivative product does not result in a covered sale.

[63] Currently, Section 31 fees on these covered sales are paid by NASD and NASD collects data on these transactions from its members using a paper-based reporting system.

[64] The following example will demonstrate the effect of a different charge date applying during a transitional period created by a fee rate change. Assume that equity security XYZ is traded on covered exchange E and OTC through members of covered association A, and that a fee rate increase becomes effective on April 1. Therefore, for the last three business days of March, a different fee rate will apply based on whether XYZ is traded OTC through members of association A (which will use the lower fee rate) or on exchange E (where the trades will not "occur" until they are settled in April, thus making them subject to the higher fee rate). However, the size of the difference is likely to be very small. For example, on April 1, 2003, the Commission implemented the largest increase in the fee rate since Congress amended Section 31 to allow fee rate changes. The Commission increased the fee rate from $25.20 per million of sales transacted to $46.80 per million, an increase of $21.60 per million. For a covered sale having the principal amount of $25,000, this fee rate differential would result in an extra charge to B of only $0.54 ($21.60/$1 million × $25,000). This example also assumes that exchange E reports its covered sales to NSCC for clearance and settlement, broker B is a member of both E and A, and both E and A pass Section 31 fees to their members.

[65] *See* e-mail from Thomas J. Westergard to *rule-comments@sec.gov* dated February 23, 2004; letter from William O'Brien, Chief Operating Officer, Brut LLC, to Commission, dated March 8, 2004 ("Brut Comment"); letter from Kathleen O'Mara, Associate General Counsel, NASD, to Jonathan G. Katz, Secretary, Commission, dated April 30, 2004 ("NASD Comment"); BSE Comment; CHX Comment; OCC Comment; NSCC Comment; NYSE Comment; SIA Comment.

[66] *See* Proposing Release, 69 FR at 4026.

[67] *See* BSE Comment; NSCC Comment; OCC Comment.

[68] OCC also calculates and pays Section 31 assessments to the Commission on behalf of the two security futures exchanges, although these exchanges were not signatories to the OCC Comment. In addition, since the Commission proposed Rule 31, a sixth national securities exchange—BSE—has started to trade options through its facility, the Boston Options Exchange. OCC clears and settles options transactions negotiated on BSE. BSE, like the security futures exchanges, was not a signatory to the OCC Comment.

[69] The BSE Comment agreed with the position taken by OCC and the other five options exchanges. In its comment, NSCC stated generally that it agreed with the view that designated clearing agencies should be able to submit payment on behalf of covered SROs but that it had not yet determined "if this is a service it could reasonably provide to a covered SRO."

[70] The Commission expects that a designated clearing agency will clearly indicate the amount that it is paying on behalf of each covered exchange for which it is acting as agent. If a covered exchange has requested a designated clearing agency to pay some or all of its Section 31 fees and assessments on its behalf, the Commission also expects that the covered exchange will indicate the total amount that it owes, the amount that it is submitting to the Commission directly, and the amount to be expected from a designated clearing agency.

of the month.[71] One commenter, NASD, recommended instead that covered SROs be allowed 12 business days.[72] In its comment, NASD stated that it currently allows its members to submit trade data for odd-lot transactions and exercises of OTC options by the tenth calendar day of each month, and thus that it might not have sufficient time to compile this information for reporting in Part III of Form R31.

The Commission is adopting this provision as proposed, with only a minor technical change.[73] The Commission believes that a maximum of ten business days is necessitated by external requirements to which the Commission is subject. First, as the Commission has previously noted, Section 31 requires each covered SRO to make a payment no later than 30 days after the close of the January-through-August billing period (on September 30).[74] To allow sufficient time for the Commission to prepare and send the Section 31 bills before September 30, and for the covered SROs to pay the bills, the Commission believes it must receive the data on the Form R31 submissions no later than the middle of the month. Second, in addition to the obligation to prepare audited financial statements annually, the Commission is required to submit unaudited financial statements to the Office of Management and Budget ("OMB") within 21 days after the end of each quarter. For the Commission to meet this requirement, it must determine and book its accounts receivable within this very short time frame. Thus, the Commission believes that ten business days strikes an appropriate balance between allowing the covered SROs sufficient time to tabulate and submit their trade data and the Commission's need to meet external deadlines set by the Exchange Act and the accounting requirements to which the Commission is subject.

The Commission does not believe that the NASD Comment raises any issue that precludes adopting the ten-business-day requirement. The Commission notes that paragraph (b)(1) of Rule 31 allows covered SROs ten business days in which to submit a completed Form R31, while NASD's rules require members to submit their Part III trade data within ten calendar days. Because of weekends, NASD always will have at least two business days from when the member data is due and when the aggregate data that is self-reported by the members must be provided on Form R31. Moreover, if NASD finds that two business days is not sufficient time, NASD might wish to consider reducing the time frame within which its members must self-report their trade data or to examine ways to systematize the submission of this data and thereby reduce the time that it spends processing the paper forms.[75]

3. Settlement by Physical Delivery

Options are settled by one of two methods: Cash settlement or physical delivery of the underlying securities. In the former case, the option is settled by payment of the difference between the strike price of the option and the market price of the underlying security or security index. Because there is no sale of securities upon exercise of a cash-settled option, no SRO incurs a Section 31 liability upon settlement. With physical delivery, on the other hand, one party must sell to the other party (at the strike price) the underlying securities to fulfill the option contract. Such sale would create Section 31 liability for the covered exchange on which the related option had been traded.

Presently, Section 31 fees for sales of securities resulting from the exercise of physical delivery exchange-traded options are paid to the Commission by OCC on behalf of the options exchanges. When OCC receives notice that an option held in the account of one of its participants is being exercised, OCC instructs NSCC to move funds and securities between NSCC participant accounts to effect the exercise. OCC also calculates the Section 31 fees on such covered sales and includes these fees as part of its aggregate Section 31 payment to the Commission.[76] OCC currently does not assign the sales of securities resulting from such exercises to a particular SRO.

As stated in the Proposing Release, the Commission believes that it is not appropriate for these fees to be combined in a single payment that obscures the SRO on whose behalf the payment is being made.[77] Each covered SRO is individually liable for Section 31 fees and assessments; therefore, the Commission should be able to match each Section 31 payment with the specific covered SRO that had the legal duty to make it. Because OCC had informed the Commission that it would be extremely costly and difficult for it to configure its systems to trace the exchanges on which physical delivery exchange-traded options are originally sold,[78] the Commission proposed instead to deem the exercise sales as occurring OTC for purposes of Section 31 and to assign them to the covered association by or through the members of which the sales of the underlying securities were effected.[79] The Commission acknowledged in the Proposing Release that this arrangement would represent a departure from current practices. Nevertheless, the Commission believed this was the least burdensome means of accomplishing the necessary goal of assigning these exercises to a specific covered SRO.

Two comments disagreed with this approach,[80] arguing that the proposal would be unduly burdensome for NASD (the covered association that would have been assigned Section 31 liability for these covered sales), OCC, and the options exchanges. Nevertheless, OCC and the options exchanges recognized the Commission's concern to assign every covered sale to a specific covered SRO and recommended a method of assigning covered sales resulting from options exercises. While the OCC Comment states that it is still impractical to trace options back to the exchange on which they were traded, it suggests that a reasonable proxy would be the exchange's *pro rata* share of the dollar volume from the previous month of all options settled by physical delivery.

The Commission agrees with this suggestion and is incorporating it into

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[71] 17 CFR 240.31(b)(1).

[72] *See* NASD Comment.

[73] The Commission added the words "a completed" between the words "submit" and "Form R31" in paragraph (b)(1) to emphasize that only a submission that includes all relevant data and that has been properly executed complies with the filing requirements of new Rules 31 and 31T.

[74] *See* Proposing Release, 69 FR at 4022, n.37. The other billing period allows for two and a half months between the close of the period (December 31) and the due date for payment (March 15).

[75] In addition, one commenter stated that ten business days would be enough time under the proposal, but that "[t]he real burden would be the daily reconciliation required between the information reported back to the exchanges by NSCC and the exchange's own trade reporting systems." BSE Comment. This comment is addressed in Section VII(D)(1)(b), *infra*.

[76] For example, assume that X is long 10 put options and Y is short 10 put options, and that X and Y hold accounts at OCC and NSCC. The security underlying the options is ABC, the strike price is $20, and the options are settled through physical delivery. X elects to exercise the put options and the exercise is assigned to Y. Y now must buy from X 1000 shares of ABC (10 puts x 100 shares underlying each put) for a price of $20,000 ($20/share × 1000 shares). OCC instructs NSCC to move $20,000 from Y's NSCC account to X's NSCC account and to move 1000 shares of ABC from X's NSCC account to Y's NSCC account. OCC also deducts a fee from X's OCC account in the amount of $20,000 times the Section 31 fee rate in effect when the exercise occurs.

[77] *See* Proposing Release, 69 FR at 4022.

[78] OCC stated that this is because the exercise of an option takes place through instructions communicated by the holder of the option to OCC, rather than by instructions given to an exchange. *See* OCC Comment.

[79] *See* paragraph (b)(3)(i) of proposed Rule 31.

[80] *See* NASD Comment; OCC Comment.

the final rule by adding new paragraph (b)(4)(ii) to Rule 31. This paragraph explains the manner in which a designated clearing agency must conduct this *pro rata* attribution.[81] The Commission also has added new text to paragraph (b)(2)(ii) of Rule 31 to recognize that a covered exchange, rather than a covered association, must report in Part I of its Form R31 the aggregate dollar amount of covered sales resulting from the exercise of physical delivery exchange-traded options, as reflected in the data provided by a designated clearing agency that clears and settles options or security futures. Proposed paragraph (b)(3)(i), which would have required a covered association to report the aggregate dollar amount of covered sales resulting from the exercise of physical delivery exchange-traded options, has been deleted.[82] Corresponding changes have been made to Form R31.

In light of the OCC Comment, the Commission believes it would be appropriate to treat covered sales resulting from the maturation of security futures settled by physical delivery in the same manner because the means by which the underlying securities are transferred is substantially similar. A security future is a standardized contract between two parties to trade a security at a specific future date. If the security future is settled by physical delivery, one party upon maturation of the security future is required to sell to the other party the underlying securities at a predetermined price, which could result in a covered sale. As with physical delivery exchange-traded options, OCC currently pays Section 31 fees on behalf of covered exchanges that trade security futures but does not identify the amount being paid on behalf of each exchange. The Commission believes that a reasonable proxy for the actual dollar amount of sales of securities resulting from the maturation of security futures would be a covered exchange's *pro rata* share of the volume of all security futures settled by physical delivery and traded on all covered exchanges in the previous month. This approach is reflected in paragraphs (b)(2)(ii) and (b)(4)(ii) of Rule 31, as adopted.

4. Brut Comment

One commenter, Brut, is an ECN that currently reports trades to the consolidated tape through BSE. However, BSE generally does not report Brut's trades to NSCC for clearance and settlement. Instead, Brut reports its trades to NSCC either directly, in its capacity as a QSR, or indirectly, through the facilities of a second SRO (generally NASD).[83] Brut urged the Commission to provide guidance that would prevent it from being double-billed for transactions reported in this manner.[84]

The Commission does not believe that Brut's comment requires any revisions to the proposed rule. Under Rule 31 as proposed and as adopted, a covered exchange must report to the Commission on Form R31 only covered sales that occur on that exchange.[85] Similarly, a covered association must report only covered sales that occur by or through any member of the association otherwise than on a national securities exchange.[86] Thus, a covered association may report a covered sale in its Form R31 data only if the sale did not occur on a national securities exchange, even if an ECN submitted a clearing-only report to the covered association for that sale. In cases where an ECN reports a covered sale to a covered exchange for purposes of printing the sale to the consolidated tape, the Commission, for purposes of Section 31, will consider the covered sale to have occurred on the covered exchange. Thus, the covered exchange rather than the covered association is required to report the covered sale on its Form R31.

Any covered association that receives and forwards clearing-only reports to a designated clearing agency for trades that occur on a covered exchange should ensure that these trade reports are not tabulated as part of the association's covered sales. A covered association may need to coordinate with its ECN members to ensure that these trades are properly marked so that the association can filter them out of the trade data that the covered association tabulates on Form R31.

5. Assigning Trades to the Appropriate Covered SRO

The CHX Comment asked the Commission to address how the new rules will treat sales of securities that occur through the Intermarket Trading System ("ITS").[87] CHX described the following situation: SRO A sends an ITS commitment to a member of SRO B to sell a security, and the commitment is executed on SRO B. Under existing arrangements, SRO A pays the Section 31 fee arising from this trade and passes the fee to its member that initiated the trade. According to CHX, the SROs have devised this system because SRO B does not have the ability to require members of SRO A to reimburse it for the cost of its Section 31 fees. CHX stated that "[p]roposed Rule 31 might be read to suggest that SRO B should pay the fee on the transaction—because it occurred on SRO B—but that outcome is not consistent with current practice." CHX requested the Commission to provide guidance on both the ITS situation and other similar circumstances.

One such circumstance was described in a no-action letter sent by the Commission's Division of Market Regulation to CHX and NASD in March 2001.[88] The no-action letter was precipitated by the following facts. Securities that are listed and traded on Nasdaq also may be traded on a national securities exchange, such as CHX, pursuant to unlisted trading privileges ("UTP").[89] CHX specialists can trade

[81] The following example will illuminate how new paragraph (b)(4)(ii) of Rule 31 will operate. Assume that OCC is required by Rules 31 and 31T to provide exchange E with clearing data to complete its Form R31 for September 2003. Assume also that exchange E in August 2003 accounted for 10% of the aggregate dollar amount of covered sales of options that settled by physical delivery. For September 2003, OCC should allocate to exchange E 10% of the aggregate dollar amount of covered sales resulting from the exercise of physical delivery exchange-traded options and having a charge date in September 2003. For purposes of the *pro rata* allocation, exchange E's volume of cash-settled options is irrelevant. A cash-settled option cannot lead to a covered sale of the underlying securities, so the volume of cash-settled options should not be included in the proxy for exercise volume.

[82] The remaining portions of paragraphs (b) and (c) have been renumbered accordingly.

[83] Brut stated that it often submits trades to ACT at the request of clients that utilize the risk-management functionality that ACT offers. *See* Brut Comment.

[84] The Commission notes that neither Section 31 of the Exchange Act nor any Commission rule imposes fees on Brut or any other broker-dealer for covered sales. Section 31 does not give the Commission authority to assess fees on any broker-dealer. These fees are imposed on Brut by the SRO(s) of which it is a member. *See infra* Section IV.

[85] *See* 17 CFR 240.31(b)(2).

[86] *See* 17 CFR 240.31(b)(3).

[87] ITS is a National Market System plan approved by the Commission pursuant to Section 11A of the Exchange Act, 15 U.S.C. 78k–1, and Rule 11Aa3–2 thereunder, 17 CFR 240.11Aa3–2. ITS was developed to facilitate intermarket trading in exchange-listed equity securities based on the current quotation information emanating from the linked markets. Securities eligible for trading through ITS include securities listed or traded pursuant to unlisted trading privileges on NYSE, Amex, or a regional exchange that substantially meets the listing requirements of NYSE or Amex. ITS enables a broker-dealer that is physically present in one market center to execute orders, as principal or agent, in an ITS security at another market center.

[88] *See* letter from Annette L. Nazareth, Director, Division, Commission, to Paul O'Kelly, Executive Vice President, CHX, and James Shelton, Associate Director, NASD, dated March 5, 2001.

[89] *See* 15 U.S.C. 78*l*(f) (setting forth the circumstances in which a national securities exchange may trade securities pursuant to UTP). *See also* Securities Exchange Act Release No. 45081 (November 19, 2001), 66 FR 59273 (November 27,

Continued

these securities either on CHX itself or through a Nasdaq execution system.[90] In cases where a CHX specialist sells a Nasdaq security through a Nasdaq system, both CHX and NASD were collecting and paying the Section 31 fees associated with this trading volume. To avoid the double payment, CHX and NASD established an arrangement whereby CHX would be the SRO responsible for collecting and paying Section 31 fees for these sales. In its March 2001 letter, the Division raised no objection to this arrangement.

After carefully considering the CHX Comment and the situation raised in the March 2001 no-action letter, the Commission has determined to adopt Rule 31 as proposed. The adoption of Rule 31, therefore, rescinds the position taken by Commission staff in the no-action letter, and covered SROs may need to revisit current arrangements they may have for reassigning liability for Section 31 fees. Section 31(b) of the Exchange Act provides that a national securities exchange must pay a fee to the Commission based on the aggregate dollar amount of covered sales "transacted on such national securities exchange."[91] In the ITS situation discussed above, the sale is not "transacted" on CHX because the CHX member has routed the order through ITS for execution at another exchange. Similarly, in the case of a Nasdaq security sold by CHX members through a Nasdaq system, the sale is not "transacted" on CHX. Therefore, the Commission concludes that CHX does not have Section 31 liability for such covered sales.

Besides adhering to the terms of the governing statute, this approach should simplify the tabulation of the covered sales occurring at each SRO and thereby facilitate the creation of auditable records of the fees calculated and collected by the Commission. The Commission believes that it would be needlessly complicated to devise special provisions on Form R31 for a covered exchange to record covered sales that in fact occurred in another market. Great care would have to be taken to ensure not only that these "away transactions" were properly tabulated and recorded on the Form R31 of the covered exchange that routed them away, but also that they were *not* recorded as part of the covered sales of the covered SRO where the orders were executed. The Commission believes it will be simpler and more transparent for each covered SRO to report all covered sales that occur on its market.

The Commission acknowledges that a covered SRO on which a covered sale occurs as a result of an incoming ITS order may not be able to collect funds to pay the Section 31 fee from one of its own members. However, Section 31 does not address the manner or extent to which covered SROs may seek to recover the amounts that they pay pursuant to Section 31 from their members. Covered SROs may wish to devise new arrangements for passing fees between themselves so that the funds are collected from the covered SRO that originated the ITS order.[92] The legal duty to pay the Section 31 fee, however, remains with the covered SRO on which the sale was in fact transacted.

6. No De Minimis Exemption

In the Proposing Release, the Commission asked whether it would be appropriate for Rule 31 and Form R31 to include a *de minimis* exemption from the obligation to provide the aggregate dollar amount of covered sales that are ex-clearing trades.[93] Under this suggested approach, a covered exchange would not be required to tabulate and report the aggregate dollar amount of covered sales for Part II of Form R31, if the exchange certified that the amount was below a certain threshold. The Commission also sought comment on what would be an appropriate threshold. In its comment letter, CHX stated that over a 30-day time period it averaged five ex-clearing trades per day with an average daily value of $16.5 million. CHX urged the Commission to adopt a *de minimis* exemption from Rule 31 for these transactions until such time as they could be systematically tabulated by NSCC and thereby included in Part I of Form R31.

The Commission does not believe that commenters have provided sufficient rationale to warrant the creation of a *de minimis* exemption for reporting ex-clearing trades. Even though these covered sales cannot be included in the Part I data, the Commission believes that they can be provided in Part II without undue difficulty. In CHX's case, the Commission believes that it would be inappropriate to exempt sales representing such a significant dollar amount, and that tabulating and reporting such a small number of covered sales should not be unduly burdensome.[94] Furthermore, if the Commission were to exempt these sales, the result this fiscal year would[95] result in some amount of foregone fees.[96]

7. Cash, Next-Day, and Seller's Option Trades

Generally, when a trade is forwarded to a registered clearing agency for settlement, the clearing agency will settle the trade in three business days (*i.e.*, T+3). However, a covered sale might be settled other than through the regular T+3 settlement process. For example, a covered sale might settle by cash payment on the same day (*i.e.*, T+0), next day (*i.e.*, T+1), or seller's option (*i.e.*, the seller may choose the date on which it wishes the trade to settle). In its comment letter, NSCC stated that it and the covered SROs will have to reach a common understanding for the treatment of cash, next-day, and seller's option trades for purposes of Rule 31.

NSCC has records of cash, next-day, and seller's option trades occurring on NYSE and Amex since before September 1, 2003. For the other covered

2001) (extending UTP eligibility to all Nasdaq securities).

[90] At the time of the no-action letter, the relevant Nasdaq execution system was SelectNet. However, Nasdaq has since replaced SelectNet with SuperMontage. *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (approving SuperMontage).

[91] 15 U.S.C. 78ee(b).

[92] Any such arrangement would have to be established pursuant to Section 19(b) of the Exchange Act, 15 U.S.C. 78s(b), and Rule 19b–4 thereunder, 17 CFR 240.19b–4.

[93] *See* Proposing Release, 69 FR at 4025.

[94] The Commission notes that, in a previous case where it granted an exemption from Section 31, the amounts in question were smaller and the costs of tracking the transactions involved much greater. *See* Securities Exchange Act Release No. 45371 (January 31, 2002), 67 FR 5199 (February 2, 2002). In this matter, the Commission exercised its authority under Section 31(f) of the Exchange Act, 15 U.S.C. 78ee(f), to exempt sales of options on narrow-based security indexes from Section 31 fees. In the absence of the exemption, an exchange trading such options would have to monitor the value of the underlying indexes on almost a moment-by-moment basis and pay Section 31 fees on option sales only when an index fell under the definition of "narrow-based." The Commission noted that the fees paid by exchanges for all sales of options on indexes that were, or in the near future might become, narrow-based was below $35,000. The Commission concluded that an exemption was warranted "[i]n light of currently low dollar volume of sales of options on narrow-based security indexes and the resources that exchanges and associations must devote to monitoring the narrow-based status of the underlying indexes." 67 FR at 5200. However, the Commission noted that, to the extent that the dollar volume of sales of options on narrow-based security indexes might increase, the Commission might reevaluate whether the exemption were warranted. *See id.*

[95] In later years, however, exempting these sales would result in a higher fee rate on the remaining non-exempt sales. *See* 15 U.S.C. 78ee(j) (requiring the Commission to adjust the fee rate to attain the target offsetting collection amount).

[96] Currently, the fee rate is $23.40 per million dollars of covered sales. *See* Securities Exchange Act Release No. 49332 (February 27, 2004), 69 FR 10278 (March 4, 2004) (making mid-year adjustment to fee rate). Absent an exemption, CHX would owe the Commission $386.10 per day for this $16.5 million of covered sales ($16.5 million/day × $23.40/million) or approximately $8,494.20 per month (assuming 22 business days/month × $386.10/day).

exchanges, NSCC did not begin receiving trade reports of cash, next-day, and seller's options trades until mid-April 2004. For any month in which NSCC has data on covered sales resulting from cash, next-day, and seller's option trades, NSCC should provide that data to the respective covered exchanges for inclusion in Part I of Form R31. For any covered sales resulting from cash, next-day, or sellers option trades that a covered exchange did not report to NSCC, the covered exchange should treat these as ex-clearing transactions and report them in Part II (assuming that such trades were captured in the exchange's trade reporting system).

8. Transactions With Multiple Parties

Several commenters asked whether certain transactions involving multiple parties would be treated as a single covered sale under Rule 31.[97] Some of the transactions mentioned by the commenters involve only a single trade on a securities market, coupled with a prior arrangement between one of the trade counterparties and a third party to shift the settlement obligations for the trade to the third party.[98] To that extent, the Commission believes that these transactions include only one covered sale under Rule 31. However, one type of multi-party transaction—a so-called "riskless principal" transaction—may result in either one covered sale or two, depending on the circumstances. In a "riskless principal" transaction, a broker-dealer receives an order from a customer to buy (sell) a security, purchases (sells) the security as principal from (to) a third party, and immediately sells (buys) the security to (from) the customer at the same price. The broker-dealer's position can be considered riskless to the extent that the two transactions offset each other and the broker-dealer incurs no net liability to its principal account. Nevertheless, a riskless-principal transaction differs from the other multi-party transactions mentioned by the commenters in that two separate executions occur on an exchange or an OTC market.

The Commission may relieve an SRO from incurring a Section 31 liability for a particular type of sale of securities by exercising its authority under Section 31(f), which states: "The Commission, by rule, may exempt any sale of securities or any class of sales of securities from any fee or assessment imposed by [Section 31], if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system." [99] The Commission hereby finds that, subject to certain conditions discussed below, an exemption from Section 31 fees for the second of two offsetting principal transactions meets this standard.

The Commission is codifying this exemption as part of the definition of "exempt sale" in paragraph (a)(11) of Rule 31. New paragraph (a)(11)(viii) provides that an exempt sale includes a "recognized riskless principal sale." The Commission has added a new paragraph (a)(14) to Rule 31 to define "recognized riskless principal sale" as a sale of a security where all of the following conditions are satisfied:

- A broker-dealer receives from a customer an order to buy (sell) a security;
- The broker-dealer engages in two contemporaneous offsetting transactions as principal, one in which the broker-dealer buys (sells) the security from (to) a third party and the other in which the broker-dealer sells (buys) the security to (from) the customer; and
- The Commission, pursuant to Section 19(b)(2) of the Exchange Act,[100] has approved a rule change submitted by the covered SRO on which the second of the two contemporaneous offsetting transactions occurs that permits that transaction to be reported as riskless.

These requirements are designed to ensure that the two transactions in which the broker-dealer acts as principal are the economic equivalent of a single agency transaction or, in other words, that the combined transaction is indeed riskless for the broker-dealer. The Commission believes that the term "*recognized* riskless principal sale" is appropriate because a sale of securities occurring on a covered SRO will qualify for the Section 31 exemption only if, among other things, such sale can be recognized in the covered SRO's audit trail as having a second, offsetting transaction. The rule filing process affords the Commission the opportunity to assure that the covered SRO's trade reporting rules and audit trail systems are sufficiently robust to allow riskless principal transactions to be recognized as such.

The Commission previously has approved rule changes relating to riskless principal transactions for one covered SRO, NASD. In 1981, the Commission approved an NASD rule change requiring a non-market-maker member to report two offsetting transactions in which the member acts as principal as a single agency trade.[101] In 1999, the Commission approved a second NASD rule change that extended this trade reporting convention to all NASD members, including market makers.[102] In the latter case, the Commission stated that "[r]educing the number of transactions required to be reported should result in a corresponding reduction in transaction fees." [103] That outcome was reached by treating the two offsetting principal transactions as a single agency transaction, resulting in a single covered sale. The Commission believes that it now would be appropriate to exercise its authority under Section 31(f) of the Exchange Act to formally exempt the second of the two offsetting transactions. The codified exemption makes clear that only sales that meet the enumerated criteria qualify for the exemption.

9. Possible Liability of a Designated Clearing Agency

Paragraph (b)(4) of proposed Rule 31 stated that "[a] designated clearing agency shall provide a covered SRO, upon request, the data in its possession needed by the covered SRO to complete Part I of Form R31." In the Proposing Release, the Commission stated that, if a covered SRO did not submit its Form R31 in a timely manner but the delay was caused by a designated clearing agency, the designated clearing agency, rather than the covered SRO, would be in violation of Rule 31.[104] In its comment letter, NSCC stated that its ability to provide covered SROs with trade data "will involve dealing on a continuous basis with a number of complex definitional and operational issues" and that "[i]t would be inappropriate for NSCC as an intermediary data processing entity to be subject to implied potential liability arising out of delays that it might incur in seeking to perform the data reporting function [required by Rule 31]." NSCC, taking the view that "this implied imposition of potential liability * * * does not appear in the Proposed Rule itself," argued that "it would be appropriate for the Commission to avoid

[97] *See* BSE Comment; CHX Comment; NSCC Comment; NYSE Comment.

[98] These include "flips," "step-outs," and "correspondent clearing transactions."

[99] 15 U.S.C. 78ee(f).

[100] 15 U.S.C. 78s(b)(2).

[101] *See* Securities Exchange Act Release No. 17501 (January 29, 1981), 46 FR 10891 (February 4, 1981).

[102] Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999) ("Second NASD Riskless Principal Order").

[103] Second NASD Riskless Principal Order, 64 FR at 15388.

[104] *See* Proposing Release, 69 FR at 4024.

the implication of such liability" in the final rule.

The Commission does not believe that the NSCC Comment warrants a revision of paragraph (b)(4), and the Commission is adopting it as proposed (although it has been renumbered as paragraph (b)(4)(i)). With this provision, the Commission is imposing specific responsibilities on designated clearing agencies, including NSCC. A designated clearing agency's failure to perform those responsibilities would be a violation of Rule 31. To that extent, the Commission disagrees with NSCC's view that the liability of a designated clearing agency is only "implied" by Rule 31. However, the Commission recognizes that a designated clearing agency's ability to carry out its responsibilities under Rule 31 is dependent on its receiving timely, complete, and accurate data from the covered exchanges for which it clears and settles transactions. Before assigning liability to any party for a potential violation of Rule 31, the Commission would examine the facts and circumstances of each situation to ascertain the cause of the potential violation and the party or parties responsible. The Commission notes, furthermore, that a designated clearing agency is responsible only for tabulating and reporting data "in its possession." [105] If a covered exchange never reports a covered sale to a designated clearing agency, or does not report the covered sale such that it can be recognized as such by the systems of its designated clearing agency, the designated clearing agency will not be in violation of Rule 31 because that covered sale was not included in the covered exchange's Part I data.

10. Netting by QSRs

In the Proposing Release, the Commission stated that QSRs might be engaged in the practice of netting trades before reporting them to NSCC, instead of reporting to NSCC on a trade-by-trade basis. Therefore, the Commission proposed to rely on data generated by a covered exchange's trade reporting system rather than by NSCC to obtain the aggregate dollar amount of covered sales reported by QSRs.[106] One commenter, NSCC, stated that this approach "impli[es] that the SEC does not have any concerns about QSRs netting trades." [107] Furthermore, NSCC recommended that the Commission state in the Rule 31 adopting release that "QSR trades should come to NSCC non-netted." NSCC noted, however, that its current rules do not prohibit a QSR from summarizing and netting its trades before reporting them to NSCC.

By adopting a new procedure for the calculation and collection of fees pursuant to Section 31 of the Exchange Act, including covered sales reported to NSCC through QSRs, the Commission is expressing no opinion on the operational practices of QSRs, including any potential netting. New Rules 31 and 31T and Form R31 are designed to obtain aggregate trading volume for covered sales from the best currently available sources. Nothing in this adopting release should be construed as prohibiting NSCC from proposing rule changes that it deems necessary and appropriate to improve the clearance and settlement system, including the manner in which QSRs report trades to NSCC.

11. Creations and Redemptions of ETFs

The NSCC Comment also asked whether creations and redemptions of shares of exchange-traded funds ("ETFs") would be covered sales under Rule 31. ETF shares are securities issued by an open-end investment company (*i.e.*, a mutual fund) that can be traded on an exchange. A mutual fund that issues such shares generally will do so only in aggregations of a specified number ("creation units"), and purchasers of creation units can separate the units into individual shares that can be traded on an exchange. An authorized participant may deposit a basket of the fund's component securities (and, in some cases, cash) into the fund and receive creation units in return. ETF shares can be redeemed by aggregating them into creation units, presenting them to the fund, and receiving a basket of component securities (and, in some cases, cash) in return.

The Commission believes that the creation of ETF shares falls within paragraph (a)(11)(i) of Rule 31, which provides that the term "exempt sale" includes any sale of securities offered pursuant to an effective registration statement under the Securities Act of 1933. In addition, the Commission believes that the delivery of creation units to the fund falls within paragraph (a)(11)(iv) of Rule 31. The Commission views the redemption of creation units as transactions similar to those covered by that paragraph, such as sales upon conversion of convertible securities. Therefore, neither creations nor redemptions of ETF shares are covered sales under Rule 31.

**III. Temporary Rule 31T**

Beginning in FY2004, the Commission is required to prepare an annual financial statement that will be audited by the Government Accounting Office ("GAO"). To satisfy applicable auditing standards, the Commission must be able to document the sources of its accounts receivable, including Section 31 fees and assessments, for its entire fiscal year. Rule 31 enables the Commission to obtain from the covered SROs aggregate data on all covered sales occurring in the U.S. markets—but will not become effective until July 2004. As the Commission noted in the Proposing Release, the purpose of temporary Rule 31T is to allow the Commission to obtain similar data for the months of FY2004 prior to the effective date of Rule 31 so that it can calculate, using the new procedure set forth in Rule 31, the fees and assessments due from covered SROs for all of its FY2004.[108] The Commission originally hoped that proposed temporary Rule 31T could be adopted before the Section 31 payment on March 15, 2004. However, because the Commission is adopting these final rules after the March 15 due date, and covered SROs already have made that payment using their existing methods, the Commission has revised temporary Rule 31T to carry out the original intent of the rule.

New paragraph (a)(1)(ii) of temporary Rule 31T defines the "FY2004 prepayment amount" as the total dollar amount of fees and assessments already paid by a covered SRO pursuant to the March 15, 2004, due date.[109] New paragraph (b) of temporary Rule 31T requires each covered SRO, by August 13, 2004, to file with the Commission a completed Form R31 for each of the months September through December 2003. The Form R31 submissions for these months will enable the Commission to calculate the amounts payable for this billing period using the new procedure. New paragraph (a)(1)(iii) of temporary Rule 31T defines the "FY2004 recalculated amount" as the total dollar amount of fees or assessments owed by a covered SRO for the September-through-December 2003 billing period, as calculated by the Commission based on the data submitted by each covered SRO in its Form R31 submissions for those four months.[110]

For each covered SRO, the Commission will subtract the FY2004 prepayment amount from the FY2004 recalculated amount; the result is the

[105] 17 CFR 240.31(b)(4)(i).

[106] *See* Proposing Release, 69 FR at 4023.

[107] NSCC Comment.

[108] *See* 69 FR at 4025.

[109] 17 CFR 240.30T(a)(1)(ii).

[110] 17 CFR 240.30T(a)(1)(iii).

"FY2004 adjustment amount."[111] If a covered SRO's FY2004 adjustment amount is a positive number, the Commission will send the covered SRO a Section 31 bill for the months September to December 2003, and the covered SRO must include the FY2004 adjustment amount with the payment for its next Section 31 bill (due by September 30, 2004).[112] If the covered SRO's FY2004 adjustment amount is a negative number, the Commission will credit the adjustment amount to the covered SRO's next Section 31 bill.[113]

Temporary Rule 31T also requires each covered SRO to file with the Commission, by August 13, 2004, a completed Form R31 for each of the months January 2004 to July 2004, inclusive.[114] Taken together, new Rules 31 and 31T will give the Commission a complete set of data from which to prepare the Section 31 bills for the present billing period (January through August 2004). Thereafter, temporary Rule 31T will no longer be necessary, and covered SROs will be subject to the ongoing obligation to file a completed Form R31 on a monthly basis pursuant to paragraph (b)(1) of Rule 31. Temporary Rule 31T expires on January 1, 2005.[115]

Four comments expressed concern with applying the new procedure to recalculate Section 31 fees and assessments for the months September to December 2003.[116] One commenter argued that "the benefits of retroactive implementation do not outweigh the costs of work necessary to recertify the September through December 2003 submission."[117] Two of these comments stated that trade data in the possession of NSCC for these months would likely be inaccurate because NSCC's systems were not properly configured to capture the correct data.[118] These comments also questioned how the adjustment payments required by temporary Rule 31T would correspond with the payments already made pursuant to the exchanges' existing rules. NYSE noted, for example, that it would be forced to make a retroactive adjustment to its Rule 440H, which governs the manner in which NYSE passes Section 31 fees to its members. Similarly, CHX argued that "[i]f there are differences between the NSCC reports and the data used by CHX in its billing, the CHX will be required to reconcile the two sets of data, on a trade-by-trade basis."

After carefully considering these comments, the Commission continues to believe that it is necessary to adopt a temporary Rule 31T that requires covered SROs to provide Form R31 submissions for every month from September 2003 to the present. Despite the costs associated with temporary Rule 31T, the Commission believes that obtaining this historical trade data is necessary for the Commission to carry out its obligations under the Accountability Act.[119] Furthermore, although there may be some discrepancy between the amounts that covered SROs must pay the Commission pursuant to temporary Rule 31T and the amounts that covered SROs already have collected from their members pursuant to their rules, the Commission does not believe this justifies delaying the implementation of a more accurate and reliable system.

Historical data are available for the options and security futures exchanges because OCC's systems are already configured to capture this data[120] and Rule 31 does not require a fundamental revision of the methods by which options and security futures exchanges pay their Section 31 fees or assessments. With the equities exchanges, however, the Commission understands that trade data going back to September 1, 2003, may not have been reported to NSCC in a form that can immediately be tabulated under the procedure created by new Rule 31. Nevertheless, the Commission believes that NSCC, with the assistance of the exchanges, can sift the data to produce an accurate record of each exchange's covered sales in equities since September 1, 2003. In that regard, the Commission anticipates that the following issues will need to be addressed:

- *Debt securities.* Sales of debt securities are exempt from Section 31 fees.[121] NSCC clears and settles trades in debt as well as equity securities. Any covered exchange that trades debt securities should provide NSCC with the CUSIP numbers for such securities so that NSCC can filter such trades from its clearing data going back to September 1, 2003.
- *Reversals.* A reversal occurs when a trade is reported incorrectly to a designated clearing agency and the covered SRO on which the trade occurred sends a second record to inform the clearing agency to negate the first record.[122] Although NSCC's reporting system allows a reversal to be marked as such, a covered SRO could choose instead to effect the reversal by reporting a second trade that nets out the first.[123] Although no NSCC rule prohibits this practice, it would cause two covered sales to appear in NSCC's record when in fact there was no covered sale. Any covered exchange that engaged in this practice during the period September to December 2003 should coordinate with NSCC to ensure that these reverse trades are not counted as covered sales.
- *Creations and redemptions of ETFs.* As noted above, neither the creation nor the redemption of ETF shares results in any covered sale under Section 31 of the Exchange Act.[124] Therefore, NSCC should not tabulate as part of a covered exchange's Part I data any securities transactions that resulted from the creation or redemption of ETF shares.
- *Trades cleared through but not executed on a covered SRO.* In some cases, a covered exchange will report a covered sale to NSCC on behalf of one of its members even though the sale was executed on another covered SRO. No liability for a covered sale should result for the covered exchange that sent the report.[125] The Commission expects NSCC and any covered exchange[126] that engages in this practice to devise a means by which to remove clearing-only reports from the exchange's Part I data.
- *Cash, next-day, and seller's option trades.* As noted above, during the period covered by temporary Rule 31T, some covered sales of equity securities resulting from cash, next-day, and

[111] 17 CFR 240.30T(a)(1)(i).

[112] *See* 17 CFR 240.30T(c).

[113] *See* 17 CFR 240.30T(d).

[114] *See* 17 CFR 240.30T(b).

[115] *See* 17 CFR 240.30T(f).

[116] *See* CHX Comment; NASD Comment; NSCC Comment; NYSE Comment.

[117] NASD Comment.

[118] *See* CHX Comment; NYSE Comment.

[119] *See infra* Section VIII.

[120] Currently, all transactions in options or security futures that occur on a national securities exchange are cleared and settled by OCC. OCC already has in place procedures to filter out exempt transactions listed in former Rule 31–1 under the Exchange Act, 17 CFR 240.31–1. Therefore, the Commission believes that OCC should, with only minor system modifications, be able to tabulate the trade data required by the covered SROs for Part I of Form R31.

[121] *See* 15 U.S.C. 78ee(b) and (c); 17 CFR 240.31(a)(11)(vii).

[122] If the terms of the trade were adjusted, the covered SRO would send a third record to the clearing agency with the correct trade data. If the trade were merely canceled, no third record would be sent.

[123] For example, assume A sells to B 100 shares of XYZ stock and this trade was reported to NSCC in error. A covered exchange could obtain the same effect as a reversal message by reporting a second trade in which B sells to A 100 shares of XYZ stock.

[124] *See supra* Section II(B)(11).

[125] *See supra* Section II(B)(4).

[126] A covered association also could send clearing-only reports to NSCC, but the procedure created by Rule 31 does not rely on clearing data for covered associations. Therefore, Rule 31 does not require NSCC to segregate a covered association's clearing-only reports for trades that were in fact executed on another SRO from the trades that did occur by or through the association's members otherwise than on an exchange.

seller's option trades were reported to NSCC while others were not.[127] NSCC should tabulate what data it has on these trades and provide them to the respective covered SRO for inclusion in Part I of Form R31. For any such covered sales that a covered exchange did not report to NSCC, the covered exchange should treat these as ex-clearing transactions and report them in Part II (assuming that such trades were captured in the exchange's trade reporting system).

• *"Riskless principal" trades.* To date, no covered exchange has received the Commission's approval of a rule change relating to riskless principal transactions. Therefore, for all trade data from September 1, 2003, to the present, NSCC should not exclude any covered sales on the grounds that they are "riskless principal" transactions.

• *Step-outs, universal flips, and correspondent clearing transactions.* As noted above, the Commission believes that each of these transactions would constitute only a single covered sale.[128]

In their comment letters, CHX and NYSE suggested that adjustments required by temporary Rule 31T could require a covered exchange retroactively to amend its rules that pass Section 31 fees on to member firms. The Commission notes that neither Section 31 of the Exchange Act nor the rules adopted by the Commission thereunder address the manner or extent to which covered SROs may seek to recover the costs of their Section 31 obligations from their members. While the Commission has approved SRO rules establishing fees to be paid by SRO members to reimburse the covered SROs for Section 31 fees paid to the Commission, an SRO's Section 31 obligations are independent of any such reimbursement. The rules adopted by the Commission today establish a procedure for the amount of an SRO's Section 31 fees to be calculated; they do not affect an SRO's obligation to pay fees or assessments to the Commission.

The Commission also acknowledges that the application of temporary Rule 31T, particularly the assigning of charge dates, might result in a slight discrepancy with respect to the transactions included in the billing period. Under the existing arrangements for the calculation and payment of Section 31 fees, covered exchanges that trade equity securities often use the trade date as the basis for assigning the period to which a sale belongs. Thus, fees on sales that occurred on a covered exchange between August 27 and August 29, 2003—the last three business days of August 2003—likely were deemed by the exchanges to have occurred in August 2003, and fees for such sales were included in the covered exchange's Section 31 payment made on September 30, 2003. For most covered sales in equity securities, however, the charge date is now the settlement date. Thus, when the covered exchange submits Form R31 for September 2003 pursuant to temporary Rule 31T, most of its covered sales having a trade date on August 27, 28, or 29 will settle T+3 in September 2003. Thus, the terms of the new rule could inadvertently impose a second fee on trades during this three-day period. To prevent this outcome, the Commission has adopted paragraph (e) of temporary Rule 31T, which provides that "[a]ny covered exchange that as of August 2003 was reporting its Section 31 volume to the Commission based on trade date shall not include in its aggregate dollar value of covered sales for its September 2003 Form R31 any covered sale that had a trade date prior to September 1, 2003."

### IV. Reconciliation of Fees Paid to Funds Collected by Covered SROs

Various commenters argued that the Commission's proposal would create difficulties in reconciling the amount that a covered SRO would owe the Commission with the amount collected by covered SROs from their members.[129] One commenter discussed various sources of the reconciliation problem and stated that "the Commission should be involved in developing a uniform process for allocating transaction fees beyond SROs."[130] A second commenter "strongly urge[d] the Commission to work hand-in-hand with NASD and representatives from the industry to address th[e] issue" of reconciling these amounts.[131] A third commenter stated that avoiding a mismatch between what is billed by the Commission and what it collects from its member firms would necessitate an amendment to the exchange rule that passes the fee to its members.[132]

Section 31 of the Exchange Act places obligations only on national securities exchanges, national securities associations, and the Commission. National securities exchanges and national securities associations must pay certain fees[133] and assessments[134] to the Commission. The Commission is required by Section 31 to collect such fees and assessments.[135] Section 31, however, does not address the manner or extent to which covered SROs may seek to recover the costs of their Section 31 obligations from their members. Nor does Section 31 address the manner or extent to which members of covered SROs may seek to pass any such charges on to their customers. In practice, the covered SROs obtain the funds for these fees and assessments by assessing charges on their members, and the members in turn pass these charges to their customers. It is customary for a customer who sells a security to see an "SEC Fee" on his or her trade confirmation. Furthermore, the broker-dealer typically rounds up the amount of the customer's charges to the next whole cent. The accumulation of extra fractional cent amounts often results in broker-dealers having "over-collected" for the fees assessed by their SROs for Section 31 purposes.[136]

The Commission is concerned about the manner in which SROs label the fees that they pass to their members and the manner in which members label the fees passed to their customers. These are not "Section 31 Fees" or "SEC Fees." Section 31 places no obligation on members of covered SROs or their customers, and it is misleading to suggest that a customer or an SRO member incurs an obligation to the Commission under Section 31. Accordingly, the Commission believes that covered SROs and their members should take prompt action to correct any such misperceptions.

### V. Delegation of Authority

Under new Rule 31 and temporary Rule 31T, the Commission will calculate the Section 31 fees and assessments due from covered SROs and issue bills to the covered SROs for those amounts. The Commission is amending its rules of organization and program management to delegate authority to the Director of the Division of Market Regulation, in consultation with the Executive Director and the Chief Economist, to make these calculations and to issue Section 31 bills pursuant to new Rule 31 and temporary Rule 31T.[137] This amendment is a "rule[] of agency organization, procedure, or practice"

[127] *See supra* Section II(B)(7).

[128] *See supra* Section II(B)(8).

[129] *See* NASD Comment; NYSE Comment; SIA Comment.

[130] *See* SIA Comment.

[131] *See* NASD Comment.

[132] *See* NYSE Comment.

[133] *See* 15 U.S.C. 78ee(b) and (c).

[134] *See* 15 U.S.C. 78ee(d).

[135] *See* 15 U.S.C. 78ee(a).

[136] The SIA Comment discussed three additional reasons for the collection discrepancies: (1) Double-counting of OTC odd-lot transactions; (2) orders executed partly on an exchange but partly OTC but confirmed to the customer at a single average price; and (3) the several layers of billing on ECNs and other mechanisms designed to provide trading anonymity that are difficult to reconcile.

[137] *See* 17 CFR 200.30–3(a)(82).

within the meaning of Section 553(b)(A) of the Administrative Procedure Act ("APA").[138] Therefore, publication of this proposed rule in the **Federal Register**, opportunity for public comment, and publication of the rule prior to its effective date are not required by Section 553 of the APA.

**VI. Consideration of the Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation**

Section 3(f) of the Exchange Act[139] requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act[140] requires the Commission, when promulgating rules under the Exchange Act, to consider the impact any such rules would have on competition. Section 23(a)(2) further provides that the Commission may not adopt a rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The duty imposed on covered SROs to pay fees and assessments on securities transactions arises from Section 31 of the Exchange Act itself; this rulemaking establishes a process for calculating and collecting these fees and assessments. The Commission believes that this rulemaking will promote efficiency, competition, and capital formation by making this process more transparent and reliable. Furthermore, the data received on Form R31 should provide the Commission with more complete and more precise data on aggregate trading volumes that will assist the Commission in setting the appropriate fee rate pursuant to Section 31(j) of the Exchange Act.[141]

In the Proposing Release, the Commission requested comment on the proposal's effect on efficiency, competition, and capital formation.[142] Although no commenter specifically addressed this section of the Proposing Release, one commenter stated that it "does not believe that the Commission's proposal is an efficient way of achieving their recognizable goal of assuring the accuracy of Section 31 fees due by each market center."[143] The commenter added that "a much simpler solution" would be to require covered exchanges to document the basis of their Section 31 fees by submitting or making available to the Commission their internal trade reporting records.

The Commission does not believe that the "simpler" solution suggested by this commenter would be the more accurate or the more efficient solution. As noted above, the Commission believes that clearing data captured by the designated clearing agencies provide the most accurate basis for the Commission's calculation of Section 31 fees and assessments. Moreover, although there will be some initial development burdens to adapt to the new rules,[144] the Commission believes that the new procedure for calculating Section 31 fees, particularly for the covered exchanges that trade equity securities, will eventually yield significant efficiencies. Currently, the manner in which Section 31 fees are calculated differs significantly between the options and equities exchanges. The options exchanges have arrangements with its clearing agency, OCC, whereby OCC calculates the aggregate dollar amount of their covered sales and pays the Section 31 fees on behalf of each options exchange. Under this rulemaking, the Commission is leaving this system essentially unchanged, an approach strongly endorsed by OCC and five options exchanges. The Commission believes that this system has evolved into an efficient means for the options exchanges to discharge their responsibilities under Section 31—as, apparently, do the exchanges themselves.[145]

On the equities exchanges, by contrast, there is no central mechanism to standardize the data collection and calculation function. This rulemaking will require the equities exchanges for the first time to utilize such a mechanism to obtain trade data that must be reported on new Form R31. This in turn will cause the equities exchanges and their principal clearing agency, NSCC, to further standardize the manner in which they report transactions, particularly with regard to indicating on trade reports whether or not the transaction is a covered sale. Such conventions are particularly helpful with regard to transactions involving multiple parties[146] and transactions that are reported through more than one SRO.[147] The Commission believes that, as NSCC and the equities exchanges become familiar with new Rules 31 and 31T and Form R31 and technical issues are resolved, an efficient and reliable system for calculating Section 31 fees for the equities exchanges—similar to what already exists for the options exchanges—will emerge.

**VII. Paperwork Reduction Act**

Rule 31 and Form R31 contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[148] Accordingly, the Commission submitted them to OMB for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. OMB approved the new collection of information for Rule 31 and Form 31R and assigned OMB Control number 3235–0597. Neither Rule 31's development burden nor the burden associated with the temporary Rule 31T, both discussed in the Proposing Release and below, was included in OMB's approval. The Commission, therefore, is resubmitting the collection of information to OMB to account for these burdens. We solicit comment on this collection of information below. Compliance with Rules 31 and 31T and Form R31 will be mandatory. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.[149] Any information filed with the Commission will be made publicly available.

In the Proposing Release, the Commission solicited comments on the collection of information requirements.[150] NSCC was the only commenter to specifically address the Commission's burden estimates made in the PRA portion of the Proposing Release. However, some commenters expressed concern that compliance with temporary Rule 31T would be burdensome.[151] The Commission is making certain adjustments to its initial burden estimate, discussed below, to reflect these comments. The Commission's other burden estimates are unchanged.

*A. Summary of Collection of Information*

Rules 31 and 31T and Form R31 require each covered SRO to provide the Commission with data on its covered sales and covered round turn transactions. Form R31, due on a

[138] 5 U.S.C. 553(b)(A).

[139] 15 U.S.C. 78c(f).

[140] 15 U.S.C. 78w(a)(2).

[141] 15 U.S.C. 78ee(j).

[142] *See* 69 FR at 4026.

[143] BSE Comment.

[144] *See infra* Section VII(D)(1).

[145] *See* OCC Comment.

[146] *See supra* Section II(B)(8).

[147] *See supra* Sections II(B)(4) and (5).

[148] 44 U.S.C. 3501 *et seq.*

[149] *See* 44 U.S.C. 3512(a).

[150] *See* 69 FR at 4028–29.

[151] *See* BSE Comment; CHX Comment; NYSE Comment.

monthly basis, consists of three parts. Part I requires each covered exchange to provide the following:

1. The aggregate dollar amount of covered sales of equity securities that: (a) Occurred on the exchange; (b) had a charge date in the month of the report; and (c) the exchange reported to a designated clearing agency;

2. The aggregate dollar amount of covered sales of options that: (a) Occurred on the exchange; (b) had a charge date in the month of the report; and (c) the exchange reported to a designated clearing agency;

3. The total number of covered round turn transactions that: (a) Occurred on the exchange; (b) had a charge date in the month of the report; and (c) the exchange reported to a designated clearing agency; and 4.The aggregate dollar amount of covered sales of equity securities that: (a) occurred on the exchange; (b) had a charge date in the month of the report; and (c) resulted from the maturation of a security future or the exercise of a physical delivery exchange-traded option.

Paragraph (b)(4)(i) of Rule 31 requires a designated clearing agency to provide a covered SRO, upon request, the data in its possession needed by the covered SRO to complete Part I of Form R31. Covered associations should not report any data in Part I of Form R31.

Part II requires each covered exchange to provide the following:

1. The aggregate dollar amount of covered sales that: (a) Occurred on the exchange; (b) had a charge date in the month of the report; (c) the covered exchange captured in a trade reporting system; and (d) were reported to a designated clearing agency by a QSR; and

2. The aggregate dollar amount of covered sales that: (a) Occurred on the exchange; (b) had a charge date in the month of the report; (c) the covered exchange captured in a trade reporting system; and (d) were ex-clearing transactions.

Part II also requires a covered association to provide the aggregate dollar amount of any covered sales that: (a) Occurred by or through any member of the association otherwise than on a national securities exchange; (b) had a charge date in the month of the report; and (c) the association captured in a trade reporting system.

Part III requires a covered exchange to provide the aggregate dollar amount of covered sales (other than covered sales resulting from the maturation of a security future or the exercise of a physical delivery exchange-traded option) that: (a) Occurred on the exchange; (b) had a charge date in the month of the report; and (c) the exchange neither captured in a trade reporting system nor reported to a designated clearing agency. In addition, Part III requires a covered association to provide the aggregate dollar amount of covered sales that: (a) Occurred by or through a member of the association otherwise than on a national securities exchange; (b) had a charge date in the month of the report; and (c) the association did not capture in a trade reporting system.

For any month in which the Commission is required to adjust the Section 31 fee rate, a covered SRO would have to separate the data on its aggregate dollar amount of covered sales into two parts. The first part would consist of the aggregate dollar amount of covered sales having a charge date in that month before the date of the fee rate adjustment; the second part would consist of the aggregate dollar amount of covered sales having a charge date on or after the date of the fee rate adjustment. The Commission does not have authority under Section 31 of the Exchange Act to adjust the assessment charge. Therefore, respondents will never need to provide the total numbers of covered round turn transactions before and after any adjustment. Respondents should provide the total number of covered round turn transactions in a single entry on Form R31.

*B. Use of Information*

The Commission will use the information obtained on Form R31 to calculate the fees and assessments owed by each covered SRO to the Commission pursuant to Section 31 of the Exchange Act. Although such fees and assessments are due only twice a year (by March 15 and September 30), the Commission will use this data to calculate and record a receivable on its financial statement every month.

*C. Respondents*

There are currently 12 covered SROs that are subject to the collection of information requirements of this rulemaking. In addition, there are currently two entities—NSCC and OCC—that are designated clearing agencies required by paragraph (b)(4)(i) of Rule 31 to provide data to the covered SROs. Therefore, there are 14 respondents in total.

*D. Total Annual Reporting and Recordkeeping Burden*

1. Development Burden for System Modifications

Pursuant to this rulemaking, each covered SRO has a duty to provide on Form R31 the aggregate dollar amount of its covered sales and the total number of its covered round turn transactions having a charge date in the month of the report. To comply with this collection of information requirement, the covered SROs will incur one-time burdens to develop new systems and procedures to record and tabulate the necessary trade data. The two designated clearing agencies also will incur burdens in configuring their systems to enable them to meet their obligations under Rule 31.

a. Options and Security Futures

Currently, the options exchanges and security futures exchanges have arrangements with OCC whereby OCC calculates, collects, and pays all Section 31 fees and assessments on behalf of the exchanges. OCC already has procedures, therefore, to prevent exempt sales from being included in the calculation of Section 31 fees. For reasons discussed above, the Commission has determined to continue to allow these arrangements. OCC currently makes payments to the Commission in one lump-sum on behalf of the exchanges without stipulating the amount being paid on behalf of each exchange. However, under Rule 31, OCC must stipulate the amount paid on behalf of each exchange. Furthermore, OCC must provide to each covered exchange for which it clears and settles transactions monthly data on the exchange's aggregate dollar amount of covered sales and the total number of covered round turn transactions cleared and settled by OCC on behalf of the exchange. OCC, therefore, must develop procedures to allocate each covered sale or covered round turn transaction to a specific exchange. The Commission initially estimated this development time to be 180 staff hours.[152] Although no commenter specifically addressed whether this estimate was accurate, the OCC Comment stated that "OCC will be ready to provide the Commission with information specifying the amount that it is paying on behalf of each exchange by the time that the Commission finalizes its Section 31 fee collection rules."

As noted above, the Commission has revised its original proposal relating to covered sales resulting from exercises of physical delivery exchange-traded

[152] *See* Proposing Release, 69 FR at 4027.

options.[153] Under the final rule, the duty to pay fees for such covered sales will remain with the covered exchanges that trade the overlying derivative products. However, to allocate the volume for these covered sales among the covered exchanges, OCC must devise a new procedure for making the *pro rata* allocations. Paragraph (b)(4)(ii) of Rule 31 governs this procedure. The Commission estimates that this procedure will take 20 OCC staff hours to develop. The Commission's total estimate of the initial development burdens of OCC is 200 staff hours (180 + 20).

Because all covered sales in options and covered round turn transactions in security futures are cleared and settled by OCC, and the designated clearing agencies will bear the primary burden for making systems changes to accommodate Rule 31, the Commission believes that the initial development burden on the options and security futures exchanges themselves will be minimal. The Commission estimates that the total initial burden on these exchanges will be 10 staff hours per exchange for a total of 80 staff hours (8 exchanges × 10 hours/exchange).[154] Thus, the Commission concludes that OCC, the options exchanges, and the security futures exchanges together will incur burdens for initial development of new systems and processes of 280 staff hours (200 + 80).

b. Exchange-Traded Equity Securities

NSCC does not currently perform any functions with respect to Section 31 of the Exchange Act. Therefore, NSCC is likely to incur more initial development burdens than OCC. To provide the data required by the new rules, NSCC must configure its systems to accurately tabulate the aggregate dollar amount of covered sales forwarded to it by the covered exchanges that trade equity securities. Such configuration will include, among other things, ensuring that reversals and exempt sales are filtered out of the exchanges' Part I data; ensuring that covered sales that result in no net change of position in any NSCC account are still tabulated; and presenting the data to the covered exchanges in a manner that can be easily reported on Form R31.

The Commission originally estimated that NSCC and the eight exchanges that trade equities would collectively incur an aggregate burden of 1000 staff hours to develop new systems and processes to fulfill their obligations under Rule 31.[155] In response to that estimate, NSCC stated in its comment that "it would take approximately 1000 hours, at a total cost of $140,000, to be able to develop the systems and procedures needed to fulfill its role under the Proposed Rule." In view of the NSCC Comment and the likelihood that the equities exchanges also will incur some burdens to develop new procedures to comply with Rule 31 and Form R31, the Commission now estimates that NSCC and the eight equities exchanges together will incur a total development burden of 1100 staff hours.

Another commenter, BSE, stated that the proposal would require "the institution of a new internal process to conduct a daily reconciliation of trades reported to the NSCC against those reported internally on BSE systems."[156] BSE estimated this process to take a minimum of two man-hours per day. The Commission notes, however, that Rule 31 does not require BSE or any other covered SRO "to conduct a daily reconciliation of trades." A covered SRO may wish, but is under no obligation, to do so. Therefore, the Commission is not revising its estimate in response to the BSE Comment.

c. OTC Equity Securities

NASD is currently the only covered association that will be required to report on Form R31 covered sales occurring otherwise than on a national securities exchange. Under the current arrangements for the payment of Section 31 fees, NASD calculates the aggregate dollar amount of sales reported to ACT after filtering out sales that are exempt from Section 31 fees. NASD also administers a paper-based system whereby NASD members report and pay fees on odd-lot sales as well as sales of securities resulting from the exercise of non-exchange-listed options, neither of which are reported to ACT. The Commission anticipates that these NASD procedures will continue under the proposal. In addition, Rule 31 requires NASD to tabulate and report all covered sales occurring in the ADF, although TRACS, the trade reporting system for the ADF, currently is not configured to provide such data. Based on conversations between Commission staff and NASD, the Commission preliminarily estimated that the necessary configurations to TRACS would require 50 hours of NASD staff time. NASD already has established procedures to pass Section 31 fees to its members based on their transaction volume (as reflected in ACT) and to collect data and fees on sales of certain securities self-reported by its members. The Commission preliminarily estimated that only 15 staff hours would be needed to adapt these processes to the requirements of this rulemaking.[157] The Commission received no comments on these estimates.

The Commission is revising one element of its initial burden estimates for NASD. The Commission originally proposed that NASD would be the covered SRO liable for Section 31 fees on covered sales resulting from exercises of physical delivery exchange-traded options. The Commission initially estimated that 25 hours of OCC and NASD staff would be required to develop a process whereby OCC would convey, and NASD would receive and report on its Form R31, data on covered sales resulting from exercises of physical delivery exchange-traded options. However, for reasons discussed above,[158] this aspect of the proposal has been eliminated. Therefore, the Commission is reducing its estimate of NASD's initial development burden by 25 hours. In sum, the Commission now estimates that NASD's initial development burden for this rulemaking will be 65 staff hours (50 + 15).

d. Total Initial Development Burden

The Commission estimates that the 14 respondents subject to the collection of information requirements of this rulemaking will incur a total one-time development burden of 1445 staff hours (280 hours for OCC and the options and security futures exchanges + 1100 for NSCC and the equities exchanges + 65 for NASD).

2. Ongoing Compliance Burden

On an ongoing basis, covered SROs are required to submit to the Commission Form R31 within ten business days after the end of every month. Rule 31 requires a designated clearing agency to furnish to a covered SRO, upon request, the data in its possession needed by the SRO to complete Part I of Form R31. Each covered SRO also must submit payment for its fees and assessments by March 15 and September 30 of each year, although this requirement is established by Section 31 itself and is merely reiterated in this rulemaking.

[153] *See supra* Section II(B)(3).

[154] The Commission originally estimated that this burden would be 70 staff hours (7 exchanges × 10 hours/exchange). *See* Proposing Release, 69 FR at 4027. However, since the Commission issued the Proposing Release, a sixth national securities exchange—BSE—began trading options. As with the other options exchanges, OCC calculates, collects, and pays all of the Section 31 fees on BSE's behalf. Therefore, the Commission is increasing this burden estimate to reflect the addition of BSE.

[155] *See* Proposing Release, 69 FR at 4027.

[156] BSE Comment.

[157] *See* Proposing Release, 69 FR at 4027.

[158] *See supra* Section II(B)(3).

a. Designated Clearing Agencies

Presently, NSCC clears transactions occurring on eight national securities exchanges while OCC also clears transactions occurring on eight exchanges.[159] Equities trading volume is far larger than options trading volume. Therefore, the Commission believes that NSCC's monthly burden in tabulating the necessary data and providing it to the exchanges will be larger than OCC's burden. The NSCC Comment stated that NSCC's monthly operating costs following initial development of its processing systems would be minimal. Therefore, the Commission estimates that NSCC will incur an average monthly burden of 4 staff hours to provide the exchanges with the data for Part I of Form R31 while OCC will incur an average monthly burden of 2 staff hours to provide data to the options and securities futures exchanges.

In addition, the Commission anticipates that Rule 31 will impose additional financial resource burdens on NSCC. These resources will provide, among other things, CPU time, data storage, power, and systems maintenance. The Commission estimates that this burden will be $1000 per month.

b. Covered Exchanges

The covered exchanges also will incur burdens in fulfilling the requirement imposed by paragraph (b)(2) of Rule 31 to complete and submit to the Commission proposed Form R31 on a monthly basis. The Commission believes that an exchange's burden will be slightly larger if it trades both equities and options, since the exchange would have to coordinate inputs from both NSCC and OCC. Furthermore, the Commission believes that an exchange that trades only options or security futures would incur slightly less burden than an exchange that trades only equities, because all data on all of its covered sales of options should be obtainable from OCC and reported in Part I of Form R31. By contrast, a covered exchange that trades equities is more likely to have covered sales that must be reported in Parts II or III. The Commission preliminarily estimated that the ongoing monthly burden for the covered exchanges to complete and submit to the Commission Form R31 would be as follows:

- Two exchanges that trade only security futures and one exchange that trades only options: 0.5 hours/form.
- Four exchanges that trade only equities: 1.0 hours/form.
- Four exchanges that trade both equities and options: 1.5 hours/form.

The Commission is adopting these estimates as proposed, but with a minor adjustment due to the fact that since the Proposing Release was issued one exchange that previously traded only equities (BSE) now also trades options. Thus, the Commission estimates that the covered exchanges will incur a total of 12.0 burden hours[160] to complete the Form R31 submissions required in a given month.

c. Covered Associations

The Commission estimates that 2 NASD staff hours will be required to produce monthly reports from ACT and TRACS of all covered sales and to record those data on Form R31. The Commission estimates that 1 NASD staff hour will be required to aggregate and record in Part III of Form R31 data on covered sales that are self-reported by NASD members. The Commission estimates that the total monthly burden imposed on the NASD by proposal will be 3 staff hours (2 + 1). In the Proposing Release, the Commission initially estimated that NASD would incur a monthly burden of 4 staff hours to comply with Rule 31 and Form R31.[161] This extra hour's difference was caused by the proposal to require NASD to record on its Form R31 data on covered sales resulting from exercises of physical delivery exchange-traded options. However, since the Commission has revised that proposal,[162] NASD will no longer have this responsibility. Therefore, the Commission is lowering its estimate of NASD's monthly compliance burden from 4 staff hours to 3.

d. Total Ongoing Monthly Burden

In summary, the Commission believes that the total burden on the 14 respondents for completing Form R31 for a single month will be 21.0 staff hours (6.0 hours for two designated clearing agencies + 12.0 hours for 11 covered exchanges + 3.0 hours for one covered association), or 252 staff hours per year (21.0 hours/month × 12 months).[163] This represents a reduction in the Commission's original estimate of 270 staff hours for the annual ongoing compliance burdens of Rule 31 and Form R31.[164] The 18-hour difference results from 24 fewer staff hours per year on the part of OCC and NASD for OCC to provide NASD with data on covered sales resulting from the exercise of physical delivery exchange-traded options, plus 6 staff hours per year due to the fact that BSE now trades both options and securities.

3. Temporary Rule 31T

Temporary Rule 31T requires every covered SRO—by August 13, 2004—to submit to the Commission a completed Form R31 for each of the months September 2003 to June 2004, inclusive.[165] This will enable the Commission to obtain data on all covered sales and covered round turn transactions occurring in its FY2004 and to make any necessary adjustments to the amount that a covered SRO paid pursuant to the March 15, 2004, due date. The Commission notes that the obligation of national securities exchanges and national securities associations to pay fees and assessments on securities transactions arises directly from Section 31 of the Exchange Act and would exist even in the absence of this rulemaking.

The Commission initially estimated that temporary Rule 31T would require each covered SRO to provide six Form R31 submissions.[166] However, because Rule 31T is not being adopted until June 2004 and the Form 31 submissions required by the rule will not be due until August 13, Rule 31T will now require covered SROs to provide ten historical Form R31 submissions (for September 2003 through June 2004, inclusive). In addition, various commenters, although not specifically addressing the Commission's hourly burden estimates, stated that compliance with temporary Rule 31T would be burdensome.[167] In light of these comments and the expanded period that temporary Rule 31T will cover, the Commission is increasing the estimated burden on all respondents for temporary Rule 31T from 135 staff hours to 200 staff hours.

[159] Currently, three exchanges—CHX, NSX, and NYSE—trade only equity securities, which are cleared and settled by NSCC. Three exchanges—ISE, NQLX, and OneChicago—trade securities that are cleared and settled only by OCC. Five exchanges—Amex, BSE, CBOE, PCX, and Phlx—trade both equities and options, thus requiring the clearance and settlement services of both NSCC and OCC.

[160] This total of 12.0 burden hours is calculated as follows: (3 OCC-only exchanges × 0.5 hour/exchange = 1.5 hours) + (3 NSCC-only exchanges × 1.0 hour/exchange = 3.0 hours) + (5 dual exchanges × 1.5 hours/exchange = 7.5 hours).

[161] *See* 69 FR at 4028.

[162] *See* supra Section II(B)(3).

[163] In addition, the Commission estimates that one designated clearing agency, NSCC, will incur additional financial burdens of $1000 per month or $12,000 per year.

[164] *See* Proposing Release, 69 FR at 4028.

[165] The first Form R31 required by Rule 31 also is due by August 13, 2004 (the tenth business day of August) and will cover the month of July 2004.

[166] *See* Proposing Release, 69 FR at 4028.

[167] *See* CHX Comment; NYSE Comment.

4. Total Burdens of Rules 31 and 31T

In summary, the Commission estimates that the burdens imposed by new Rules 31 and 31T together before August 2004 will be 1645 staff hours. This figure represents the initial development burdens to be incurred by covered SROs and designated clearing agencies to establish new systems and procedures to comply with Rules 31 and 31T and to provide historical trading data going back to September 1, 2003. The Commission estimates that, after August 2004 (the first month that a Form R31 is due pursuant to Rule 31), the 14 respondents will incur annual burdens of 252 staff hours per year to comply with Rule 31 and Form R31.

*E. Record Retention Period*

Rule 17a–1 under the Exchange Act [168] requires national securities exchanges, national securities associations, and registered clearing agencies to preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts, and other such records as shall be made or received by it in the course of its business as such and in the conduct of its self-regulatory activity for a period of not less than five years, the first two years in an easily accessible place, subject to the destruction and disposition provisions of Rule 17a–6 under the Exchange Act.[169]

*F. Request for Comments*

The Commission requests comment in order to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility;
- Evaluate the accuracy of the Commission's estimates of the burden of the proposed collection of information;
- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and
- Evaluate whether there are ways to minimize the burden of the collection of information on the respondents, including through the use of automated collection techniques or other forms of information technology.

Any member of the public may direct to the Commission any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the collection of information requirements should direct their comments to OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503; and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–05–04. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–05–04, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549. Because OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if OMB receives them within 30 days of publication of this notice.

## VIII. Consideration of Costs and Benefits

To assist the Commission in its evaluation of the costs and benefits that might result from the proposal, commenters were requested to provide analysis and data relating to the costs and benefits. The Commission preliminarily identified certain costs and benefits associated with the new system for calculating and collection Section 31 fees and assessments in the Proposing Release.[170] The Commission requested comment on its preliminary analysis and asked specifically whether, in the commenters' view, the benefits justify the costs. One commenter argued that "the benefits of retroactive implementation [of temporary Rule 31T] do not outweigh the costs of the work necessary to recertify the September to December 2003 submission" of trade data supporting the Section 31 payment for that period.[171] However, neither this commenter nor any other commenter provided any empirical data relating to the costs and benefits of this proposal. After carefully considering the comments received, the Commission concludes that the benefits of this proposal justify the costs that it will impose.

*A. Benefits*

A primary benefit of this rulemaking is that the Commission will be able to obtain more accurate data on all covered sales and covered round turn transactions occurring in the U.S. securities markets. This data will facilitate the Commission's compliance with the Accountability Act, pursuant to which the Commission must prepare annual financial statements that are audited by an external auditor. The Commission's obligations under the Accountability Act begin in FY2004. To meet these obligations, the Commission must be able to demonstrate the accuracy of the payments collected by the Commission, including payments made by covered SROs pursuant to Section 31. The Commission believes that the trade data provided on Form R31 will yield the most accurate bases for their Section 31 payments. The Commission's annual audit, as required by the Accountability Act, necessitates that the Commission verify the amount of fees and assessments that it collects using the most accurate data available.

A related benefit of this rulemaking is that the means by which the Commission derives a large source of its revenue will become more transparent and more easily subject to verification. These data are to be provided on a simple form. Requiring the covered SROs to report their trade data in this manner should improve the ability of an auditor or other interested person to understand the sources and calculation of Section 31 payments. The Commission believes, and the SIA agrees,[172] that the public interest benefits when the Commission can demonstrate that it is properly carrying out the fiscal responsibilities assigned to it by Congress.

Another benefit of this proposal is that the data used by the Commission to determine whether a fee rate adjustment is required pursuant to Section 31(j) of the Exchange Act [173] will be more precise. Paragraph (j) requires the Commission to make an annual and (in some circumstances, a mid-year) adjustment to the fee rate. The data received on Form R31 should provide the Commission with more complete and more precise data on aggregate trading volumes that will assist the Commission in determining the appropriate fee rate.

*B. Costs*

Rule 31 and Form R31 require covered SROs to provide the Commission, on a monthly basis beginning with the month of July 2004, data on their covered sales and covered round turn transactions. Temporary Rule 31T requires covered SROs to provide the Commission with Form R31

[168] 17 CFR 240.17a–1.
[169] 17 CFR 240.17a–6.
[170] *See* 69 FR at 4029–30.
[171] NASD Comment.
[172] *See* SIA Comment.
[173] 15 U.S.C. 78ee(j).

submissions for the months of September 2003 until June 2004, inclusive. As discussed above, this rulemaking will cause the covered SROs and designated clearing agencies to incur certain paperwork costs in tabulating and reporting to the Commission the data required by Form R31.[174] The Commission estimates that the covered SROs and designated clearing agencies will incur a burden of 1445 staff hours for initial development, 252 staff hours per year to submit Form R31 on a monthly basis, and 200 staff hours to comply with temporary Rule 31T. The Commission also estimates that one designated clearing agency, NSCC, will incur a monthly financial cost of $1000 for systems maintenance to comply with Rule 31.

In addition, the Commission believes that certain covered exchanges may incur additional costs to develop new methods for allocating Section 31 fees among their members.[175] NYSE and Amex require their members to self-report the aggregate dollar amount of their covered sales and the corresponding Section 31 fees due based on that volume. The other equities exchanges impose fees on their members based on the sales of securities that the exchange reports to the consolidated tape. Since the rules adopted here base the calculation of Section 31 fees largely on clearing data, either or both of the existing methods for allocating Section 31 fees among members of the equities exchanges could yield an amount that differs from that calculated by the Commission pursuant to Rule 31. A covered exchange that seeks to ensure that the amount paid to the Commission is as close as possible to the amount collected from its members might wish to develop new procedures to subdivide Section 31 fees among its members. Any new rule to implement such a procedure would have to be filed as a rule change pursuant to Section 19(b) of the Exchange Act.[176]

To assist a covered exchange in dividing the fee equitably among its members, the exchange could request that NSCC subdivide the data by exchange member so that the exchange can pass to each member its accurate *pro rata* portion of the total exchange fee. While subdividing the data in this manner is not required by Rule 31, the Commission anticipates that covered exchanges may elect to establish such arrangements to collect from their members only the precise amount that the Commission bills them under Rule 31.

The Commission notes that this proposal does not impose new costs on covered SROs in the form of higher fees or assessments. The target amounts that the Commission should collect under Section 31 are set by statute; the rules approved today establish a procedure for the Commission to use to calculate the fees and assessments from each covered SRO.

### IX. Regulatory Flexibility Act

Pursuant to Section 605(b) of the Regulatory Flexibility Act,[177] the Commission certified that Rules 31 and 31T and Form R31 will not have a significant economic impact on a substantial number of small businesses. This certification, including the reasons supporting the certification, were set forth in the Proposing Release.[178] The Commission solicited comments on the potential impact of Rules 31 and 31T and Form R31 on small entities in the Proposing Release. Specifically, the Commission requested that commenters describe the nature of any impact on small businesses and provide empirical data to support the extent of the impact. The Commission received no comments on this certification and is adopting it as proposed.

### X. Statutory Authority

Rules 31 and 31T under the Exchange Act are adopted pursuant to 15 U.S.C. 78a *et seq.*, particularly Sections 6, 15A, 17A, 19, 23(a), and 31 of the Exchange Act (15 U.S.C. 78f, 78o–3, 78q–1, 78s, 78w(a), and 78ee).

### List of Subjects

*17 CFR Part 200*

Administrative practice and procedure, Authority delegations (Government agencies).

*17 CFR Parts 240 and 249*

Reporting and recordkeeping requirements, Securities.

### Text of Final Rule

■ For the reasons set out in the preamble, the Commission is amending Title 17, Chapter II of the Code of Federal Regulations as follows:

## PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

■ 1. The authority citation for part 200 continues to read in part as follows:

**Authority:** 15 U.S.C. 77s, 77o, 77sss, 78d, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 80a–37, 80b–11, and 7202, unless otherwise noted.

■ 2. Section 200.30–3 is amended by adding new paragraph (a)(82) as follows:

**§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.**

* * * * *

(a) * * *

(82) To calculate the amount of fees and assessments due from covered SROs based on the trade data that the covered SROs submit on Form R31 (17 CFR 249.11) and to issue Section 31 bills to covered SROs, in consultation with the Executive Director and the Chief Economist, pursuant to Rules 31 and 31T of this chapter (17 CFR 240.31 and 240.31T).

* * * * *

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The authority citation for part 240 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 4. Section 240.31–1 is removed.

■ 5. Section 240.31 is added to read as follows:

**§ 240.31 Section 31 transaction fees.**

(a) *Definitions.* For the purpose of this section, the following definitions shall apply:

(1) *Assessment charge* means the amount owed by a covered SRO for a covered round turn transaction pursuant to section 31(d) of the Act (15 U.S.C. 78ee(d)).

(2) *Billing period* means, for a single calendar year:

(i) January 1 through August 31 ("billing period 1"); or

(ii) September 1 through December 31 ("billing period 2").

(3) *Charge date* means the date on which a covered sale or covered round turn transaction occurs for purposes of determining the liability of a covered SRO pursuant to section 31 of the Act (15 U.S.C. 78ee). The charge date is:

(i) The settlement date, with respect to any covered sale (other than a covered sale resulting from the exercise of an option settled by physical delivery or from the maturation of a security future settled by physical delivery) or

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[174] *See supra* Section VII.

[175] *See* NYSE Comment (stating that NYSE would have to amend its Rule 440H).

[176] 15 U.S.C. 78s(b).

[177] 5 U.S.C. 605(b).

[178] *See* 69 FR at 4030.

covered round turn transaction that a covered SRO is required to report to the Commission based on data that the covered SRO receives from a designated clearing agency;

(ii) The exercise date, with respect to a covered sale resulting from the exercise of an option settled by physical delivery;

(iii) The maturity date, with respect to a covered sale resulting from the maturation of a security future settled by physical delivery; and

(iv) The trade date, with respect to all other covered sales and covered round turn transactions.

(4) *Covered association* means any national securities association by or through any member of which covered sales or covered round turn transactions occur otherwise than on a national securities exchange.

(5) *Covered exchange* means any national securities exchange on which covered sales or covered round turn transactions occur.

(6) *Covered sale* means a sale of a security, other than an exempt sale or a sale of a security future, occurring on a national securities exchange or by or through any member of a national securities association otherwise than on a national securities exchange.

(7) *Covered round turn transaction* means a round turn transaction in a security future, other than a round turn transaction in a future on a narrow-based security index, occurring on a national securities exchange or by or through a member of a national securities association otherwise than on a national securities exchange.

(8) *Covered SRO* means a covered exchange or covered association.

(9) *Designated clearing agency* means a clearing agency registered under section 17A of the Act (15 U.S.C. 78q-1) that clears and settles covered sales or covered round turn transactions.

(10) *Due date* means:

(i) March 15, with respect to the amounts owed by covered SROs under section 31 of the Act (15 U.S.C. 78ee) for covered sales and covered round turn transactions having a charge date in billing period 2; and

(ii) September 30, with respect to the amounts owed by covered SROs under section 31 of the Act (15 U.S.C. 78ee) for covered sales and covered round turn transactions having a charge date in billing period 1.

(11) *Exempt sale* means:

(i) Any sale of a security offered pursuant to an effective registration statement under the Securities Act of 1933 (except a sale of a put or call option issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by section 3(a) or 3(b) of the Securities Act of 1933 (15 U.S.C. 77c(a) or 77c(b)), or a rule thereunder;

(ii) Any sale of a security by an issuer not involving any public offering within the meaning of section 4(2) of the Securities Act of 1933 (15 U.S.C. 77d(2));

(iii) Any sale of a security pursuant to and in consummation of a tender or exchange offer;

(iv) Any sale of a security upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security;

(v) Any sale of a security that is executed outside the United States and is not reported, or required to be reported, to a transaction reporting association as defined in § 240.11Aa3–1 and any approved plan filed thereunder;

(vi) Any sale of an option on a security index (including both a narrow-based security index and a non-narrow-based security index);

(vii) Any sale of a bond, debenture, or other evidence of indebtedness; and

(viii) Any recognized riskless principal sale.

(12) *Fee rate* means the fee rate applicable to covered sales under section 31(b) or (c) of the Act (15 U.S.C. 78ee(b) or (c)), as adjusted from time to time by the Commission pursuant to section 31(j) of the Act (15 U.S.C. 78ee(j)).

(13) *Narrow-based security index* means the same as in section 3(a)(55)(B) and (C) of the Act (15 U.S.C. 78c(a)(55)(B) and (C)).

(14) *Recognized riskless principal sale* means a sale of a security where all of the following conditions are satisfied:

(i) A broker-dealer receives from a customer an order to buy (sell) a security;

(ii) The broker-dealer engages in two contemporaneous offsetting transactions as principal, one in which the broker-dealer buys (sells) the security from (to) a third party and the other in which the broker-dealer sells (buys) the security to (from) the customer; and

(iii) The Commission, pursuant to section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)), has approved a proposed rule change submitted by the covered SRO on which the second of the two contemporaneous offsetting transactions occurs that permits that transaction to be reported as riskless.

(15) *Round turn transaction in a security future* means one purchase and one sale of a contract of sale for future delivery.

(16) *Physical delivery exchange-traded option* means a securities option that is listed and registered on a national securities exchange and settled by the physical delivery of the underlying securities.

(17) *Section 31 bill* means the bill sent by the Commission to a covered SRO pursuant to section 31 of the Act (15 U.S.C. 78ee) showing the total amount due from the covered SRO for the billing period, as calculated by the Commission based on the data submitted by the covered SRO in its Form R31 (§ 249.11 of this chapter) submissions for the months of the billing period.

(18) *Trade reporting system* means an automated facility operated by a covered SRO used to collect or compare trade data.

(b) *Reporting of covered sales and covered round turn transactions.*

(1) Each covered SRO shall submit a completed Form R31 (§ 249.11 of this chapter) to the Commission within ten business days after the end of each month.

(2) A covered exchange shall provide on Form R31 the following data on covered sales and covered round turn transactions occurring on that exchange and having a charge date in that month:

(i) The aggregate dollar amount of covered sales that it reported to a designated clearing agency, as reflected in the data provided by the designated clearing agency;

(ii) The aggregate dollar amount of covered sales resulting from the exercise of physical delivery exchange-traded options or from matured security futures, as reflected in the data provided by a designated clearing agency that clears and settles options or security futures;

(iii) The aggregate dollar amount of covered sales that it captured in a trade reporting system but did not report to a designated clearing agency;

(iv) The aggregate dollar amount of covered sales that it neither captured in a trade reporting system nor reported to a designated clearing agency; and

(v) The total number of covered round turn transactions that it reported to a designated clearing agency, as reflected in the data provided by the designated clearing agency.

(3) A covered association shall provide on Form R31 the following data on covered sales and covered round turn transactions occurring by or through any member of such association otherwise than on a national securities exchange and having a charge date in that month:

(i) The aggregate dollar amount of covered sales that it captured in a trade reporting system;

(ii) The aggregate dollar amount of covered sales that it did not capture in a trade reporting system; and

(iii) The total number of covered round turn transactions that it reported to a designated clearing agency, as reflected in the data provided by the designated clearing agency.

(4) *Duties of designated clearing agency.*

(i) A designated clearing agency shall provide a covered SRO, upon request, the data in its possession needed by the covered SRO to complete Part I of Form R31 (§ 249.11 of this chapter).

(ii) If a covered exchange trades physical delivery exchange-traded options or security futures that settle by physical delivery of the underlying securities, the designated clearing agency that clears and settles such transactions shall provide that covered exchange with the data in its possession relating to the covered sales resulting from the exercise of such options or from the matured security futures. If, during a particular month, the designated clearing agency cannot determine the covered exchange on which the options or security futures originally were traded, the designated clearing agency shall assign covered sales resulting from exercises or maturations as follows. To provide Form R31 data to the covered exchange for a particular month, the designated clearing agency shall:

(A) Calculate the aggregate dollar amount of all covered sales in the previous calendar month resulting from exercises and maturations, respectively, occurring on all covered exchanges for which it clears and settles transactions;

(B) Calculate, for the previous calendar month, the aggregate dollar amount of covered sales of physical delivery exchange-traded options occurring on each covered exchange for which it clears and settles transactions, and the aggregate dollar amount of covered sales of physical delivery exchange-traded options occurring on all such exchanges collectively;

(C) Calculate, for the previous calendar month, the total number of covered round turn transactions in security futures that settle by physical delivery that occurred on each covered exchange for which it clears and settles transactions, and the total number of covered round turn transactions in security futures that settle by physical delivery that occurred on all such exchanges collectively;

(D) Determine for the previous calendar month each covered exchange's percentage of the total dollar volume of physical delivery exchange-traded options ("exercise percentage") and each covered exchange's percentage of the total number of covered round turn transactions in security futures that settle by physical delivery ("maturation percentage"); and

(E) In the current month, assign to each covered exchange for which it clears and settles covered sales the exercise percentage of the aggregate dollar amount of covered sales on all covered exchanges resulting from the exercise of physical delivery exchange-traded options and the maturation percentage of all covered sales on all covered exchanges resulting from the maturation of security futures that settle by physical delivery.

(5) A covered SRO shall provide in Part I of Form R31 only the data supplied to it by a designated clearing agency.

(c) *Calculation and billing of section 31 fees.*

(1) The amount due from a covered SRO for a billing period, as reflected in its Section 31 bill, shall be the sum of the monthly amounts due for each month in the billing period.

(2) The monthly amount due from a covered SRO shall equal:

(i) The aggregate dollar amount of its covered sales that have a charge date in that month, times the fee rate; plus

(ii) The total number of its covered round turn transactions that have a charge date in that month, times the assessment charge.

(3) By the due date, each covered SRO shall pay the Commission, either directly or through a designated clearing agency acting as agent, the entire amount due for the billing period, as reflected in its Section 31 bill.

■ 6. Section 240.31T is added to read as follows:

**§ 240.31T Temporary rule regarding fiscal year 2004.**

(a) *Definitions.*

(1) For the purpose of this section, the following definitions shall apply:

(i) *FY2004 adjustment amount* means the FY2004 recalculated amount minus the FY2004 prepayment amount.

(ii) *FY2004 prepayment amount* means the total dollar amount of fees and assessments paid by a covered SRO pursuant to the March 15, 2004, due date for covered sales and covered round turn transactions having a charge date between September 1, 2003, and December 31, 2003, inclusive.

(iii) *FY2004 recalculated amount* means the total dollar amount of fees and assessments owed by a covered SRO for covered sales and covered round turn transactions having a charge date between September 1, 2003, and December 31, 2003, inclusive, as calculated by the Commission based on the data submitted by the covered SRO in its Form R31 (§ 249.11 of this chapter) submissions for September 2003, October 2003, November 2003, and December 2003, and indicated on a Section 31 bill for these months.

(2) Any term used in this section that is defined in § 240.30(a) of this chapter shall have the same meaning as in § 240.30(a) of this chapter.

(b) By August 13, 2004, each covered SRO shall submit to the Commission a completed Form R31 for each of the months September 2003 to June 2004, inclusive.

(c) If the FY2004 adjustment amount of a covered SRO is a positive number, the covered SRO shall include the FY2004 adjustment amount with the payment for its next Section 31 bill.

(d) If the FY2004 adjustment amount is a negative number, the Commission shall credit the FY2004 adjustment amount to the covered SRO's next Section 31 bill.

(e) Notwithstanding paragraph (a)(1)(iii) of this section, any covered exchange that as of August 2003 was calculating its Section 31 fees based on the trade date of its covered sales shall not include on its September 2003 Form R31 data for any covered sale having a trade date before September 1, 2003.

(f) This temporary section shall expire on January 1, 2005.

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 7. The authority citation for part 249 continues to read in part as follows:

**Authority:** 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 8. Section 249.11 and Form R31 (referenced in § 249.11) are added to read as follows:

**§ 249.11 Form R31 for reporting covered sales and covered round turn transactions under section 31 of the Act.**

This form shall be used by each national securities exchange to report to the Commission within ten business days after the end of every month the aggregate dollar amount of sales of securities that occurred on the exchange, had a charge date in the month of the report, and are subject to fees pursuant to section 31(b) of the Act (15 U.S.C. 78ee) and § 240.31 of this chapter; and the total number of round turn transactions in security futures that occurred on the exchange, had a charge date in the month of the report, and are subject to assessments pursuant to section 31(d) of the Act and § 240.31 of this chapter. This form also shall be used by a national securities association to report to the Commission within ten

business days after the end of every month the aggregate dollar amount of sales of securities that occurred by or through a member of the association otherwise than on a national securities exchange, had a charge date in the month of the report, and are subject to fees pursuant to section 31(c) of the Act and § 240.31 of this chapter; and the total number of round turn transactions in security futures that occurred by or through any member of the association otherwise than on a national securities exchange, had a charge date in the month of the report, and are subject to assessments pursuant to section 31(d) of the Act and § 240.31 of this chapter.

**Note:** The text of Form R31 does not, and this amendment will not, appear in the Code of Federal Regulations.

BILLING CODE 8010–01–P

**FORM R31**

| OMB APPROVAL |
| --- |
| OMB Number: .....3235-0597 |
| Expires: .....March 31, 2007 |
| Estimated average |
| burden hours per form: .....1.5 |

**UNITED STATES**
**SECURITIES AND EXCHANGE COMMISSION**
**WASHINGTON, DC 20549**

# FORM FOR REPORTING COVERED SALES AND COVERED ROUND TURN TRANSACTIONS UNDER SECTION 31 OF THE SECURITIES EXCHANGE ACT OF 1934

## FORM R31 INSTRUCTIONS

**A. EXPLANATION OF TERMS USED IN THIS FORM**

**CHARGE DATE** – The date on which a covered sale or covered round turn transaction occurs for purposes of determining the liability of a covered SRO pursuant to Section 31 of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78ee). The charge date is: (1) the settlement date, with respect to any covered sale (other than a covered sale resulting from the exercise of an option settled by physical delivery or from the maturation of a security future settled by physical delivery) or covered round turn transaction that a covered SRO is required to report to the Commission based on data that the covered SRO receives from a designated clearing agency; (2) the exercise date, with respect to a covered sale resulting from the exercise of an option settled by physical delivery; (3) the maturity date, with respect to a covered sale resulting from the maturation of a security future settled by physical delivery; and (4) the trade date, with respect to all other covered sales and covered round turn transactions.

**COVERED ASSOCIATION** – Any national securities association by or though any member of which covered sales or covered round turn transactions occur otherwise than on a national securities exchange.

**COVERED EXCHANGE** – Any national securities exchange on which covered sales or covered round turn transactions occur.

**COVERED SALE** – A sale of a security, other than an exempt sale or a sale of a security future, occurring on a national securities exchange or by or through any member of a national securities association otherwise than on a national securities exchange.

**COVERED ROUND TURN TRANSACTION** – A round turn transaction in a security future, other than a round turn transaction in a future on a narrow-based security index, occurring on a national securities exchange or by or through a member of a national securities association otherwise than on a national securities exchange.

**COVERED SRO** – A covered exchange or a covered association.

**DESIGNATED CLEARING AGENCY** – A clearing agency registered under Section 17A of the Exchange Act (15 U.S.C. 78q-1) that clears and settles covered sales or covered round turn transactions.

**EX-CLEARING TRANSACTION** – A sale of a security that clears and settles otherwise than through a designated clearing agency.

**EXEMPT SALE** – (1) Any sale of a security offered pursuant to an effective registration statement under the Securities Act of 1933 ("Securities Act") (except a sale of a put or call option issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by Section 3(a) or 3(b) thereof (15 U.S.C. 77c(a) or 77c(b)), or a rule thereunder; (2) any sale of a security by an issuer not involving any public offering within the meaning of Section 4(2) of the Securities Act (15 U.S.C. 77d(2)); (3) any sale of a security pursuant to and in consummation of a tender or exchange offer; (4) any sale of a security upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security; (5) any sale of a security that is executed outside the United States and is not reported, or required to be reported, to a transaction reporting association as defined in 17 CFR 240.11Aa3-1 and any approved plan filed thereunder; (6) any sale of an option on a security index (including both a narrow-based security index and a non-narrow-based security index); (7) any sale of a bond, debenture, or other evidence of indebtedness; and (viii) any recognized riskless principal sale.

**FEE RATE** – The fee rate applicable to covered sales under Section 31(b) or (c) of the Exchange Act (15 U.S.C. 78ee(b) or (c)), as adjusted from time to time by the Commission pursuant to Section 31(j) of the Exchange Act (15 U.S.C. 78ee(j)).

**NARROW-BASED SECURITY INDEX** – Has the same meaning as in Sections 3(a)(55)(B) and (C) of the Exchange Act (15 U.S.C. 78c(a)(55)(B) and (C)).

**PHYSICAL DELIVERY EXCHANGE-TRADED OPTION** – An option that is listed and registered on a national securities exchange and that is settled by the physical delivery of the underlying securities.

**QUALIFIED SPECIAL REPRESENTATIVE** – A member of a designated clearing agency that operates, has an affiliate that operates, or clears for a broker-dealer that operates, an automated execution system where the designated clearing agency member is on the contra-side of every transaction.

**RECOGNIZED RISKLESS PRINCIPAL SALE** – A sale of a security where all of the following conditions are satisfied: (1) A broker-dealer receives from a customer an order to buy (sell) a security; (2) The broker-dealer engages in two contemporaneous offsetting transactions as principal, one in which the broker-dealer buys (sells) the security from (to) a third party and the other in which the broker-dealer sells (buys) the security to (from) the customer; and (3) The Commission, pursuant to Section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)), has approved a proposed rule change submitted by the covered SRO on which the second of the two contemporaneous offsetting transactions occurs that permits that transaction to be reported as riskless.

**TRADE REPORTING SYSTEM** – An automated facility operated by a covered SRO used to collect or compare trade data.

**B. GENERAL INSTRUCTIONS**

1. A covered exchange shall use Form R31 to report to the Commission, pursuant to Section 31 of the Exchange Act and Rule 31 thereunder (17 CFR 240.31), data regarding all covered sales and covered round turn transactions that: (1) occurred on the exchange; and (2) have a charge date in the month for which this form is being submitted.

2. A covered association shall use Form R31 to report to the Commission, pursuant to Section 31 of the Exchange Act and Rule 31 thereunder, data regarding all covered sales that: (1) occurred by or through any member of the association otherwise than on a national securities exchange; and (2) have a charge date in the month for which this form is being submitted.

3. Form R31 shall be submitted within ten business days after the end of every month, and such other times as stipulated in temporary Rule 31T (17 CFR 240.31T).

4. A covered exchange must obtain the data necessary to complete Part I of this Form R31 from a designated clearing agency. Pursuant to Rule 31, a designated clearing agency is required, upon request, to provide a covered SRO with the data in its possession needed by the covered SRO to complete Form R31. A covered exchange shall provide in Part I of this Form R31 only the data supplied to it by a designated clearing agency.

5. For any item that requests the aggregate dollar amount of covered sales, enter responses "A" and "B" as follows. For any month in which the Commission does not adjust the fee rate, enter the aggregate dollar amount of covered sales for the entire month in "A" and leave "B" blank. For any month in which the Commission adjusts the fee rate, enter in "A" the aggregate dollar amount of covered sales having a charge date in that month before the date of the fee rate adjustment, and enter in "B" the aggregate dollar amount of covered sales having a charge date in that month on or after the date of the fee rate adjustment. The total number of covered round turn transactions should be provided in a single entry.

6. **CONTACT EMPLOYEE** - The individual listed on the Execution Page (Page 3) of Form R31 as the contact employee must be authorized to represent on behalf of the covered SRO that the information provided on this Form R31 is complete and accurate.

7. **FORMAT** – A covered SRO must file this Form R31 with the Commission in paper. Please type all information. Use only the current version of Form R31 or a reproduction. Attach an Execution Page (Page 3) with an original manual signature.

8. **WHERE TO FILE AND NUMBER OF COPIES** – Submit one original and two copies of Form R31 to: Securities and Exchange Commission; Attention: Form R31; Office of Economic Analysis; 450 Fifth Street, NW; Washington, DC 20549-1105.

9. **PAPERWORK REDUCTION ACT DISCLOSURE**
   - Form R31 requires covered SROs to provide data regarding all covered sales and covered round turn transactions having a charge date in the month for which this form is being submitted.
   - An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Sections 3(a)(1), 5, 6(a), 15A(a), 17A(b), and 23(a) of the Exchange Act (15 U.S.C. 78c(a)(1), 78e, 78f(a), 78o-3(a), 78q-1(b), and 78w(a)) authorize the Commission to collect information on this Form R31.
   - Form R31 is designed to enable the Commission to determine the amount of fees and assessments that are due from every covered SRO under Section 31 of the Exchange Act.
   - The Commission has estimated that each respondent will spend, on average, approximately 1.5 hours completing this Form R31. This average includes designated clearing agencies as respondents.
   - Any member of the public may direct to the Commission any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden.
   - No assurance of confidentiality is given by the Commission with respect to the responses made in Form R31. The public has access to the information contained in Form R31.
   - This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. 3507. The applicable Privacy Act system of records is SEC-2 and the routine uses of the records are set forth at 40 FR 39255 (August 27, 1975) and 41 FR 5318 (February 5, 1976).

| Form R31<br><br>Page 1 | U.S. SECURITIES AND EXCHANGE COMMISSION<br>WASHINGTON, DC 20549<br><br>FORM FOR REPORTING COVERED SALES AND COVERED ROUND TURN TRANSACTIONS<br>UNDER SECTION 31 OF THE SECURITIES EXCHANGE ACT OF 1934 | Date filed<br>(MM/DD/YYYY) |
|---|---|---|

WARNING: INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS

1. State the name of the covered SRO:

2. State the month and year for which this Form R31 is being filed:

3. Provide the following information for the contact employee:

   Name:

   Title:

   Telephone Number:

   E-mail Address:

   Street Address:

**PART I**

QUESTIONS 4-7 TO BE COMPLETED BY COVERED EXCHANGES

4. Provide the aggregate dollar amount of covered sales of equity securities that: (a) occurred on the exchange; (b) had a charge date in the month of this report; and (c) the exchange reported to a designated clearing agency, as reflected in the data provided by a designated clearing agency:

   (A)

   (B)

5. Provide the aggregate dollar amount of covered sales of options that: (a) occurred on the exchange; (b) had a charge date in the month of this report; and (c) the exchange reported to a designated clearing agency, as reflected in the data provided by a designated clearing agency:

   (A)

   (B)

6 Provide the total number of covered round turn transactions that: (a) occurred on the exchange; (b) had a charge date in the month of this report; and (c) the exchange reported to a designated clearing agency:

7. Provide the aggregate dollar amount of covered sales of equity securities that: (a) occurred on the exchange; (b) had a charge date in the month of this report; and (c) resulted from the maturation of a security future or the exercise of a physical delivery exchange-traded option, as reflected in the data provided by a designated clearing agency that clears and settles options or security futures:

   (A)

   (B)

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DO NOT WRITE BELOW THIS LINE - FOR OFFICIAL USE ONLY

| Form R31<br><br>Page 2 | **U.S. SECURITIES AND EXCHANGE COMMISSION**<br>**WASHINGTON, DC 20549**<br><br>**FORM FOR REPORTING COVERED SALES AND COVERED ROUND TURN TRANSACTIONS UNDER SECTION 31 OF THE SECURITIES EXCHANGE ACT OF 1934** | Date filed<br>(MM/DD/YYYY) |
|---|---|---|

**PART II**

QUESTIONS 8-9 TO BE COMPLETED BY COVERED EXCHANGES

8. Provide the aggregate dollar amount of covered sales that: (a) occurred on the exchange; (b) had a charge date in the month of this report; (c) the covered exchange captured in a trade reporting system; and (d) were reported to a designated clearing agency by a qualified special representative:

(A)

(B)

9. Provide the aggregate dollar amount of covered sales that: (a) occurred on the exchange; (b) had a charge date in the month of this report; (c) the exchange captured in a trade reporting system; and (d) were ex-clearing transactions:

(A)

(B)

QUESTION 10 TO BE COMPLETED BY COVERED ASSOCIATIONS

10. For each trade reporting system of the association, provide the aggregate dollar amount of covered sales that: (a) occurred by or through a member of the association otherwise than on a national securities exchange; (b) had a charge date in the month of this report; and (c) the association captured in the trade reporting system:

Name of Trade Reporting System:

(A)

(B)

Name of Trade Reporting System:

(A)

(B)

**PART III**

QUESTION 11 TO BE COMPLETED BY COVERED EXCHANGES

11. Provide the aggregate dollar amount of covered sales that: (a) occurred on the exchange; (b) had a charge date in the month of this report; and (c) the exchange neither captured in a trade reporting system nor reported to a designated clearing agency:

(A)

(B)

QUESTION 12 TO BE COMPLETED BY COVERED ASSOCIATIONS

12. Provide the aggregate dollar amount of covered sales that: (a) occurred by or through a member of the association otherwise than on a national securities exchange; (b) had a charge date in the month of this report; and (c) the association did not capture in a trade reporting system:

(A)

(B)

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| Form R31 | U.S. SECURITIES AND EXCHANGE COMMISSION<br>WASHINGTON, DC 20549 | Date filed<br>(MM/DD/YYYY) |
|---|---|---|
| Page 3 | FORM FOR REPORTING COVERED SALES AND COVERED ROUND TURN TRANSACTIONS<br>UNDER SECTION 31 OF THE SECURITIES EXCHANGE ACT OF 1934 | |

**EXECUTION:**

The undersigned has executed this form on behalf of, and with the authority of, the covered SRO. The undersigned and the covered SRO represent that the information and statements contained herein are current, true, and complete.

MM/DD/YY:

Name of Covered SRO:

BY:

Signature:

Print Name and Title:

*This page must be completed in full with original, manual signature.*

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By the Commission.

Dated: June 28, 2004.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 04–15081 Filed 7–6–04; 8:45 am]

BILLING CODE 8010–01–C

Federal Register

Wednesday,
July 7, 2004

Part IV

# Department of Health and Human Services

## Administration for Children and Families

## Projects of National Significance: Ongoing Data Collection; Notice

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Projects of National Significance: Ongoing Data Collection

*Program Office Name:* Administration on Developmental Disabilities (ADD).

*Announcement Type:* Cooperative Agreement—Initial.

*Funding Opportunity Number:* HHS–2004–ACF–ADD–DN–0004.

*CFDA Number:* 93.631.

*Dates:* Applications are due August 23, 2004.

**I. Funding Opportunity Description**

*General Description*

The Administration on Developmental Disabilities (ADD) in the Administration for Children and Families (ACF), the U.S. Department of Health and Human Services announces the availability of fiscal year (FY) 2004 funds for cooperative agreements authorized under Subtitle E of the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Projects of National Significance (PNS). Under this Subtitle, funds will be awarded to collect, analyze, and report on data to describe services and supports for persons with developmental disabilities. There are four Priority Areas under this announcement with the following objectives:

- *Priority Area I:* To conduct analyses and provide rapid responses that describe the movement of people with developmental disabilities from institutional to community settings (especially domiciles of their own) and the outcomes experienced by individuals with developmental disabilities who receive publicly funded residential services.
- *Priority Area II:* To investigate, report on, and provide rapid response to information needs related to the financial and programmatic trends in services for people with developmental disabilities that support and promote their well-being.
- *Priority Area III:* To examine, report on, and provide rapid responses regarding the employment status of people with developmental disabilities and related outcomes as a result of programs that support their employment.
- *Priority Area IV:* To implement an Internet site that will provide relevant content and information on the Medicaid program for individuals with developmental disabilities and their families.

*Background on ADD and ADD Programs*

The Administration on Developmental Disabilities (ADD) in the Administration for Children and Families (ACF), Department of Health and Human Services (DHHS) shares common goals with other ACF programs that promote the economic and social well-being of families, children, individuals, and communities. ACF and ADD envision:

- Families and individuals empowered to increase their own economic independence and productivity;
- Strong, healthy, supportive communities having a positive impact on the quality of life and the development of children;
- Partnerships with individuals, front-line service providers, communities, States, and Congress that enable solutions which transcend traditional agency boundaries;
- Services planned and integrated to improve access to programs and supports for individuals and families;
- A community-based approach that recognizes and expands on the resources and benefits of diversity; and
- A recognition of the power and effectiveness of public-private partnerships, including collaboration among a variety of community groups and government agencies, such as a coalition of faith-based organizations, grassroots groups, families, and public agencies to address a community need.

The goals, listed above, will enable more individuals, including people with developmental disabilities, to live productive and independent lives integrated into their communities. The Projects of National Significance are a means by which ADD promotes the achievement of these goals.

ADD is the lead agency within ACF and DHHS responsible for planning and administering programs to promote self-sufficiency and protect the rights of persons with developmental disabilities. ADD implements the Developmental Disabilities Assistance and Bill of Rights Act, the DD Act, which was authorized by Congress in 2000.

The DD Act of 2000 (42 U.S.C. 15001) supports and provides assistance to States, public agencies, and private non-profit organizations, including faith-based and community organizations, to assure that individuals with developmental disabilities and their families participate in the design of and have access to culturally competent services, supports, and other assistance and opportunities that promote independence, productivity, integration, and inclusion into the community.

As defined in the DD Act, the term "developmental disabilities" means a severe, chronic disability of an individual that is attributable to a mental or physical impairment or combination of mental and physical impairments that is manifested before the individual attains age 22 and is likely to continue indefinitely. Developmental disabilities result in substantial limitations in three or more of the following functional areas: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and capacity for economic self-sufficiency.

A number of significant findings are identified in the DD Act, including:

- Disability is a natural part of the human experience that does not diminish the right of individuals with developmental disabilities to enjoy the opportunity for independence, productivity, integration, and inclusion into the community.
- Individuals whose disabilities occur during their developmental period frequently have severe disabilities that are likely to continue indefinitely.
- Individuals with developmental disabilities often require lifelong specialized services and assistance, provided in a coordinated and culturally competent manner by many agencies, professionals, advocates, community representatives, and others to eliminate barriers and to meet the needs of such individuals and their families.

The DD Act also promotes the best practices and policies presented below:

- Individuals with developmental disabilities, including those with the most severe developmental disabilities, are capable of achieving independence, productivity, integration, and inclusion into the community, and often require the provision of services, supports, and other assistance to achieve such.
- Individuals with developmental disabilities have competencies, capabilities, and personal goals that should be recognized, supported, and encouraged, and any assistance to such individuals should be provided in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual.
- Individuals with developmental disabilities and their families are the primary decision makers regarding the services and supports such individuals and their families receive, and play decision making roles in policies and programs that affect the lives of such individuals and their families.

Toward these ends, ADD seeks to support and accomplish the following:

• Enhance the capabilities of families in assisting individuals with developmental disabilities to achieve their maximum potential;

• Support the increasing ability of individuals with developmental disabilities to exercise greater choice and self-determination and to engage in leadership activities in their communities; and

• Ensure the protection of individuals with developmental disabilities' legal and human rights.

The four programs funded under the DD Act are:

• State Developmental Disabilities Councils;

• State Protection and Advocacy Systems for Individuals with Developmental Disabilities' Rights;

• Grants to the National Network of University Centers for Excellence in Developmental Disabilities, Education, Research, and Service; and

• Grants for Projects of National Significance.

Through the Projects of National Significance (PNS) grant program, ADD has awarded in the past cooperative agreements for data collection and information dissemination efforts to better understand the support and service delivery system for people with developmental disabilities. The most recent funding for these awards was intended to measure the effect of national policy changes that modified the nature of financial assistance to individuals with developmental disabilities. Specifically, ADD sought to identify the extent to which individuals with developmental disabilities were included in programs and the measurable outcomes that result in participation in such programs.

Given ADD's interest in promoting the increased independence, productivity, and community integration of individuals with developmental disabilities, the main purpose of the data collection and information dissemination projects is to continue to support research and information collection efforts that shed light on the nature of services and related outcomes for individuals with developmental disabilities. Under this cooperative agreement, ADD will fund projects that are designed to assess trends and gaps in the services for individuals with developmental disabilities, identify outcomes for individuals with developmental disabilities who receive services, and provide the field, including consumers, with timely information.

**Terms and Conditions of the Cooperative Agreement**

This Program Announcement describes awards that will be made as a cooperative agreement. While an organization will not be conducting its project on behalf of ADD, ADD and the awardees will share work cooperatively in the development and implementation of the projects' agenda. Under the cooperative agreement mechanism, ADD and the awardees will share the responsibility for planning the objectives of the projects. Awardees will have the primary responsibility for developing and implementing the activities of the project. ADD will jointly participate with awardees in such activities as clarifying the specific topic areas to be addressed through periodic briefings and ongoing consultation, sharing with awardees its knowledge of the issues being addressed by past and current projects, and providing feedback to awardees about the usefulness to the field of written products and information sharing activities. The details of the relationship between ADD and awardees will be set forth in the cooperative agreement to be developed and signed prior to issuance of the award.

Priority Area I of this Program Announcement shall provide a funding opportunity for research activities that examine on a national level the movement of people with developmental disabilities from institutional to community settings (especially domiciles of their own) and the outcomes experienced by individuals with developmental disabilities who receive publicly funded residential services. This Program Announcement also contains a Priority Area II for investigations into the financial and programmatic trends in services for people with developmental disabilities that support and promote their well-being. Additionally, applications are being sought for Priority Area III to examine from a national perspective the employment status of people with developmental disabilities and related outcomes as a result of employment. Finally, Priority Area IV seeks applications for one project that will implement an Internet site which provides relevant information on Medicaid for individuals with developmental disabilities and their families to better assist these individuals in gaining access to and benefiting from these services.

Projects under each Priority Area may involve the collection of new data, the analysis of current data collected in the States, or a combination of both. ADD intends to fund at least 1 grant in each Priority Area on a competitive basis.

Each applicant is responsible for responding to the ADD Performance System. This System is framed by accountability requirements of the DD Act and Federal government, including those established under the ACF Annual Report Plan for the Government Performance and Results Act. The accountability provisions are discussed for each Priority Area.

*Other General Information:*

*Anticipated Total Funding:* $1,050,000.

*Anticipated Number of Awards:* 3–4 per budget period.

*Ceiling on Amount of Individual Awards:* Individual priority areas range from $150,000 to $300,000 per budget period.

*Floor on Amount of Individual Awards:* None.

*Average Projected Award Amount:* Individual priority areas range from $150,000 to $300,000 per budget period.

*Project Periods for Awards:* This announcement is inviting applications for project periods up to three years. Awards, however, will be made on a competitive basis, for a one-year budget period. Applications for continuation cooperative agreements funded under these awards beyond the one-year budget period but within the three year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

*Priority Area I: Residential Services for People With Developmental Disabilities*

*Purpose:*

To better understand the landscape of residential services for people with developmental disabilities and the impact of national programs, such as those authorized under the DD Act, the purpose of Priority Area I is to conduct analyses that describe the movement of people with developmental disabilities from institutional to community settings (especially domiciles of their own) and the outcomes experienced by individuals with developmental disabilities who receive publicly and, to the extent possible, privately funded residential services.

Over 20 years ago, most people with developmental disabilities lived in institutions. In an effort to move people out of these settings, the "deinstitutionalization" movement increased the use of supervised community living settings. With a continued focus on moving people with

developmental disabilities into community living experiences, residential services currently emphasize community integration that promotes self-determination and opportunities for people with developmental disabilities to be a part of the community.

Despite positive efforts to increase access to community living, great variability continues to characterize the extent to which people living in various States are provided the opportunity to live in community settings. Moreover, providing adequately supported access to community services for people with significant medical and behavioral needs still presents challenges, and as a result community services for people with the most severe developmental disabilities have been slower to develop.

To meet the intent of Priority Area I, the following are the minimum requirements for the project design:

*Project Design and Methods:* Applicants should identify the project design and methods for carrying out activities under this funding opportunity. At a minimum, applicants should outline, as appropriate:

- The research design (*e.g.*, case study, longitudinal, State level policy analyses, descriptive) for describing services and measuring program impact;
- Indicators for measuring program impact;
- The necessary steps for collecting new data the project will generate and/or the current data the project will analyze;
- Data sources, including primary and secondary sources;
- Quantitative and/or qualitative methods of analysis and plans for ensuring the reliability and validity of the analysis;
- Plans for a rapid response system whereby information needs are addressed in a timely fashion; and
- A description of the Project commitment to work with ADD under the cooperative agreement.

*Topics:* Applicants should address topics that are timely and responsive to the information needs of multiple audiences concerned about services for people with developmental disabilities. In discussing the project approach, applicants should indicate what topics will be addressed in the analysis, which could include:

- An understanding of housing issues from multiple perspectives, such as State agencies, community service providers, consumers of services, etc.;
- Extent to which the goals of the system promotes community inclusion;
- States policies or practices that support access to residential services as a key outcome for persons with developmental disabilities;
- Coordination across other agencies or initiatives, such as one-stop entities;
- Efficacy of outreach methods;
- The effect of new fiscal strategies that are not tied to Medicaid; and
- Promising practices.

Any topic discussed in the application should include reference to ways in which impact will be a part of the analysis.

*Identification of Services:* Applicants should identify the existing State and Federal laws under review that impact people with developmental disabilities. At a minimum, the applicant should provide details of the following:

- The laws and policies governing services for people with developmental disabilities the project proposes to examine;
- Funding streams for services and supports to people with developmental disabilities and their families; and
- Eligibility criteria and other relevant program requirements.

Applicants should indicate any programs operated in the private sector that will be included in the analysis.

*Key Personnel:* Each grantee should ensure that key project personnel have direct experience with and/or knowledge in conducting research using a variety of approaches such as using large, national databases.

*Civil Rights:* Each grantee must comply with the Americans with Disabilities Act, where applicable, and Section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act Amendments of 1998.

*Communication and Dissemination:* Each applicant must provide a detailed description of plans for regularly communicating and disseminating information to the public through e-mail and other effective, affordable, and accessible forms of electronic communication, which may include monthly newsletters, the publication of datasets on websites or regularly scheduled research briefs and fact sheets on topical areas. Applicants should discuss how information on the internet will be compliant with Section 508.

*Annual Report:* The applicant must describe how they will meet requirements of the ADD Performance System through the development of an annual report. This narrative and numerical report must describe on a yearly basis changes related to housing for people with developmental disabilities. Specifically, the applicants must describe how they will report on the percentage of individuals with developmental disabilities who are more independent, self-sufficient, and integrated into the community as a result of housing services. The report should provide national perspectives and, as appropriate, state-by-state analyses. The annual report will be due by the end of the project fiscal year and must be made available to the public.

## II. Award Information

*Funding Instrument Type:* Cooperative Agreement.

*Description of Federal Involvement with Cooperative Agreement:* Please see "I. Funding Opportunity Description, General Description, Terms and Conditions of the Cooperative Agreement" for a complete description of the cooperative agreement.

*Anticipated Total Priority Area Funding:* $300,000.

*Anticipated Number of Awards:* 1 per budget period.

*Ceiling on Amount of Individual Annual Awards:* $300,000 per budget period.

*Floor of Individual Award Amounts:* None.

*Average Projected Award Amount:* $300,000 per budget period.

*Project Periods for Awards:* This announcement is inviting applications for project periods up to three years. Awards, however, will be made on a competitive basis, for a one-year budget period. Applications for continuation grants funded under these awards beyond the one-year budget period but within the three-year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

## III. Eligibility Information

### *1. Eligible Applicants*

State Governments, County Governments, City or Township Governments, State Controlled Institutions of Higher Education, Native American Tribal Governments (Federally Recognized), Public Housing Authorities/Indian Housing Authorities, Non-profits having 501 (c) (3) status with the IRS, other than institutions of higher education, Non-profits that do not have 501 (c) (3) status with the IRS, other than institutions of higher education, and private Institutions of Higher Learning.

*Additional Information on Eligibility:*

- Non-profit organizations must demonstrate proof of non-profit status. Proof of non-profit status is any one of the following:

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; or

e. Any of the items in the subparagraphs immediately above for a State or national parent and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Applicants are cautioned that the ceiling for individual awards is $300,000. An application exceeding the $300,000 threshold will be considered non-responsive and returned without review.

*2. Cost Sharing or Matching*

Grantees must provide at least 25 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-federal share. The non-federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. For example, in order to meet the match requirements, a project with a total approved cost of $400,000, requesting $300,000 in ACF funds, must provide a non-federal share of at least 100,000 (25% of total approved project cost of $400,000). Grantees will be held accountable for commitments of non-federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal funds.

Applications that fail to include the required amount of cost-share will be considered non-responsive and returned without review.

*3. Other (if Applicable)*

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 and 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 at 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com*

Applicants are cautioned that the ceiling for individual awards is $300,000. Applications exceeding the $300,000 threshold will be considered non-responsive and will not be eligible for funding under this announcement.

Applications that fail to include the required amount of cost-share will be considered non-responsive and returned without review.

**IV. Application and Submission Information**

*1. Address To Request an Application Package*

Jennifer Johnson, Program Specialist, Administration on Developmental Disabilities, Office of Operations and Discretionary Grants, Mail Stop: HHH 405-D, 370 L'Enfant Promenade, SW., Washington, DC 20447, Phone: 202–690–5982, E-mail: *jjohnson1@acf.hhs.gov.*

*2. Content and Form of Application Submission*

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. You may not e-mail an electronic copy of a grant application to us.

*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.
- 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 must comply with any page limitation requirements described in this Program Announcement and meet the application deadline.
- 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 *http://www.Grants.gov.*
- You must search for the downloadable application package by the CFDA number.

*Electronic Address where applications will be accepted: http://www.Grants.gov.*

The required application package will include the following using the format described:

Format

The project description must not exceed 50 double-spaced, numbered, typed pages including an abstract and a table of contents. Any application which exceeds the page limit requirement will have the additional pages removed from the application prior to the review. The type must not be smaller than 12 pitch or a point size of 12.

Project Description

Please see Section V. 1. Criteria, for instructions on preparing the project summary/abstract and the full project description.

Budget

The applicant shall develop a full budget, including a completed SF 424A, "Budget Information—Non-Construction Programs," a detailed budget breakdown by object class categories listed in the SF 424A, Section B, and a narrative budget justification, for a twelve-month budget period. The SF 424 forms are provided below in this

announcement. The applicant must include the twelve-month Federal budget under Column (1), the twelve-month non-Federal budget under Column (2), and the total twelve-month budget under Column (5) of the SF 424A. The applicant shall use the three-column approach when preparing the detailed budget breakdown. For the remaining two years of the requested project period, the applicant must complete SF 424A, Section E, indicating the total forecasted budget for each year. The applicant must also provide a lump sum figure for non-Federal contributions for the second through third years of the project on SF 424A, Section C. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget. If the procurement policy of an applicant's institution includes an equipment definition other than the current Federal definition, a copy of the institution's current definition should be included in the application. Please see Section V.1 Criteria for additional guidance.

Appendix

The Appendix must not exceed 40 pages. Supplementary material, intended to provide examples of activities, may be included in the Appendix for reviewers but shall adhere to the page limit requirement. The Appendix must be included with the original and the two copies of the application.

Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original, signed and dated application, plus two copies;

—Application is from an organization that is eligible under the eligibility requirements, defined in the Priority Area description; and

—Application length does not exceed 50 pages

—Application for Federal Assistance (SF 424, REV 4–88);

—A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable;

—Budget Information—Non-Construction Programs (SF 424A, REV 4–88);

—Budget justification for Section B—Budget Categories;

—Table of Contents;

—Letter from the Internal Revenue Service, etc. to prove non-profit status, if necessary;

—Copy of the applicant's approved indirect cost rate agreement, if appropriate; (when charging indirect costs to Federal funds or when using indirect costs as a matching share);

—Project Description;

—Letter(s) of commitment verifying non-Federal cost share

—Any appendices/attachments;

—Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88);

—Certification Regarding Lobbying;

—Certification of Protection of Human Subjects, if necessary; and

—Certification of the Pro Children Act of 1994, signature on the application represents certification.

• Assurances/Certifications

Applicants are required to submit a SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants should furnish an executed copy of the lobbying certification (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicant must also understand that they will be held accountable for the smoking prohibition included within Pub. L. 103–227, Part C Environmental Tobacco Smoke (also known as the Pro-Children's Act of 1994). By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

In addition, applicants are required under Section 162(c)(3) of the Act to provide assurances that the human rights of all individuals with developmental disabilities (especially those individuals without familial protection) who will receive services under projects assisted under Part E will be protected consistent with section 110 (relating to the rights of individuals with developmental disabilities). Each application must include a statement providing this assurance.

For research projects in which human subjects may be at risk, a Protection of Human Subjects Assurance may be required. If there is a question regarding the applicability of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496–7041.

Non-profit applicants must demonstrate proof of their non-profit status and this proof must be included in their application. Proof of non-profit status is any one of the following:

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; or

e. Any of the items in the subparagraphs immediately above for a State or national parent and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

*3. Submission Dates and Times*

The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on August 23, 2004. 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 following address: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade SW., 8th Floor, Washington, DC 20447, Attention: Lois Hodge.

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. ACF will not be sending applicants notifications that their applications were received under this Program Announcement by the deadline.

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 following address: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade SW., 8th Floor, Washington, DC 20447, Attention: Lois Hodge.

*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.

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. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

*Required Forms:*

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| SF424, SF424a, SF424B | Per required form | May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm.* | August 23, 2004. |
| Project Summary/Abstract | Summary of application request | One page limit | August 23, 2004. |
| Project Description | Responsiveness to evaluation criteria. | Format described in Review and Selection section. Limit 60 pages. Size 12 font, ½" margins. | August 23, 2004. |
| Certification Regarding Lobbying | Per required form | May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm.* | August 23, 2004. |
| Disclosure of Lobbying Activities (SF–LLL). | Per required form | May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm.* | August 23, 2004. |
| Environmental Tobacco Smoke Certification. | Per required form | May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm.* | August 23, 2004. |

*Additional Forms:*

Private-non-profit organizations are encouraged to submit with their applications the additional survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants".

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| Survey for Private, Non-Profit Grant Applicants. | Per required form | May be found on *http://www.acf.hhs.gov/programs/ofs/form.htm.* | By application due date. |

*4. Intergovernmental Review*

State Single Point of Contact (SPOC), Notification Under Executive Order 12372

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs", and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities". Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs

As of January, 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process: Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia and Washington. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC.

All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants and Audit Resolution, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, DC 20447.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found at: *http://www.whitehouse.gov/omb/grants/spoc.html*

*5. Funding Restrictions*

*Non-Allowable Costs:* Reimbursement of pre-award costs, costs for foreign travel, or costs for construction activities are not allowable charges to this Federal grant program.

*Indirect Costs:* In order to charge Indirect Costs to the Federal Funds and/or use Indirect Costs as a matching share, the applicant must have an approved indirect costs agreement for the period in which the Federal funds would be awarded.

*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. The Application must be received at the address below by 4:30 p.m. Eastern Standard Time on or before the closing date. Applications should be mailed to: The U.S. Department of Health and Human Services, ACF Office of Grants Management, 370 L'Enfant Promenade SW. 8th Floor, Washington, DC 20447, Attention: Lois Hodge.

*Hand-Deliver:* Applicants choosing to hand-deliver applications by either themselves or by an agent, must have the application delivered by 4:30 EST between Monday and Friday (excluding Federal holidays) on the deadline date to: The U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, ACF Mail Center, 2nd Floor Aerospace Center, 901 D Street, SW., Washington, DC 20024, Attention: Lois Hodge.

An Applicant must provide an original application with all attachments signed by an authorized representative and two copies.

*Electronic Submission:* 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 50 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.

*General Project Description:* Applicants are required to submit a full project description and must prepare the project description statement in accordance with the following instructions.

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, all information requested through each specific evaluation criteria should 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.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

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.

Approach

Outline a plan of action which 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 which 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. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates. If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Evaluation

Provide a narrative addressing how the results of the project and the conduct 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.

Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Budget and Budget Justification

Provide 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. The detailed budget must

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.

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.

Travel

*Description:* Costs of project-related travel by employees of the applicant organization (does not include costs of consultant 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.

1. Evaluation Criteria

Five criteria will be used to review and evaluate each application. Each criterion should be addressed in the project description section of the application. The point values indicate the maximum numerical weight possible for each criterion in the review process.

Approach (35 Points)

Using the following values for each required item in this criterion, points will be awarded according to the extent to which the application:

15 Points Outlines a sound, workable, and detailed plan of action, pertaining to the goals and objectives of the proposed project and the proposed approach.

5 Points Provides quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity.

5 Points Describes innovations and/or unusual features of the proposed project.

5 Points Provides a rationale for taking this approach as opposed to other possibilities.

3 Points Lists organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

2 Points Cites factors that might accelerate or decelerate the work.

Objectives and Need for Assistance (25 Points)

Using the following values for each required item in this criterion, points will be awarded according to the extent to which the application:

8 Points Identifies and demonstrates the need for assistance and the importance of addressing the problems in the proposed project.

8 Points States the principal and subordinate objectives for the proposed project and describes the conceptual framework for the project.

4 Points Adequately identifies the key State and Federal supports being examined.

3 Points Provides relevant data based on research and/or planning studies.

2 Points Provides supporting documentation and/or testimonies from concerned individuals and groups, other than the applicant.

Evaluation (25 Points)

Using the following values for each required item in this criterion, points will be awarded according to the extent to which the application:

10 Points Expected results and benefits are consistent with the proposed project's goals and objectives.

5 Points States the anticipated contributions of the proposed project to policy, practice, theory, the field, and/or research.

5 Points Describes the specific results/products that will be achieved and relevant information regarding information collection and evaluation.

5 Points Describes the evaluation methodology.

Personnel, Staff and Position Data (10 Points)

Using the following values for each required item in this criterion, points will be awarded according to the extent to which the application:

5 Points Identifies the background and experience of key staff members.

5 Points Identifies personnel who will be assigned to the project.

Budget and Budget Justification (5 Points)

Applicants are expected to present a budget with reasonable project costs, appropriately allocated across component areas, and sufficient to accomplish the objectives. The requested funds for the project must be fully justified and documented. Line item allocations and justification are required for both Federal and non-Federal funds. A letter of commitment for the project's non-Federal resources must be submitted with the application in order to be given credit in the review process. A fully explained non-Federal share budget must be prepared for each funding source.

For purposes of the outside review process, applicants may elect to summarize salary information on the copies of their application. All salary information must, however, appear on the signed original application for ACF.

Using the following values for each required item in this criterion, points will be awarded according to the extent to which the application:

2 Points Discusses and justifies the costs and reasonableness of the proposed project in view of the expected results and benefits.

2 Points Describes the fiscal controls and accounting procedures to be used.

1 Point Includes a fully explained non-Federal share budget and its source(s).

2. Review and Selection Process

Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instructions in this announcement and (2) the applicant is eligible for funding. It is necessary that applicants state specifically which priority area they are applying for. If applications are found to be inappropriate for the funding announcement in which they are submitted, applicants will be contacted for verbal approval of redirection to a more appropriate priority area.

Applications which pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of specific evaluation criteria. The results of these reviews will assist the Commissioner and ADD program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by reviewers. However,

highly ranked applications are not guaranteed funding because other factors are taken into consideration. These include, but are not limited to, the number of similar types of existing grants or projects funded with ADD funds in the last five years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; an applicant's progress in resolving any final audit disallowance on previous ADD or other Federal agency grants. ADD will consider the geographic distribution of funds among States and the relative proportion of funding among rural and urban areas. The evaluation criteria were designed to assess the quality of a proposed project, and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to the evaluation criteria within the context of this program announcement.

*Priority Area II: Financial and Programmatic Trends in Services for People With Developmental Disabilities*

1. Priority Area II Description

*Priority Area II Background Information:*

*Purpose:* The purpose of Priority Area II is to support investigations of and reports on the trends in public services accessed by people with developmental disabilities to support and promote their well-being.

Federal and State funds are a key financial resource for an array of services and supports for people with developmental disabilities. For example, many adults with developmental disabilities rely on public forms of assistance, such as Temporary Assistance for Needy Families and Supplemental Security Income, because social and physical barriers, low expectations from others, and societal stereotypes contribute to a lower sense of opportunity and lower attainment in education and employment.

States are facing significant financial strains, which is leading to cutbacks in public programs across the board. The aging of individuals with developmental disabilities combined with the increased longevity of this population is further complicating fiscal matters in the States. Education systems are struggling to meet the demands of school reform, resulting in cutbacks in programs. Increasingly, schools and early intervention programs are accessing Medicaid funds to cover the costs of special education services to children with disabilities. The waiver under Medicaid has become the primary program supporting long-term care services for persons with developmental disabilities.

To meet the intent of Priority Area II, the following are the minimum requirements for the project design:

*Project Design and Methods:* Applicants should identify the project design and methods for carrying out activities under this funding opportunity. At a minimum, applicants should outline, as appropriate:

- The research design (*e.g.*, case study, longitudinal, State level policy analyses, descriptive) for describing services and measuring program impact;
- Indicators for measuring program impact;
- The necessary steps for collecting new data the project will generate and/or the current data the project will analyze;
- Data sources, including primary and secondary sources; and
- Quantitative and/or qualitative methods of analysis and plans for ensuring the reliability and validity of the analysis;
- Plans for a rapid response system through which pressing information needs are addressed in a timely fashion; and
- A description of the Project commitment to work with ADD under the cooperative agreement.

*Topics:* Applicants should address topics that are timely and responsive to the information needs of multiple audiences concerned about services for people with developmental disabilities. In discussing the project approach, applicants should indicate what topics will be addressed in the analysis, which could include:

- An understanding of developmental disabilities services issues from multiple perspectives, such as State agencies, community service providers, consumers of services, etc.;
- Extent to which the goals of the system promote community inclusion;
- States policies or practices that support access to services that support persons with developmental disabilities;
- Participation rates in TANF and other State welfare programs;
- Trends and shifts in current services under current fiscal climate;
- Coordination across other agencies or initiatives, such as one-stop entities;
- Efficacy of outreach methods; and
- Promising practices.

Any topic discussed in the application should include reference to ways in which impact will be included in the analysis.

*Identification of Services:* Applicants should identify the existing State and Federal laws under review that impact people with developmental disabilities. At a minimum, the applicant should provide details of the following:

- The laws and policies governing services for people with developmental disabilities the project proposes to examine;
- Funding streams for services and supports to people with developmental disabilities and their families; and
- Eligibility criteria and other relevant program requirements.

Applicants should indicate any programs operated in the private sector that will be a part of the analysis.

*Key Personnel:* Each grantee should ensure that key project personnel have direct experience with and/or knowledge in conducting research using a variety of approaches such as using large, national databases.

*Civil Rights:* Each grantee must comply with the Americans with Disabilities Act, where applicable, and Section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act Amendments of 1998.

*Communication and Dissemination:* Each applicant must provide a detailed description of plans for regularly communicating and disseminating information to the public through e-mail and other effective, affordable, and accessible forms of electronic communication, which may include monthly newsletters, the publication of datasets on Web sites or regularly scheduled research briefs and fact sheets on topical areas. Applicants should discuss how information on the Internet will be compliant with Section 508.

*Annual Report:* The applicant must describe how they will meet requirements of the ADD Performance System through the development of an annual report. This narrative and numerical report must describe on a yearly basis changes (both positive and negative) for people with developmental disabilities. Specifically, the applicants must describe how they will report on the percentage of individuals with developmental disabilities who are more independent, self-sufficient, and integrated into the community as a result of public services. The report should provide national perspectives and, as appropriate, state-by-state analyses. The annual report will be due by the end of the project fiscal year and must be made available to the public.

**II. Priority Area II Award Information**

*Funding Instrument Type:* Cooperative Agreement.

*Description of Federal Involvement with Cooperative Agreement:* Please see "I. Funding Opportunity Description, General Description, Terms and Conditions of the Cooperative Agreement", for a complete description of the cooperative agreement.

*Anticipated Total Priority Area Funding:* $300,000.

*Anticipated Number of Awards:* 1 per budget period.

*Ceiling on Amount of Individual Annual Awards:* $300,000 per budget period.

*Floor of Individual Award Amounts:* None.

*Average Projected Award Amount:* $300,000 budget period.

*Length of Project:* This announcement is inviting applications for project periods up to three years. Awards, however, will be made on a competitive basis, for a one-year budget period. Applications for continuation grants funded under these awards beyond the one-year budget period but within the three year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

**III. Priority Area II Eligibility Information**

*1. Eligible Applicants*

State Governments, County Governments, City or Township Governments, State Controlled Institutions of Higher Education, Native American Tribal Governments (Federally Recognized), Public Housing Authorities/Indian Housing Authorities, Non-profits having 501 (c)(3) status with the IRS, other than institutions of higher education, Non-profits that do not have 501 (c)(3) status with the IRS, other than institutions of higher education, and private Institutions of Higher Learning.

*Additional Information on Eligibility:*

- Non-profit organizations must demonstrate proof of non-profit status. Proof of non-profit status is any one of the following:

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. 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; or

e. Any of the items in the subparagraphs immediately above for a State or national parent and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Applicants are cautioned that the ceiling for individual awards is $300,000. An application exceeding the $300,000 threshold will be considered non-responsive and returned without review.

*2. Cost Sharing or Matching*

Grantees must provide at least 25 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-federal share. The non-federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. For example, in order to meet the match requirements, a project with a total approved cost of $400,000, requesting $300,000 in ACF funds, must provide a non-federal share of at least 100,000 (25% of total approved project cost of $400,000). Grantees will be held accountable for commitments of non-federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal funds.

Applications that fail to include the required amount of cost-share will be considered non-responsive and returned without review.

*3. Other (if Applicable)*

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 and 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 at 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Applicants are cautioned that the ceiling for individual awards is $300,000. Applications exceeding the $300,000 threshold will be considered non-responsive and will not be eligible for funding under this announcement.

Applications that fail to include the required amount of cost-share will be considered non-responsive and returned without review.

**IV. Application and Submission Information**

*1. Address To Request an Application Package*

Jennifer Johnson, Program Specialist, Administration on Developmental Disabilities, Office of Operations and Discretionary Grants, Mail Stop: HHH 405–D, 370 L'Enfant Promenade, SW., Washington, DC 20447, Phone: 202–690–5982, E-mail: *jjohnson1@acf.hhs.gov.*

*2. Content and Form of Application Submission*

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. You may not e-mail an electronic copy of a grant application to us.

*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.
- 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 must comply with any page limitation requirements described in this Program Announcement and meet the application deadline.

• 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 *http://www.Grants.gov.*

• You must search for the downloadable application package by the CFDA number.

*Electronic Address where applications will be accepted: http://www.Grants.gov.*

The required application package will include the following using the format described:

Format

The project description must not exceed 50 double-spaced, numbered, typed pages including an abstract and a table of contents. Any application which exceeds the page limit requirement will have the additional pages removed from the application prior to the review. The type must not be smaller than 12 pitch or a point size of 12.

Project Description

Please see Section V. 1. Criteria, for instructions on preparing the project summary/abstract and the full project description.

Budget

The applicant shall develop a full budget, including a completed SF 424A, "Budget Information—Non-Construction Programs," a detailed budget breakdown by object class categories listed in the SF 424A, Section B, and a narrative budget justification, for a twelve-month budget period. The SF 424 forms are provided below in this announcement. The applicant must include the twelve-month Federal budget under Column (1), the twelve-month non-Federal budget under Column (2), and the total twelve-month budget under Column (5) of the SF 424A. The applicant shall use the three-column approach when preparing the detailed budget breakdown. For the remaining two years of the requested project period, the applicant must complete SF 424A, Section E, indicating the total forecasted budget for each year. The applicant must also provide a lump sum figure for non-Federal contributions for the second through third years of the project on SF 424A, Section C. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget. If the procurement policy of an applicant's institution includes an equipment definition other than the current Federal definition, a copy of the institution's current definition should be included in the application. Please see Section V.1 Criteria for additional guidance.

Appendix

The Appendix must not exceed 40 pages. Supplementary material, intended to provide examples of activities, may be included in the Appendix for reviewers but shall adhere to the page limit requirement. The Appendix must be included with the original and the two copies of the application.

Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original, signed and dated application, plus two copies;

—Application is from an organization that is eligible under the eligibility requirements, defined in the Priority Area description; and

—Application length does not exceed 50 pages

—Application for Federal Assistance (SF 424, REV 4–88);

—A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable;

—Budget Information—Non-Construction Programs (SF 424A, REV 4–88);

—Budget justification for Section B—Budget Categories;

—Table of Contents;

—Letter from the Internal Revenue Service, etc. to prove non-profit status, if necessary;

—Copy of the applicant's approved indirect cost rate agreement, if appropriate (when charging indirect costs to Federal funds or when using indirect costs as a matching share);

—Project Description;

—Letter(s) of commitment verifying non-Federal cost share;

—Any appendices/attachments;

—Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88);

—Certification Regarding Lobbying;

—Certification of Protection of Human Subjects, if necessary; and

—Certification of the Pro Children Act of 1994, signature on the application represents certification.

• Assurances/Certifications

Applicants are required to submit a SF 424B, Assurances— Non-Construction Programs and the Certification Regarding Lobbying. Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants should furnish an executed copy of the lobbying certification (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicant must also understand that they will be held accountable for the smoking prohibition included within Pub. L. 103–227, Part C Environmental Tobacco Smoke (also known as the Pro-Children's Act of 1994). By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

In addition, applicants are required under Section 162(c)(3) of the Act to provide assurances that the human rights of all individuals with developmental disabilities (especially those individuals without familial protection) who will receive services under projects assisted under Part E will be protected consistent with section 110 (relating to the rights of individuals with developmental disabilities). Each application must include a statement providing this assurance.

For research projects in which human subjects may be at risk, a Protection of Human Subjects Assurance may be required. If there is a question regarding the applicability of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496–7041.

Non-profit applicants must demonstrate proof of their non-profit status and this proof must be included in their application. Proof of non-profit status is any one of the following:

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; or

e. Any of the items in the subparagraphs immediately above for a State or national parent and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

*3. Submission Dates and Times*

The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on August 23, 2004. 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 following address: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade SW, 8th Floor, Washington, DC 20447, Attention: Lois Hodge.

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. ACF will not be sending applicants notifications that their applications were received under this Program Announcement by the deadline.

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 following address: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade SW, 8th Floor, Washington, DC 20447, Attention: Lois Hodge.

*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.

*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. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

*Required Forms:*

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| SF424, SF424a, SF424B | Per required form | May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm.* | August 23, 2004. |
| Project Summary/Abstract | Summary of application request | One page limit | August 23, 2004. |
| Project Description | Responsiveness to evaluation criteria. | Format described in Review and Selection section. Limit 60 pages. Size 12 font, ½" margins. | August 23, 2004. |
| Certification Regarding Lobbying | Per required form | May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm.* | August 23, 2004. |
| Disclosure of Lobbying Activities (SF–LLL). | Per required form | May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm.* | August 23, 2004. |
| Environmental Tobacco Smoke Certification. | Per required form | May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm.* | August 23, 2004. |

*Additional Forms:*

Private-non-profit organizations are encouraged to submit with their applications the additional survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants".

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| Survey for Private, Non-Profit Grant Applicants. | Per required form | May be found on *http://www.acf.hhs.gov/programs/ofs/form.htm.* | By application due date. |

*4. Intergovernmental Review*

State Single Point of Contact (SPOC), Notification Under Executive Order 12372

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs", and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities". Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of January, 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process: Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia and Washington. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC.

All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants and Audit Resolution, 370 L'Enfant Promenade, S.W., Mail Stop 6C–462, Washington, DC 20447.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found at: *http://www.whitehouse.gov/omb/grants/spoc.html.*

*5. Funding Restrictions*

*Non-Allowable Costs:* Reimbursement of pre-award costs, costs for foreign travel, or costs for construction activities are not allowable charges to this Federal grant program.

*Indirect Costs:* In order to charge Indirect Costs to the Federal Funds and/or use Indirect Costs as a matching share, the applicant must have an approved indirect costs agreement for the period in which the Federal funds would be awarded.

*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. The Application must be received at the address below by 4:30 PM Eastern Standard Time on or before the closing date. Applications should be mailed to: The U.S. Department of Health and Human Services, ACF Office of Grants Management, 370 L'Enfant Promenade SW. 8th Floor, Washington, DC 20447, Attention: Lois Hodge.

*Hand-Deliver:* Applicants choosing to hand-deliver applications by either themselves or by an agent, must have the application delivered by 4:30 EST between Monday and Friday (excluding Federal holidays) on the deadline date to: The U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, ACF Mail Center, 2nd Floor Aerospace Center, 901 D Street, SW., Washington, DC 20024, Attention: Lois Hodge.

An Applicant must provide an original application with all attachments signed by an authorized representative and two copies.

*Electronic Submission:* Please see section IV. 2 Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

**V. Application Review Information**

*1. Evaluation Criteria*

Please see Generic and Specific Evaluation criteria for Priority Area #1, V.1, "Application Review Information, Evaluation Criteria" for crafting your response for the Project Narrative.

*2. Review and Selection Process*

Please see Priority Area#1, V.2, "Application Review Information, Review and Selection Process," for information on the review and selection process for this priority area.

**Priority Area III: Employment Status of People With Developmental Disabilities**

**I. Priority Area III Description**

*Priority Area III Background Information:*

*Purpose:* The purpose of Priority Area III is to support investigations that examine the employment status of people with developmental disabilities and related outcomes as a result of programs that support their employment.

Individuals with developmental disabilities are significantly less likely to be employed than are individuals without developmental disabilities. The outlook is particularly bleak for individuals with cognitive impairments and significant disabilities as their rate of employment rate is lower than those with milder impairments.

The persistently poor employment and postsecondary education participation rates for individuals with developmental disabilities has led to an increased emphasis on improving the secondary school to post-school transition process for youth with developmental disabilities. This need is heightened by new demands in the work environment for advanced skills of employees.

Information about the effects of efforts to increase the employability of people with developmental disabilities is necessary to assess the impact of such programs. These types of investigations should examine employment status, the retention rate, the kinds of positions held in relation to their disabling condition, and comparisons of wages to the general population.

To meet with the intent of Priority Area III, the following are the minimum requirements for the project design:

*Project Design and Methods:* Applicants should identify the project design and methods for carrying out activities under this funding opportunity. At a minimum, applicants should outline, as appropriate:

- The research design (*e.g.*, case study, longitudinal, State level policy analyses, descriptive) for describing services and measuring program impact;
- Indicators for measuring program impact;
- The necessary steps for collecting new data the project will generate and/or the current data the project will analyze;
- Data sources, including primary and secondary sources; and
- Quantitative and/or qualitative methods of analysis and plans for ensuring the reliability and validity of the analysis;
- Plans for a rapid response system whereby information needs are addressed in a timely fashion; and
- A description of the Project commitment to work with ADD under the cooperative agreement.

*Topics:* Applicants should address topics that are timely and responsive to the information needs of multiple audiences concerned about services for people with developmental disabilities. In discussing the project approach, applicants should indicate what topics will be addressed in the analysis, which could include:

- An understanding of employment issues from multiple perspectives, such as State agencies, community service providers, consumers of services, etc.;
- Extent to which the goals of the system promote community inclusion;
- States policies or practices that support access to employment services as a key outcome for persons with developmental disabilities;
- An analysis-of the ways in which people with developmental disabilities

obtained employment and the extent to which they are maintained;

• The relationship between post-secondary training opportunities and employment outcomes;

• Coordination across other agencies or initiatives, such as one-stop entities;

• Efficacy of outreach methods; and

• Promising practices.

Any topic discussed in the application should include reference to ways in which impact will be a part of the analysis.

*Identification of Services:* Applicants should identify the existing State and Federal laws under review that impact people with developmental disabilities. At a minimum, the applicant should provide details of the following:

• The laws and policies governing services for people with developmental disabilities the project proposes to examine;

• Funding streams for services and supports to people with developmental disabilities and their families; and

• Eligibility criteria and other relevant program requirements.

Applicants should indicate any programs operated in the private sector that will be included in the analysis.

*Key Personnel:* Each grantee should ensure that key project personnel have direct experience with and/or knowledge in conducting research using a variety of approaches such as using large, national databases.

*Civil Rights:* Each grantee must comply with the Americans with Disabilities Act, where applicable, and Section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act amendments of 1998.

*Communication and Dissemination:* Each applicant must provide a detailed description of plans for regularly communicating and disseminating information to the public through e-mail and other effective, affordable, and accessible forms of electronic communication, which may include the publication of monthly newsletters, datasets on websites or regularly scheduled research briefs and fact sheets on topical areas. Applicants should discuss how information on the internet will be compliant with Section 508.

*Annual Report:* The applicant must describe how they will meet requirements of the ADD Performance System through the development of an annual report. This narrative and numerical report must describe on a yearly basis changes in employment for people with developmental disabilities. Specifically, the applicants must describe how they will report on the percentage of individuals with developmental disabilities who are more independent, self-sufficient, and integrated into the community as a result of employment services. The report should provide national perspectives and, as appropriate, state-by-state analyses. The annual report will be due by the end of the project fiscal year and must be made available to the public.

**II. Priority Area III Award Information**

*Funding Instrument Type:* Cooperative Agreement.

*Description of Federal Involvement with Cooperative Agreement:* Please see "I. Funding Opportunity Description, General Description, Terms and Conditions of the Cooperative Agreement" for a complete description of the cooperative agreement.

*Anticipated Total Priority Area Funding:* $300,000.

*Anticipated Number of Awards:* 1 per budget period.

*Ceiling on Amount of Individual Annual Awards:* $300,000 per budget period.

*Floor of Individual Award Amounts:* None.

*Average Projected Award Amount:* $300,000 per budget period.

*Length of Project:* This announcement is inviting applications for project periods up to three years. Awards, however, will be made on a competitive basis, for a one-year budget period. Applications for continuation grants funded under these awards beyond the one-year budget period but within the three year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

**III. Priority Area III Eligibility Information**

*1. Eligible Applicants*

State Governments, County Governments, City or Township Governments, State Controlled Institutions of Higher Education, Native American Tribal Governments (Federally Recognized), Public Housing Authorities/Indian Housing Authorities, Non-profits having 501 (c) (3) status with the IRS, other than institutions of higher education, Non-profits that do not have 501 (c) (3) status with the IRS, other than institutions of higher education, and private institutions of higher learning

*Additional Information on Eligibility:*

• Non-profit organizations must demonstrate proof of non-profit status. Proof of non-profit status is any one of the following:

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. 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; or

e. Any of the items in the subparagraphs immediately above for a State or national parent and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Applicants are cautioned that the ceiling for individual awards is $300,000. An application exceeding the $300,000 threshold will be considered non-responsive and returned without review.

*2. Cost Sharing or Matching*

Grantees must provide at least 25 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-federal share. The non-federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. For example, in order to meet the match requirements, a project with a total approved cost of $400,000, requesting $300,000 in ACF funds, must provide a non-federal share of at least 100,000 (25% of total approved project cost of $400,000). Grantees will be held accountable for commitments of non-federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal funds.

Applications that fail to include the required amount of cost-share will be considered non-responsive and returned without review.

*3. Other (if Applicable)*

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 and 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 at 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Applicants are cautioned that the ceiling for individual awards is $300,000. Applications exceeding the $300,000 threshold will be considered non-responsive and will not be eligible for funding under this announcement.

Applications that fail to include the required amount of cost-share will be considered non-responsive and returned without review.

**IV. Application and Submission Information**

*1. Address To Request an Application Package*

Jennifer Johnson, Program Specialist, Administration on Developmental Disabilities, Office of Operations and Discretionary Grants, Mail Stop: HHH 405–D, 370 L'Enfant Promenade, SW., Washington, DC 20447, Phone: 202–690–5982, E-mail: *jjohnson1@acf.hhs.gov.*

*2. Content and Form of Application Submission*

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. You may not e-mail an electronic copy of a grant application to us.

*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.
- 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 must comply with any page limitation requirements described in this Program Announcement and meet the application deadline.
- 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 *http://www.Grants.gov.*
- You must search for the downloadable application package by the CFDA number.

*Electronic Address where applications will be accepted: http://www.Grants.gov.*

The required application package will include the following using the format described:

Format

The project description must not exceed 50 double-spaced, numbered, typed pages including an abstract and a table of contents. Any application which exceeds the page limit requirement will have the additional pages removed from the application prior to the review. The type must not be smaller than 12 pitch or a point size of 12.

Project Description

Please see Section V. 1. Criteria, for instructions on preparing the project summary/abstract and the full project description.

Budget

The applicant shall develop a full budget, including a completed SF 424A, "Budget Information—Non-Construction Programs," a detailed budget breakdown by object class categories listed in the SF 424A, Section B, and a narrative budget justification, for a twelve-month budget period. The SF 424 forms are provided below in this announcement. The applicant must include the twelve-month Federal budget under Column (1), the twelve-month non-Federal budget under Column (2), and the total twelve-month budget under Column (5) of the SF 424A. The applicant shall use the three-column approach when preparing the detailed budget breakdown. For the remaining two years of the requested project period, the applicant must complete SF 424A, Section E, indicating the total forecasted budget for each year. The applicant must also provide a lump sum figure for non-Federal contributions for the second through third years of the project on SF 424A, Section C. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget. If the procurement policy of an applicant's institution includes an equipment definition other than the current Federal definition, a copy of the institution's current definition should be included in the application. Please see Section V.1 Criteria for additional guidance.

Appendix

The Appendix must not exceed 40 pages. Supplementary material, intended to provide examples of activities, may be included in the Appendix for reviewers but shall adhere to the page limit requirement. The Appendix must be included with the original and the two copies of the application.

Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original, signed and dated application, plus two copies;

—Application is from an organization that is eligible under the eligibility requirements, defined in the Priority Area description; and

—Application length does not exceed 50 pages

—Application for Federal Assistance (SF 424, REV 4–88);

—A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable;

—Budget Information—Non-Construction Programs (SF 424A, REV 4–88);

—Budget justification for Section B—Budget Categories;

—Table of Contents;

—Letter from the Internal Revenue Service, etc. to prove non-profit status, if necessary;

—Copy of the applicant's approved indirect cost rate agreement, if appropriate; (when charging indirect costs to Federal funds or when using indirect costs as a matching share);

—Project Description;

—Letter(s) of commitment verifying non-Federal cost share

—Any appendices/attachments;

—Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88);

—Certification Regarding Lobbying;

—Certification of Protection of Human Subjects, if necessary; and

—Certification of the Pro Children Act of 1994, signature on the application represents certification.

• Assurances/Certifications

Applicants are required to submit a SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants should furnish an executed copy of the lobbying certification (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicant must also understand that they will be held accountable for the smoking prohibition included within Pub. L. 103–227, Part C Environmental Tobacco Smoke (also known as the Pro-Children's Act of 1994). By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

In addition, applicants are required under Section 162(c)(3) of the Act to provide assurances that the human rights of all individuals with developmental disabilities (especially those individuals without familial protection) who will receive services under projects assisted under Part E will be protected consistent with section 110 (relating to the rights of individuals with developmental disabilities). Each application must include a statement providing this assurance.

For research projects in which human subjects may be at risk, a Protection of Human Subjects Assurance may be required. If there is a question regarding the applicability of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496–7041.

Non-profit applicants must demonstrate proof of their non-profit status and this proof must be included in their application. Proof of non-profit status is any one of the following:

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; or

e. Any of the items in the subparagraphs immediately above for a State or national parent and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

*3. Submission Dates and Times*

The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on August 23, 2004. 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 following address: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade SW., 8th Floor, Washington, DC 20447, Attention: Lois Hodge.

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. ACF will not be sending applicants notifications that their applications were received under this Program Announcement by the deadline.

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 following address: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management 370 L'Enfant Promenade SW., 8th Floor, Washington, DC 20447, Attention: Lois Hodge.

*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.

*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. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

*Required Forms:*

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| SF424, SF424a, SF424B | Per required form | May be found at *www.acf.hhs.gov/program/ofs/forms.htm.* | August 23, 2004. |
| Project Summary/Abstract | Summary of application request | One page limit | August 23, 2004. |
| Project Description | Responsiveness to evaluation criteria. | Format described in Review and Selection section. Limit 60 pages. Size 12 font, ½" margins.. | August 23, 2004. |
| Certification Regarding Lobbying | Per required form | May be found at *www.acf.hhs.gov/program/ofs/forms.htm.* | August 23, 2004. |
| Disclosure of Lobbying Activities (SF–LLL). | Per required form | May be found at *www.acf.hhs.gov/program/ofs/forms.htm.* | August 23, 2004. |
| Environmental Tobacco Smoke Certification. | Per required form | May be found at *www.acf.hhs.gov/program/ofs/forms.htm.* | August 23, 2004. |

*Additional Forms:*

Private-non-profit organizations are encouraged to submit with their applications the additional survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants."

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| Survey for Private, Non-Profit Grant Applicants. | Per required form ..... | May be found on *http://www.acf.hhs.gov/programs/ofs/form.htm.* | By application due date. |

*4. Intergovernmental Review*

State Single Point of Contact (SPOC), Notification Under Executive Order 12372

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs", and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities". Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs

As of January, 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process: Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia and Washington. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC.

All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants and Audit Resolution, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, D.C. 20447.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found at: *http://www.whitehouse.gov/omb/grants/spoc.html.*

*5. Funding Restrictions*

*Non-Allowable Costs:* Reimbursement of pre-award costs, costs for foreign travel, or costs for construction activities are not allowable charges to this Federal grant program. Indirect Costs: In order to charge Indirect Costs to the Federal Funds and/or use Indirect Costs as a matching share, the applicant must have an approved indirect costs agreement for the period in which the Federal funds would be awarded.

*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. The Application must be received at the address below by 4:30 p.m. Eastern Standard Time on or before the closing date. Applications should be mailed to: The U.S. Department of Health and Human Services, ACF Office of Grants Management, 370 L'Enfant Promenade SW, 8th Floor, Washington, DC 20447, Attention: Lois Hodge.

*Hand-Deliver:* Applicants choosing to hand-deliver applications by either themselves or by an agent, must have the application delivered by 4:30 EST between Monday and Friday (excluding Federal holidays) on the deadline date to: The U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, ACF Mail Center, 2nd Floor Aerospace Center, 901 D Street, SW., Washington, DC 20024, Attention: Lois Hodge.

An Applicant must provide an original application with all attachments signed by an authorized representative and two copies.

*Electronic Submission:* Please see section IV. 2 Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

**V. Application Review Information**

*1. Evaluation Criteria*

Please see Generic and Specific Evaluation criteria for Priority Area #1, V.1, "Application Review Information, Evaluation Criteria" for crafting your response for the Project Narrative.

*2. Review and Selection Process*

Please see Priority Area# #1, V.2, "Application Review Information, Review and Selection Process", for information on the review and selection process for this priority area.

**Priority Area IV: Rapid Deployment of Good Ideas Through Medicaid Web Referencing**

**I. Priority Area IV. Description**

*Purpose:* The purpose of Priority Area IV is to issue a grant award to fund one (1) project, designed to implement an Internet site that will provide relevant content and information on services under the Medicaid program for individuals with developmental disabilities and their families, including web-based State level "resource sheets".

Individuals with developmental disabilities rely on multiple systems of support to simply live their lives. However, information that could be used to improve decision-making is not easily accessible to individuals with developmental disabilities and their families, advocates, providers of services and supports, or even to the policymakers who design and fund systems. Moreover, for individuals with

developmental disabilities, access to relevant Internet-based information is limited.

Medicaid is a primary source of support and vital component of the lives of many individuals with developmental disabilities and their families. Yet the complex Medicaid system that is subject to an intricate law, regulation, and changes in administrative guidance is further complicated by variability in program structure from State to State. Many States have submitted plans to the Centers for Medicare and Medicaid (CMS) for Home and Community-Based Health Services (HCBS) waivers. These plans offer both opportunities and challenges for individuals with developmental disabilities, who wish to sustain or expand their opportunities to live and contribute to community life.

Although there is great variability among States in their use of Medicaid funds through general Medicaid services and through HCBS waivers, there are many common and basic Medicaid-related questions to which individuals need answers. Individuals with developmental disabilities and their families need to know how the Medicaid program can be used to access a broad range of home and community-based services and supports. Clear answers to frequently asked questions are often a user-friendly feature of Web sites on any topic.

To meet with intent of Priority Area IV, the following are the minimum requirements for the project design:

*Project Design and Methods:* Applicants should outline, as appropriate, the necessary steps to implement a Web site that is user-friendly and practical to a broad rage of users, including individuals with developmental disabilities, their families, their advocates, DD network members, State policymakers, regional CMS staff, and other interested persons. The Web site must:

- Be responsive to the information needs and wants of its users, and should collect and measure user satisfaction;
- Inform a variety of audiences using tools, such as frequently asked questions (FAQs) about Medicaid that provide timely answers;
- Be useful and attractive to young persons with developmental disabilities;
- Provide interactive links to national, State, and local resources that offer useful information about Medicaid;
- Increase the number of web-based State level "resource sheets" available on the Web site;
- Include audio-clips of personal stories in multiple languages where possible.
- Promote a consumer/self-advocate orientation;
- Employ principles of cultural competency;
- Attend to unserved and underserved populations affected by developmental disabilities, including those from multicultural backgrounds, rural and inner-city areas, migrant, homeless, and refugee families; and
- Provide a description of the Project commitment to work with ADD under the cooperative agreement.

*Consumer Collaboration:* In describing how the Web site will be developed and maintained, the applicant should discuss how collaborations through partnerships and coalitions will engage consumers, family leaders, service providers and professionals to assist in gathering accurate information and interpretations of the Medicaid program. These collaborations should:

- Allow for the exchange of ideas and expertise to improve services and effect systemic change;
- Be composed of strong advisory components that consist of a majority of individuals with developmental disabilities and offer a structure where individuals with developmental disabilities make real decisions that determine the outcomes of the project; and
- A description of how individuals with developmental disabilities and their families will be involved in all aspects of the design, implementation, and evaluation of the project.

*Key Personnel:* Each grantee should ensure that key project personnel have direct life experience with living with a developmental disability and/or the development and implementation of Web sites.

*Civil Rights:* Each grantee must comply with the Americans with Disabilities Act, where applicable, and Section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act amendments of 1998.

*Communication and Dissemination:* Applicants must show that they (1) have past experience in providing information, including web-based resources, to people with developmental disabilities and (2) that they intend to comply with information and electronic technology accessibility standards and go beyond compliance to improve access as much as possible. At a minimum, each applicant must provide a detailed description of:

- Plans for communicating and disseminating information to the public through e-mail and other effective, affordable, and accessible forms of electronic communication, which may include monthly newsletters or regularly scheduled information briefs and fact sheets on topical areas.
- How information on the internet will be compliant with Section 508.

*Annual Report:* The applicant must describe how they will meet requirements of the ADD Performance System through the development of an annual report in the form of a briefing book. Specifically, the applicant must describe how they will publish a briefing book for the field that lists the most FAQs regarding Medicaid services. The FAQs must be revised annually to reflect the current issues related to Medicaid services. This briefing book must include general information about Medicaid, including the percentage of individuals with developmental disabilities who are more independent, self-sufficient, and integrated into the community as a result of Medicaid services. The briefing book will be due by the end of the project fiscal year and must be made available to the public.

**II. Priority Area IV. Award Information**

*Funding Instrument Type:* Cooperative Agreement.

*Description of Federal Involvement with Cooperative Agreement:* Please see "I. Funding Opportunity Description, General Description, Terms and Conditions of the Cooperative Agreement" for a complete description of the cooperative agreement.

*Anticipated Total Priority Area Funding:* $150,000.

*Anticipated Number of Awards:* 1 per budget period.

*Ceiling on Amount of Individual Annual Awards:* $150,000 per budget period.

*Floor of Individual Award Amounts:* None.

*Average Projected Award Amount:* $150,000 per project and budget period.

*Length of Project:* This announcement is inviting applications for project periods up to three years. Awards, however, will be made on a competitive basis, for a one-year budget period. Applications for continuation grants funded under these awards beyond the one-year budget period but within the three year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

**III. Priority Area IV. Eligibility Information**

*1. Eligible Applicants*

State Governments, County Governments, City or Township Governments, State Controlled Institutions of Higher Education, Native American Tribal Governments (Federally Recognized), Public Housing Authorities/Indian Housing Authorities, Non-profits having 501 (c) (3) status with the IRS, other than institutions of higher education, Non-profits that do not have 501 (c) (3) status with the IRS, other than institutions of higher education, and private institutions of higher learning

*Additional Information on Eligibility:*

• Non-profit organizations must demonstrate proof of non-profit status. Proof of non-profit status is any one of the following:

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. 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; or

e. Any of the items in the subparagraphs immediately above for a State or national parent and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Applicants are cautioned that the ceiling for individual awards is $150,000. An application exceeding the $150,000 threshold will be considered non-responsive and returned without review.

*2. Cost Sharing or Matching*

Grantees must provide at least 25 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-federal share. The non-federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. For example, in order to meet the match requirements, a project with a total approved cost of $400,000, requesting $300,000 in ACF funds, must provide a non-federal share of at least 100,000 (25% of total approved project cost of $400,000). Grantees will be held accountable for commitments of non-federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal funds.

Applications that fail to include the required amount of cost-share will be considered non-responsive and returned without review.

*3. Other (if Applicable)*

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 and 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 at 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Applicants are cautioned that the ceiling for individual awards is $150,000. Applications exceeding the $150,000 threshold will be considered non-responsive and will not be eligible for funding under this announcement.

Applications that fail to include the required amount of cost-share will be considered non-responsive and returned without review.

**IV. Application and Submission Information**

*1. Address To Request an Application Package*

Jennifer Johnson, Program Specialist, Administration on Developmental Disabilities, Office of Operations and Discretionary Grants, Mail Stop: HHH 405–D, 370 L'Enfant Promenade, SW., Washington, DC 20447, Phone: (202) 690–5982, E-mail: *jjohnson1@acf.hhs.gov.*

*2. Content and Form of Application Submission*

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. You may not e-mail an electronic copy of a grant application to us.

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.

• 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 must comply with any page limitation requirements described in this Program Announcement and meet the application deadline.

• 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 *http://www.Grants.gov.*

• You must search for the downloadable application package by the CFDA number.

*Electronic Address where applications will be accepted: http://www.Grants.gov.*

The required application package will include the following using the format described:

Format

The project description must not exceed 50 double-spaced, numbered, typed pages including an abstract and a table of contents. Any application

which exceeds the page limit requirement will have the additional pages removed from the application prior to the review. The type must not be smaller than 12 pitch or a point size of 12.

Project Description

Please see Section V. 1. Criteria, for instructions on preparing the project summary/abstract and the full project description.

Budget

The applicant shall develop a full budget, including a completed SF 424A, "Budget Information—Non-Construction Programs," a detailed budget breakdown by object class categories listed in the SF 424A, Section B, and a narrative budget justification, for a twelve-month budget period. The SF 424 forms are provided below in this announcement. The applicant must include the twelve-month Federal budget under Column (1), the twelve-month non-Federal budget under Column (2), and the total twelve-month budget under Column (5) of the SF 424A. The applicant shall use the three-column approach when preparing the detailed budget breakdown. For the remaining two years of the requested project period, the applicant must complete SF 424A, Section E, indicating the total forecasted budget for each year. The applicant must also provide a lump sum figure for non-Federal contributions for the second through third years of the project on SF 424A, Section C. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget. If the procurement policy of an applicant's institution includes an equipment definition other than the current Federal definition, a copy of the institution's current definition should be included in the application. Please see Section V.1 Criteria for additional guidance.

Appendix

The Appendix must not exceed 40 pages. Supplementary material, intended to provide examples of activities, may be included in the Appendix for reviewers but shall adhere to the page limit requirement. The Appendix must be included with the original and the two copies of the application.

Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original, signed and dated application, plus two copies;

—Application is from an organization that is eligible under the eligibility requirements, defined in the Priority Area description; and

—Application length does not exceed 50 pages

—Application for Federal Assistance (SF 424, REV 4–88);

—A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable;

—Budget Information—Non-Construction Programs (SF 424A, REV 4–88);

—Budget justification for Section B—Budget Categories;

—Table of Contents;

—Letter from the Internal Revenue Service, etc. to prove non-profit status, if necessary;

—Copy of the applicant's approved indirect cost rate agreement, if appropriate; (when charging indirect costs to Federal funds or when using indirect costs as a matching share);

—Project Description;

—Letter(s) of commitment verifying non-Federal cost share

—Any appendices/attachments;

—Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88);

—Certification Regarding Lobbying; Certification of Protection of Human Subjects, if necessary; and

—Certification of the Pro Children Act of 1994, signature on the application represents certification.

• Assurances/Certifications

Applicants are required to submit a SF 424B, Assurances— Non-Construction Programs and the Certification Regarding Lobbying. Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants should furnish an executed copy of the lobbying certification (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 that they will be held accountable for the smoking prohibition included within Pub. L. 103–227, Part C Environmental Tobacco Smoke (also known as the Pro-Children's Act of 1994). By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

In addition, applicants are required under Section 162(c)(3) of the Act to provide assurances that the human rights of all individuals with developmental disabilities (especially those individuals without familial protection) who will receive services under projects assisted under Part E will be protected consistent with section 110 (relating to the rights of individuals with developmental disabilities). Each application must include a statement providing this assurance.

For research projects in which human subjects may be at risk, a Protection of Human Subjects Assurance may be required. If there is a question regarding the applicability of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496–7041.

Non-profit applicants must demonstrate proof of their non-profit status and this proof must be included in their application. Proof of non-profit status is any one of the following:

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; or

e. Any of the items in the subparagraphs immediately above for a State or national parent and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

*3. Submission Dates and Times*

The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on August 23, 2004. 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 following address: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade SW, 8th Floor, Washington, DC 20447, Attention: Lois Hodge.

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 following address: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade SW, 8th Floor, Washington, DC 20447, Attention: Lois Hodge.

*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.

*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. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

*Required Forms:*

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| SF424, SF424a, SF424B | Per required form | May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm.* | August 23, 2004. |
| Project Summary/Abstract | Summary of application request | One page limit | August 23, 2004. |
| Project Description | Responsiveness to evaluation criteria. | Format described in Review and Selection section. Limit 60 pages. Size 12 font, ½" margins. | August 23, 2004. |
| Certification Regarding Lobbying | Per required form | May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm.* | August 23, 2004. |
| Disclosure of Lobbying Activities (SF–LLL). | Per required form | May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm.* | August 23, 2004. |
| Environmental Tobacco Smoke Certification. | Per required form | May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm.* | August 23, 2004. |

*Additional Forms:*

Private-non-profit organizations are encouraged to submit with their applications the additional survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants."

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| Survey for Private, Non-Profit Grant Applicants. | Per required form | May be found on *http://www.acf.hhs.gov/programs/ofs/form.htm.* | By application due date. |

*4. Intergovernmental Review*

State Single Point of Contact (SPOC), Notification Under Executive Order 12372

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of January, 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process: Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia and Washington. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC.

All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants and Audit Resolution, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, DC 20447.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found at: *http://*

*www.whitehouse.gov/omb/grants/spoc.html.*

*5. Funding Restrictions*

*Non-Allowable Costs:* Reimbursement of pre-award costs, costs for foreign travel, or costs for construction activities are not allowable charges to this Federal grant program.

*Indirect Costs:* In order to charge Indirect Costs to the Federal Funds and/or use Indirect Costs as a matching share, the applicant must have an approved indirect costs agreement for the period in which the Federal funds would be awarded.

*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. The Application must be received at the address below by 4:30 PM Eastern Standard Time on or before the closing date. Applications should be mailed to:

The U.S. Department of Health and Human Services, ACF Office of Grants Management, 370 L'Enfant Promenade SW., 8th Floor, Washington, DC 20447, Attention: Lois Hodge.

*Hand-Deliver:* Applicants choosing to hand-deliver applications by either themselves or by an agent, must have the application delivered by 4:30 EST between Monday and Friday (excluding Federal holidays) on the deadline date to: The U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, ACF Mail Center, 2nd Floor Aerospace Center, 901 D Street, SW., Washington, DC 20024, Attention: Lois Hodge.

An Applicant must provide an original application with all attachments signed by an authorized representative and two copies.

*Electronic Submission:* Please see section IV. 2 Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

**V. Application Review Information**

*1. Evaluation Criteria*

Please see Generic and Specific Evaluation criteria for Priority Area #1, V.1, "Application Review Information, Evaluation Criteria" for crafting your response for the Project Narrative.

*2. Review and Selection Process*

Please see Priority Area# #1, V.2, "Application Review Information, Review and Selection Process," for information on the review and selection process for this priority area.

*Please note that the Award and Contact information and requirements below are applicable to all three Priority Areas in this Program Announcement.*

**VI. Award Administration Information**

*1. Award Notices*

*Anticipated Announcement and Award Dates:* Subject to the availability of funding, ADD intends to award new grants resulting from this Program Announcement during the fourth quarter of Fiscal Year 2004. For the purpose of the awards under this Program Announcement, the successful applicants should expect a project start date of September 30, 2004.

*Award Notices:* Successful and unsuccessful applicants will be notified of the results of this grant competition within 90 days of the application deadline. Successful applicants will receive by U.S. postal mail a letter signed by the Commissioner of the Administration on Developmental Disabilities (ADD) with an official notice of award (the Financial Assistance Award) signed by the grants management officer. This notice of award signed by the grants officer is the authorization to begin performance.

*Administrative and National Policy Requirements:*

45 CFR–Part 74;

45 CFR–Part 92.

*Special Terms and Condition of Award:* None.

*Special Reporting Requirements:* Programmatic Reports and Financial Reports are required semi-annually. All required reports must be submitted in a timely manner, in recommended formats (to be provided), and the final report must also be submitted on disk or electronically using a standard word-processing program.

**VII. Agency Contacts**

*Program Office Contact:* Jennifer Johnson, Program Specialist, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone: (202) 690–5982, E-mail: *jjohnson1@acf.hhs.gov,* fax (202) 690–6904.

*Grants Management Office Contact:* Lois Hodge, Grants Officer, 370 L'Enfant Promenade, SW., Washington, DC 20447, (202) 401–2344, E-mail *lhodge@acf.hhs.gov.*

**VIII. Other Information**

*http://www.acf.hhs.gov/programs/add/.*

Dated: June 28, 2004.

**Patricia A. Morrissey,**

*Commissioner, Administration on Developmental Disabilities.*

[FR Doc. 04–15052 Filed 7–6–04; 8:45 am]

BILLING CODE 4184–01–P

Federal Register

Wednesday,
July 7, 2004

Part V

# Department of Health and Human Services

## Announcement of Anticipated Availability of Funds for Family Planning Service Grants; Notice

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Announcement of Anticipated Availability of Funds for Family Planning Service Grants

**AGENCY:** Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Population Affairs.

**ACTION:** Notice.

*Announcement Type:* Initial Competitive Grant.

*CFDA Number:* 93.217.

**DATES:** Application due dates vary. To receive consideration, applications must be received by the Office of Public Health and Science (OPHS) Office of Grants Management no later than the applicable due date listed in Table I, Section IV. 3. *Submission Dates and Times,* and within the time frames specified in this announcement for electronically submitted, mailed, and/or hand-carried applications.

Executive Order 12372 comment due date: The State Single Point of Contact (SPOC) has 60 days from the applicable due date as listed in Table I of this announcement to submit any comments.

**SUMMARY:** The Office of Population Affairs (OPA), Office of Family Planning (OFP), announces the anticipated availability of funds for fiscal year (FY) 2005 family planning service grants under the authority of Title X of the Public Health Service Act and solicits applications for competing grant awards to serve the areas and/or populations listed in Table I. Only applications which propose to serve the populations and/or areas listed in Table I will be accepted for review and possible funding.

### I. Funding Opportunity Description

This announcement seeks applications from public and nonprofit private entities to establish and operate voluntary family planning services projects, which shall provide family planning services to all persons desiring such services. Family planning services include clinical family planning and related preventive health services; information, education, and counseling related to family planning, including abstinence education; and referral services as indicated.

*Program Statute and Regulations*

Requirements regarding the provision of family planning services under Title X can be found in the statute (Title X of the Public Health Service Act, 42 U.S.C. 300, *et seq.*), the implementing regulations which govern project grants for family planning services (42 CFR part 59, subpart A), and the "Program Guidelines for Project Grants for Family Planning Services," published in January 2001. Title X of the Public Health Service Act authorizes the Secretary of Health and Human Services (HHS) to award grants for projects to provide family planning services to persons from low-income families and others. Section 1001 of the Act, as amended, authorizes grants "to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents)." Title X regulations further specify that "These projects shall consist of the educational, comprehensive medical, and social services necessary to aid individuals to determine freely the number and spacing of their children" (42 CFR 59.1). In addition, section 1001 of the statute requires that, to the extent practicable, Title X service providers shall encourage family participation in family planning services projects. Section 1008 of the Act, as amended, stipulates that "none of the funds appropriated under this title shall be used in programs where abortion is a method of family planning."

Copies of the Title X statute, regulations, and Program Guidelines may be obtained by contacting the OPHS Office of Grants Management, or downloaded from the Office of Population Affairs Web site at *http://opa.osophs.dhhs.gov.* These documents are also included in the application kit. All Title X requirements—including those derived from the statute, the regulations, and the Program Guidelines—apply to all activities funded under this announcement. For example, projects must meet the regulatory requirements set out at 42 CFR 59.5 regarding charges to clients, and the funding criteria set out at 42 CFR 59.7 apply to all applicants under this announcement.

### II. Award Information

The anticipated FY 2005 appropriation for the Title X family planning program is approximately $280 million. Of this amount, OPA intends to make available approximately $46 million for competing Title X family planning service grant awards in 16 states, populations, and/or areas. (See Table I, Section IV. 3. *Submission Dates and Times,* for competing areas and approximate amount of awards). The remaining funds will be used for continued support of grants and activities which are not competitive in FY 2005. This program announcement is subject to the appropriation of funds and is a contingency action taken to ensure that, should funds become available for this purpose, applications can be processed in an orderly manner, and funds can be awarded in a timely fashion. Grants will be funded in annual increments (budget periods) and are generally approved for a project period of three to five years. Funding for all approved budget periods beyond the first year of the grant is contingent upon the availability of funds, satisfactory progress of the project, and adequate stewardship of Federal funds.

### III. Eligibility Information

*1. Eligible Applicants*

Any public or nonprofit private entity located in a State (which includes one of the 50 United States, the District of Columbia, Commonwealth of Puerto Rico, U.S. Virgin Islands, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federated States of Micronesia, and the Republic of the Marshall Islands) is eligible to apply for a grant under this announcement. Faith-based organizations are eligible to apply for these Title X family planning services grants.

*2. Cost Sharing*

Program regulations at 42 CFR 59.7(b) state that "No grant may be made for less than 90 percent of the project's costs, as so estimated, unless the grant is to be made for a project that was supported, under section 1001, for less than 90 percent of its costs in fiscal year 1975. In that case, the grant shall not be for less than the percentage of costs covered by the grant in fiscal year 1975." Furthermore, section 59.7(c) stipulates that "No grant may be made for an amount equal to 100 percent for the project's estimated costs."

*3. Other*

Awards will be made only to those organizations or agencies which have met all applicable requirements and which demonstrate the capability of providing the proposed services.

### IV. Application and Submission Information

*1. Address to Request Application Package*

Application kits may be requested from, and applications submitted to the OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852; 301–594–0758. Application kits are also available

online at the electronic grants management Web site (e-Grants) at *https://egrants.osophs.dhhs.gov,* or by FAX at 301–594–9399.

*2. Content and Form of Application*

Applications must be submitted on the Form OPHS–1 (Revised 6/01) and in the manner prescribed in the application kit. Applications should be limited to 60 double-spaced pages, not including appendices and required forms, using an easily readable serif typeface, such as Times Roman, Courier, or GC Times. All pages, charts, figures and tables should be numbered. The application narrative should be numbered separately and clearly show the 60 page limit. If the application narrative exceeds 60 pages, only the first 60 pages of the application narrative will be reviewed. Appendices may provide curriculum vitae, organizational structure, examples of organizational capabilities, or other supplemental information which supports the application. However, appendices are for supportive information only. All information that is critical to the proposed project should be included in the body of the application. Appendices should be clearly labeled.

A Dun and Bradstreet Universal Numbering System (DUNS) number is required for all applications for Federal assistance. Organizations should verify that they have a DUNS number or take the steps needed to obtain one. Instructions for obtaining a DUNS number are included in the application package, and may be downloaded from the OPA Web site.

Applications must include a one-page abstract of the proposed project. The abstract will be used to provide reviewers with an overview of the application, and will form the basis for the application summary in grants management documents.

*3. Submission Dates and Times*

Competing grant applications are invited for the following areas (please note, in order to maximize access to family planning services, one or more grants may be awarded for each area listed):

TABLE I

| Areas/populations to be served | Approximate funding available | Application due date | Approximate funding date |
|---|---|---|---|
| Region I: | | | |
| Massachusetts | $5,217,000 | 09/01/04 | 01/01/05 |
| Region II: | | | |
| New York State | 9,635,000 | 03/01/05 | 07/01/05 |
| Puerto Rico | 2,389,000 | 03/01/05 | 07/01/05 |
| Region III: | | | |
| Washington, D.C | 1,053,000 | 09/01/04 | 01/01/05 |
| Region IV: | | | |
| Kentucky | 5,203,000 | 03/01/05 | 07/01/05 |
| South Carolina | 5,569,000 | 03/01/05 | 07/01/05 |
| Tennessee | 5,914,000 | 03/01/05 | 07/01/05 |
| Region V: | | | |
| No areas competitive in FY 2005 | | | |
| Region VI: | | | |
| Arkansas | 3,241,000 | 11/01/04 | 03/01/05 |
| New Mexico | 2,288,000 | 09/01/04 | 01/01/05 |
| Region VII: | | | |
| Kansas | 2,332,000 | 03/01/05 | 07/01/05 |
| Region VIII: | | | |
| No areas competitive in 2005 | | | |
| Region IX: | | | |
| Gila River Indian Community | 251,000 | 03/01/05 | 07/01/05 |
| Government of Guam | 452,000 | 03/01/05 | 07/01/05 |
| Republic of Palau | 99,000 | 03/01/05 | 07/01/05 |
| Federated States of Micronesia | 411,000 | 03/01/05 | 07/01/05 |
| Region X: | | | |
| Idaho | 1,318,000 | 03/01/05 | 07/01/05 |
| Oregon, Multnomah County | 330,000 | 03/01/05 | 07/01/05 |

Submission Mechanisms

The OFP provides multiple mechanisms for submission of applications as described in the following sections.

Electronic Submission

The OPHS electronic grants management system, eGrants, provides for applications to be submitted electronically. While applications are accepted in hard copy, the use of the electronic application submission capabilities provided by the eGrants system is encouraged. Information about this system is available on the OPA Web site, *http://opa.osophs.dhhs.gov,* or may be requested from the OPHS Office of Grants Management at 301–594–0758. Applications sent via any other means of electronic communication, including facsimile or electronic mail, outside of the OPHS eGrants system will not be accepted for review.

The body of the application and required forms can be submitted using the e-Grants system. In addition to electronically submitted materials, applicants are required to provide a hard copy of the application face page (Standard Form 424 [Revised 06/2001]) with the original signature of an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. The application is not considered complete until both the electronic application and the hard copy face page with original signature are received.

Electronic grant application submissions must be submitted no later than 5 p.m. eastern time on the deadline date specified in the **DATES** section of the announcement. All required hard copy original signatures and mail-in items must be received by the OPHS

Office of Grants Management no later than 5 p.m. eastern time on the next business day after the deadline date specified in the **DATES** section of the announcement.

Applications will not be considered valid until all electronic application components, hard copy original signatures, and mail-in items are received by the OPHS Office of Grants Management according to the deadlines specified above. Any application submitted electronically after 5 p.m. eastern time on the deadline date specified in the **DATES** section of the announcement will be considered late and will be deemed ineligible. Failure of the applicant to submit all required hard copy original signatures to the OPHS Office of Grants Management by 5 p.m. eastern time on the next business day after the deadline date specified in the **DATES** section of the announcement will result in the electronic application being deemed ineligible.

Upon completion of a successful electronic application submission, the eGrants system will provide the applicant with a confirmation page indicating the date and time (eastern time) of the electronic application submission. This confirmation page will also provide the receipt status of all indicated signatures and items to be mailed to the OPHS Office of Grants Management. As items are received by the OPHS Office of Grants Management, the electronic application status will be updated to reflect the receipt of mail-in items. It is recommended that the applicant monitor the status of their application to ensure that all signatures and mail-in items are received.

Applicants are encouraged to initiate electronic applications early in the application development process, and to submit early on the due date or before. This will aid in addressing any problems with submission prior to the application deadline.

Mailed Hard Copy Applications

Applications submitted in hard copy are required to submit an original and two copies of the application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Mailed applications will be considered as meeting the deadline if they are received by the OPHS Office of Grants Management on or before 5 p.m. eastern time on the deadline date specified in the **DATES** section of the announcement. The application deadline date requirement specified in this announcement supercedes the instructions in the OPHS–1. Applications that do not meet the deadline will be returned to the applicant unread.

Hand-Delivered Applications

Hand-delivered applications must be received by the OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, Maryland, 20852, no later than 5 p.m. eastern time on the deadline date specified in the **DATES** section of the announcement. Hand-delivered applications must include an original and two copies of the application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

*4. Intergovernmental Review*

Applicants under this announcement are subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," as implemented by 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for the state in which the applicant is located. The application kit contains the currently available listing of the SPOCs that have elected to be informed of the submission of applications. For those states not represented on the listing, further inquiries should be made by the applicant regarding the submission to the relevant SPOC. The SPOC should forward any comments to the OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, Maryland 20852. The SPOC has 60 days from the applicable due date as listed in Table I of this announcement to submit any comments. For further information, contact the OPHS Office of Grants Management at 301–594–0758.

*5. Funding Restrictions*

The allowability, allocability, reasonableness and necessity of direct and indirect costs that may be charged to OPHS grants are outlined in the following documents: OMB Circular A-21 (Institutions of Higher Education); OMB Circular A–87 (State and Local Governments); OMB Circular A–122 (Nonprofit Organizations); and 45 CFR part 74, Appendix E (Hospitals). Copies of the Office of Management and Budget (OMB) Circulars are available on the Internet at *http://www.whitehouse.gov/omb/grants/grants_circulars.html*.

In order to claim indirect costs as part of a budget request, an applicant organization must have an indirect cost rate which has been negotiated with the Federal government. The Health and Human Services Division of Cost Allocation (DCA) Regional Office that is applicable to your State can provide information on how to receive such a rate. A list of DCA Regional Offices is included in the application kit for this announcement.

*6. Other Submission Requirements*

The following priorities represent overarching goals for the Title X program. In developing a proposal, each applicant should describe how the proposed project will address each priority.

Program Priorities

1. Assuring continued high quality family planning and related preventive health services that will improve the overall health of individuals;

2. Assuring access to a broad range of high quality clinical family planning and related preventive health services that include the following: Provision of highly effective contraceptive methods; breast and cervical cancer screening and prevention; STD and HIV prevention education, counseling, and testing; extramarital abstinence education and counseling; and other preventive health services. The broad range of services does not include abortion as a method of family planning;

3. Encouraging family participation in the decision of minors to seek family planning services, including activities that promote positive family relationships;

4. Improving the health of individuals and communities by partnering with community-based organizations (CBOs), faith-based organizations (FBOs), and other public health providers that work with vulnerable or at-risk populations;

5. Promoting individual and community health by emphasizing family planning and related preventive health services for hard-to-reach populations, such as uninsured or under-insured individuals, males, persons with limited English proficiency, adolescents, and other vulnerable or at-risk populations.

Legislative Mandates

The following legislative mandates have been part of the Title X appropriations for each of the last several years. In developing a proposal, each applicant should describe how the

proposed project will address each of these legislative mandates.

- "None of the funds appropriated in this Act may be made available to any entity under Title X of the Public Health Service Act unless the applicant for the award certifies to the Secretary that it encourages family participation in the decision of minors to seek family planning services and that it provides counseling to minors on how to resist attempts to coerce minors into engaging in sexual activities;" and
- "Notwithstanding any other provision of law, no provider of services under Title X of the Public Health Service Act shall be exempt from any State law requiring notification or the reporting of child abuse, child molestation, sexual abuse, rape, or incest."

Other Key Issues

In addition to the Program Priorities and Legislative Mandates, the following Key Issues have implications for Title X services projects and should be acknowledged in the program plan:

1. The increasing cost of providing family planning services;
2. The U.S. Department of Health and Human Service priorities, initiatives, and Healthy People 2010 objectives as they relate to family planning and reproductive health (*http://www.health.gov/healthypeople*);
3. Departmental initiatives and legislative mandates, such as the Health Insurance Portability and Accountability Act (HIPAA); Infant Adoption Awareness Program; providing adolescents with information, skills and support to encourage delay of sexual activity; serving persons with limited English proficiency;
4. Integration of HIV/AIDS services into family planning programs; specifically, HIV/AIDS education, counseling and testing either on-site or by referral should be provided in all Title X family planning services projects. Education regarding the prevention of HIV/AIDS should incorporate the "ABC" message. That is, for adolescents and unmarried individuals, the message should include "A" for abstinence; for married or individuals in committed relationships, the message is "B" for being faithful; and, for individuals who engage in behavior that puts them at risk for HIV, the message should include "C" for condom use.
5. Utilization of electronic technologies, such as e-Grants, the OPA electronic grants management system (training for grantees will be provided as needed);
6. Data collection and reporting which is responsive to the revised Family Planning Annual Report (FPAR) and other information needs for monitoring and improving family planning services;
7. Service delivery improvement through utilization of research outcomes focusing on family planning and related population issues; and
8. Utilizing practice guidelines and recommendations developed by recognized professional organizations and other Federal agencies in the provision of evidence-based Title X clinical services.

Characteristics of a Successful Proposal

Proposed projects must adhere to all requirements of the Title X statute, regulations, and Program Guidelines. Successful proposals will fully describe how the project will address the requirements, and should include the following:

1. A clear description of the need for the services proposed;
2. A description of the geographic area and population to be served;
3. Evidence that the applicant organization has experience in providing clinical health services and the capacity to undertake the clinical family planning and related preventive health services required;
4. Evidence that the proposed services are consistent with the requirements of Title X. Use of Title X funds is prohibited in programs where abortion is a method of family planning;
5. A project plan which describes the services to be provided, the location(s) and hours of clinic operations, and projected number of clients to be served;
6. A staffing plan which is reasonable and adheres to the Title X regulatory requirement that family planning medical services will be performed under the direction of a physician with special training or experience in family planning. Staff providing clinical services should be licensed and function within the applicable professional practice acts for the State;
7. Goal statement(s) and related outcome objectives that are specific, measurable, achievable, realistic and time-framed (S.M.A.R.T.);
8. Description of how the applicant will address Title X Program Priorities and Key Issues.
9. Evidence of formal agreements for referral services (*e.g.*, required clinical services, if not provided by the applicant), and collaborative agreements with other service providers in the community, where appropriate;
10. Evidence of the capability of collecting and reporting the required program data for the Title X annual data collection system (FPAR);
11. Evidence of a system for assuring quality family planning services, including adherence to program requirements; and
12. A budget and budget justification narrative for year one of the project that is detailed, reasonable, adequate, cost efficient, and that is derived from proposed activities. Budget projections for each of the continuing years should be included.

## V. Application Review Information

*1. Criteria*

(1) The degree to which the project plan adequately provides for the requirements set forth in the Title X regulations at 42 CFR part 59, subpart A (20 points);

(2) The extent to which family planning services are needed locally (20 points);

(3) The number of patients, and, in particular, the number of low-income patients to be served (15 points);

(4) The adequacy of the applicant's facilities and staff (15 points);

(5) The capacity of the applicant to make rapid and effective use of the Federal assistance (10 points);

(6) The relative availability of non-Federal resources within the community to be served and the degree to which those resources are committed to the project (10 points); and

(7) The relative need of the applicant (10 points).

*2. Review and Selection Process*

Each regional office is responsible for evaluating applications and setting funding levels according to the criteria set out in 42 CFR 59.7(a). Eligible applications will be reviewed by a panel of independent reviewers and will be evaluated based on the criteria listed above. In addition to the independent review panel, there will be staff reviews of each application for programmatic and grants management compliance.

Final grant award decisions will be made by the Regional Health Administrator (RHA) for the applicable PHS Region. In making grant award decisions, the RHA will fund those projects which will, in his/her judgement, best promote the purposes of section 1001 of the Act, within the limits of funds available for such projects.

## VI. Award Administration Information

*1. Award Notices*

The OPA does not release information about individual applications during the review process. When final funding

decisions have been made, each applicant will be notified by letter of the outcome. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, signed by the Director of the OPHS Office of Grants Management. This document specifies to the grantee the amount of money awarded, the purposes of the grant, the length of the project period, terms and conditions of the grant award, and the amount of funding, if any, to be contributed by the grantee to project costs.

*2. Administrative and National Policy Requirements*

In accepting this award, the grantee stipulates that the award and any activities thereunder are subject to all provisions of 45 CFR parts 74 and 92, currently in effect or implemented during the period of the grant.

The successful applicant will be responsible for the overall management of activities within the scope of the approved project plan. The OPHS requires all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. This is consistent with the OPHS mission to protect and advance the physical and mental health of the American people.

The Buy American Act of 1933, as amended (41 U.S.C. 10a–10d), requires that Government agencies give priority to domestic products when making purchasing decisions. Therefore, to the greatest extent practicable, all equipment and products purchased with grant funds should be American-made.

A Notice providing information and guidance regarding the "Government-wide Implementation of the President's Welfare-to-Work Initiative for Federal Grant Programs" was published in the **Federal Register** on May 16, 1997. This initiative was designated to facilitate and encourage grantees and their sub-recipients to hire welfare recipients and to provide additional needed training and/or mentoring as needed. The text of the Notice is available electronically on the OMB home page at *http://www.whitehouse.gov/omb.*

The HHS Appropriations Act requires that when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, grantees shall clearly state the percentage and dollar amount of the total costs of the program or project which will be financed with Federal money and the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

*3. Reporting*

Each grantee is required to submit a Family Planning Annual Report (FPAR) each year. The information collections (reporting requirements) and format for this report have been approved by the Office of Management and Budget and assigned OMB No. 0990–0221. The FPAR contains a brief organizational profile and 14 tables to report data on users, service use, and revenue for the reporting year.

In addition to the FPAR, grantees are required to submit an annual Financial Status Report within 90 days of the end of each budget period. Grantees who receive greater than $500,000 of Federal funds must also undergo an independent audit in accordance with OMB Circular A–133.

**VII. Agency Contacts**

*Administrative and Budgetary Requirements*

For information related to administrative and budgetary requirements, contact the OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852; 301–594–0758.

*Program Requirements*

For information related to family planning program requirements, contact the Regional Program Consultant for Family Planning in the applicable Regional Office listed below:

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)—Suzanne Theroux, 617–565–1063;

Region II (New Jersey, New York, Puerto Rico, Virgin Islands)—Robin Lane, 212–264–3935;

Region III (Delaware, Washington, DC, Maryland, Pennsylvania, Virginia, West Virginia)—Donna Garner, 215–861–4624 or Dickie Lynn Gronseth, 215–861–4656;

Region IV (Kentucky, Mississippi, North Carolina, Tennessee, Alabama, Florida, Georgia, South Carolina)—Cristino Rodriguez, 404–562–7900;

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)—Janice Ely, 312–886–3864;

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)—Evelyn Glass, 214–767–3088;

Region VII (Iowa, Kansas, Missouri, Nebraska)—Elizabeth Curtis, 816–426–2924;

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)—Jill Leslie, 303–844–7856;

Region IX (Arizona, California, Hawaii, Nevada, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federal States of Micronesia, Republic of the Marshall Islands)—Nancy Mautone Smith, 415–437–7984;

Region X (Alaska, Idaho, Oregon, Washington)—Janet Wildeboor, 206–615–2776.

**Alma L. Golden, MD, FAAP**

*Deputy Assistant Secretary for Population Affairs.*

[FR Doc. 04–15340 Filed 7–6–04; 8:45 am]

BILLING CODE 4150–34–P


Federal Register

Wednesday,
July 7, 2004

Part VI

# Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 916 and 917

Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches; Final Rule

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Parts 916 and 917**

**[Docket No. FV04–916–1 FIR]**

## Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, with changes, an interim final rule revising the handling requirements for California nectarines and peaches by modifying the grade, size, maturity, and container requirements for fresh shipments of these fruits, beginning with 2004 season shipments. This rule also continues in effect an on-going modification of the requirements for placement of Federal-State Inspection Service lot stamps for the 2004 season and beyond, continues in effect a minimum net weight for a style of containers, continues in effect the authorization to continue shipments of "CA Utility" quality nectarines and peaches, and continues in effect the revision of the tolerance for blossom-end growth cracks for Peento type peaches. The marketing orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). This rule will enable handlers to continue shipping fresh nectarines and peaches meeting consumer needs in the interests of producers, handlers, and consumers of these fruits.

**EFFECTIVE DATE:** August 6, 2004.

**FOR FURTHER INFORMATION CONTACT:** Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; Fax: (202) 720–8938.

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

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

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

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

Under the orders, lot stamping, grade, size, maturity, container, container marking, and pack requirements are established for fresh shipments of California nectarines and peaches. Such requirements are in effect on a continuing basis. The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC), which are responsible for local administration of the orders, met on November 12, 2003, and unanimously recommended that these handling requirements be revised for the 2004 season, which began about the second week of April. The changes: (1) Continue indefinitely the lot stamping requirements that have been in effect since the 2000 season; (2) authorize continued shipments of "CA Utility" quality fruit during the 2004 season; (3) revise tolerances for blossom-end growth cracks for Peento type peaches; (4) establish a minimum net weight for volume-filled, five down containers; (5) add an additional container to the list of standard containers and amend the dimensions of another container already regulated; and (6) revise varietal maturity, quality, and size requirements to reflect changes in growing and marketing practices. These changes continue in effect until modified, suspended, or terminated.

The committees meet prior to and during each season to review the rules and regulations effective on a continuing basis for California nectarines and peaches under the orders. Committee meetings are open to the public and interested persons are encouraged to express their views at these meetings. The committees held such meetings on November 12, 2003. USDA reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

No official crop estimate was available at the time of the committees' November 12, 2003, meetings because the nectarine and peach trees were dormant. The committees subsequently made crop estimates at their meetings on April 28, 2004. The 2004 nectarine crop was estimated to be approximately 22,245,000 containers, and the 2004 peach crop was estimated to be approximately 22,601,000 containers. These crops are similar to the 2003 crops, which totaled 21,896,300 containers of nectarines and 22,306,300 containers of peaches.

### Lot Stamping Requirements

Sections 916.55 and 917.45 of the orders require inspection and certification of nectarines and peaches, respectively, handled by handlers. Sections 916.115 and 917.150 of the nectarine and peach orders' rules and regulations, respectively, require that all exposed or outside containers of nectarines and peaches, and at least 75 percent of the total containers on a pallet, be stamped with the Federal-State Inspection Service (inspection service) lot stamp number after inspection and before shipment to show that the fruit has been inspected. These requirements apply except for

containers that are loaded directly onto railway cars, exempted, or mailed directly to consumers in consumer packages.

Lot stamp numbers are assigned to each handler by the inspection service, and are used to identify the handler and the date on which the container was packed. The lot stamp number is also used by the inspection service to identify and locate the inspector's corresponding working papers or field notes. Working papers are the documents each inspector completes while performing an inspection on a lot of nectarines or peaches. Information contained in the working papers supports the grade levels certified to by the inspector at the time of the inspection.

The lot stamp number has value for the industries, as well. The committees utilize the lot stamp number and date codes to trace fruit in the container back to the orchard from which it was harvested. This information is essential in providing quick information for a crisis management program instituted by the industries. Without the lot stamp information on each container, the "trace back" effort, as it is called, would be jeopardized.

Several new containers have been adopted for use by nectarine and peach handlers in recent years. These containers are returnable plastic containers (RPCs). Use of RPCs may represent substantial savings to retailers for storage and disposal, as well as for handlers who do not have to pay for traditional, single-use containers. Fruit is packed in the containers by the handler, delivered to the retailer, emptied, and returned to a central clearinghouse for cleaning and redistribution to the handler. However, because these containers are designed for reuse, RPCs do not support markings that are permanently affixed to the container. All markings must be printed on cards that slip into tabs on the front or sides of the containers. The cards are easily inserted and removed, and further contribute to the efficient reuse of RPCs.

The cards are a continuing concern for the inspection service and the industry because of their unique portability. There is some concern that the cards on pallets of inspected containers could easily be moved to pallets of uninspected containers, thus permitting a handler to avoid inspection on a lot or lots of nectarines or peaches. This would also jeopardize the use of the lot stamp numbers for the industry's "trace back" program.

To address this concern since the 2000 season, the committees have annually recommended that pallets of inspected fruit in RPCs be identified with a USDA-approved pallet tag containing the lot stamp number, in addition to the lot stamp number printed on the card on each container. In this way, noted the committees, an audit trail would be created confirming that the lot stamp number on each container on the pallet corresponds to the lot stamp number on the pallet tag.

The committees and the inspection service presented their concerns to the manufacturers of these types of containers prior to the 2000 season. At that time, one manufacturer indicated a willingness to address the problem by offering an area on the principal display panel where the container markings would adhere to the container. Another possible improvement discussed was for an adhesive for the current style of containers which would securely hold the cards with the lot stamp numbers, yet would be easy for the clearinghouse to remove when the containers are washed. However, the changes offered by the manufacturers have not yet transpired.

In a meeting of the Tree Fruit Quality Subcommittee on October 23, 2003, the subcommittee recognized that as time has passed, the likelihood of getting a suitable adhesive for the cards or an area on the containers for container markings has decreased significantly. Therefore, the subcommittee determined that it was no longer appropriate to put this regulation into effect annually. When the time comes that an adhesive for the cards becomes available or another method for securing the lot stamp on each container is found, the subcommittee determined that they would make a recommendation to eliminate this requirement.

For those reasons, the subcommittee unanimously recommended to the committees that the requirement for lot stamp numbers on USDA-approved pallet tags, when used on RPCs, as well as on individual containers on a pallet, be required for the 2004 season and beyond. The committees then recommended unanimously that such requirement be implemented for the 2004 season and beyond, as well.

Thus, the amendments to §§ 916.115 and 917.150 continue in effect and require the lot stamp number to be printed on a USDA-approved pallet tag, when used on RPCs in addition to the requirement that the lot stamp number be applied to cards on all exposed or outside containers, and not less than 75 percent of the total containers on a pallet. This regulation will remain in effect until such time as it may be modified.

**Container and Pack Requirements**

Sections 916.52 and 917.41 of the orders authorize establishment of container, container marking, and pack requirements for shipments of nectarines and peaches, respectively. Under §§ 916.350 and 917.442 of the orders' rules and regulations, the specifications of container markings, net weights, well-filled requirements, weight-count standards for various sizes of nectarines and peaches, and lists of standard containers are provided.

The committees unanimously recommended that a uniform net weight be established for all "five down" boxes (commonly referred to as "Euro" boxes) that are volume-filled. Currently, the net weight requirement for volume-filled, "five down" boxes is 29 and 31 pounds.

"Five down" boxes are containers that lay in a pattern of five containers per layer on each pallet. In other words, each layer of boxes on a pallet contains only five Euro boxes. Other container sizes and footprints may result in nine boxes per layer.

During the 2003 season, the industry used both the 29-pound and 31-pound net weights in Euro containers, and committee staff tracked the total packages of nectarines and peaches of each weight. The purpose of the tracking was to see if one net weight was predominant.

At a meeting of the Tree Fruit Quality Subcommittee meeting on October 23, 2003, the results of the study were released. During the 2003 season, 94,300 twenty-nine-pound boxes of nectarines were packed compared to 8,520 thirty-one-pound boxes of nectarines. There were also 69,115 twenty-nine-pound boxes of peaches packed as compared to 17,103 thirty-one-pound boxes. Based upon the statistics, the subcommittee voted unanimously to recommend to the committees that the minimum net weight for all volume-filled, five down Euro containers should be established at 29 pounds.

At the November 12, 2003, meeting, the NAC and PCC also unanimously recommended that all volume-filled, five down Euro boxes have an established net weight of 29 pounds, which is to be printed on the end of the container.

*Nectarines:* For the reasons stated above, the revision of paragraphs (a)(1) and (a)(8) of § 916.350 continues in effect to refer to all volume-filled, five down Euro containers. Such changes will ensure that all volume-filled, five down Euro containers of nectarines are a net weight of 29 pounds. The container markings shall be placed on

one outside end of the container in plain sight and in plain letters.

*Peaches:* For the reasons stated above, the revision of paragraphs (a)(1) and (a)(9) of § 917.442 continues in effect to refer to all volume-filled, five down Euro containers. Such changes will ensure that all volume-filled, five down Euro containers of peaches are a net weight of 29 pounds. The markings shall be placed on one outside end of the container in plain sight and in plain letters.

**Standard Container Listings**

This rule also makes changes to the pack and container marking requirements to establish one new standard container being used by the industry and to modify the dimensions of another already regulated. In the rules and regulations for nectarines at § 916.350, current paragraphs (a)(5) and (a)(6), and for peaches at § 917.442, current paragraphs (a)(6) and (a)(7), standard containers, such as the Nos. 22D, 22E, 22G, and 32, are required to be marked with the net weight. Under paragraph (b) in §§ 916.350 and 917.442, such standard containers are defined. Once the use of a container becomes common in the industry, such containers are determined to be standard containers. Standard containers represent container types that are recognized by the industry and adopted by the retail trade. As such, it is a practice of the committees to recommend that such containers be added to the list of standard containers together with container marking requirements.

At the November 29, 2001, meeting, the NAC and PCC, acting upon a recommendation from the Returnable Plastic Container Task Force, unanimously recommended that the Euro five down RPC be added to the list of standard containers. The container was, then, added to the list of standard containers, as approved by USDA.

During the 2003 season, the California Department of Food and Agriculture (CDFA) modified the dimensions of the Euro five down container and assigned it No. 35. CDFA also assigned numbers to one new container, the No. 36. These two new numbers were then added to the California Agricultural Code. By standardizing containers, the State permits handlers to use a new container for more than ten percent of their annual shipments. Otherwise, the container would be considered an experimental container for which handlers would have to file an application and limit shipments in such containers to a maximum of ten percent of their total seasonal shipments. Once containers are standardized within the California Agricultural Code, they are historically added to the orders so that regulated handlers may use them for packaging nectarines and peaches.

Thus, the revision of paragraph (b) of §§ 916.350 and 917.442 continues in effect adding the new No. 36, and the revised and renamed No. 35 to the list of standard containers.

**Grade and Quality Requirements**

Sections 916.52 and 917.41 of the orders authorize the establishment of grade and quality requirements for nectarines and peaches, respectively. Prior to the 1996 season, § 916.356 required nectarines to meet a modified U.S. No. 1 grade. Specifically, nectarines were required to meet U.S. No. 1 grade requirements, except for a slightly tighter requirement for scarring and a more liberal allowance for misshapen fruit. Prior to the 1996 season, § 917.459 required peaches to meet the requirements of a U.S. No. 1 grade, except for a more liberal allowance for open sutures that were not "serious damage."

This rule continues in effect the revisions of §§ 916.350, 916.356, 917.442, and 917.459 to permit shipments of nectarines and peaches meeting "CA Utility" quality requirements during the 2004 season. ("CA Utility" fruit is lower in quality than that meeting the modified U.S. No. 1 grade requirements.) Shipments of nectarines and peaches meeting "CA Utility" quality requirements have been permitted each season since 1996.

Studies conducted by the NAC and PCC in 1996 indicated that some consumers, retailers, and foreign importers found the lower-quality fruit acceptable in some markets. When shipments of "CA Utility" nectarines were first permitted in 1996, they represented 1.1 percent of all nectarine shipments, or approximately 210,000 containers. Shipments of "CA Utility" nectarines reached a high of 6 percent (1,408,362 containers) during the 2003 season.

Shipments of "CA Utility" peaches totaled 1.9 percent of all peach shipments, or approximately 366,000 containers, during the 1996 season. Shipments of "CA Utility" peaches reached a high of 5.6 percent of all peach shipments (1,231,000 containers) during the 2002 season.

Handlers have also commented that the availability of the "CA Utility" quality option lends flexibility to their packing operations. They have noted that they now have the opportunity to remove marginal nectarines and peaches from their U.S. No. 1 containers and place this fruit in containers of "CA Utility." This flexibility, the handlers note, results in better quality U.S. No. 1 packs without sacrificing fruit.

The Tree Fruit Quality Subcommittee met on October 23, 2003, and recommended unanimously to the NAC and PCC to continue shipments of "CA Utility" quality nectarines and peaches. Subsequently, the NAC and PCC voted unanimously at their November 12, 2003, meetings to authorize continued shipments of "CA Utility" quality fruit during the 2004 season.

Accordingly, based upon the recommendations, the revisions to paragraph (d) of §§ 916.350 and 917.442, and paragraph (a)(1) of §§ 916.356 and 917.459 continue in effect to permit shipments of nectarines and peaches meeting "CA Utility" quality requirements during the 2004 season, on the same basis as shipments since the 2000 season.

**Maturity Requirements**

In §§ 916.52 and 917.41, authority is provided to establish maturity requirements for nectarines and peaches, respectively. The minimum maturity level currently specified for nectarines and peaches is "mature" as defined in the standards. For most varieties, "well-matured" determinations for nectarines and peaches are made using maturity guides (*e.g.*, color chips). These maturity guides are reviewed each year by the Shipping Point Inspection Service (SPI) to determine whether they need to be changed, based upon the most-recent information available on the individual characteristics of each nectarine and peach variety.

These maturity guides established under the handling regulations of the California tree fruit marketing orders have been codified in the Code of Federal Regulations as Table 1 in §§ 916.356 and 917.459, for nectarines and peaches, respectively.

The requirements in the 2004 handling regulations are the same as those that appeared in the 2003 handling regulations with a few exceptions. Those exceptions are explained in this rule and continue in effect.

*Nectarines:* Requirements for "well-matured" nectarines are specified in § 916.356 of the order's rules and regulations. This rule continues in effect the revision of Table 1 of paragraph (a)(1)(iv) of § 916.356 to add maturity guides for seven varieties of nectarines. Specifically, SPI recommended adding maturity guides for the Honey Dew variety to be regulated at the B maturity guide, for the Emelia and Grand Sweet

varieties at the J maturity guide, for the June Candy and Regal Red at the K maturity guide, and the Gee Sweet and Honey Fire varieties to be regulated at the L maturity guide.

In addition, eight nectarine varieties are no longer being shipped and their removal from the listing of maturity guide assignments in Table 1 of paragraph (a)(1)(iv) of § 916.356 continues in effect. The varieties removed include: Autumn Grand, Early May, Early May Grand, Independence, May Jim, May Lion, Red Grand, and Royal Delight nectarine varieties.

The NAC recommended these maturity guide requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the "well-matured" level of maturity for nectarine varieties in production.

*Peaches:* Requirements for "well-matured" peaches are specified in § 917.459 of the order's rules and regulations. This rule continues in effect the revision of Table 1 of paragraph (a)(1)(iv) of § 917.459 to add maturity guides for twelve peach varieties. Specifically, SPI recommended adding maturity guides for the May Sweet and Sweet September varieties to be regulated at the I maturity guide; the Burpeachone (Spring Flame™ 21), Burpeachtwo (Henry II™), Candy Red, Country Sweet, Pretty Lady, Prima Peach 23, Shelly, Sierra Gem, and Summer Kist varieties to be regulated at the J maturity guide; and the Kaweah peach variety to be regulated at the L maturity guide.

Thus, the revision of Table 1 in paragraph (a)(1)(iv) of § 917.459 continues in effect to reflect these recommendations.

In addition, three peach varieties are no longer being shipped and their removal from the listing of maturity guide assignments in Table 1 of paragraph (a)(1)(iv) of § 917.459 continues in effect for the Sierra Crest peach variety. The PCC also recommended that the Johnny's White and Snow Ball peach varieties be removed. However, these two varieties were previously removed from Table 1.

SPI has also recommended changes to the "California Well-Matured" or "CA WELL MAT" maturity requirements for varieties of nectarines and peaches with insufficient "ground color" (ground color is the skin color beneath the characteristic red or pink exhibited on the fruit). Under the changes, the stem cavity will be utilized to make a determination regarding "California Well-Matured" or "CA WELL MAT" for varieties that have insufficient ground color. These varieties are usually highly colored red varieties on which the stem cavity is the only location where the ground color can be seen. SPI further recommends that the color in the stem cavity for most varieties should be at least at the H maturity guide and that confirmation of the maturity may further be established by using other "California Well-Matured" characteristics.

Further, SPI has recommended that two nectarine varieties be notated with an asterisk for additional inspection information. According to SPI, inspectors have determined that the Honey Dew and Mango varieties are appropriately "California Well-Matured" or "CA WELL MAT" when the ground color is "breaking yellowish-green." In other words, the ground color of the fruit is a green color showing signs of changing to a yellow or orange color for yellow-fleshed varieties, and a green color showing signs of changing to a cream color for white-fleshed varieties.

The amendment to the note at the end of Table 1 of paragraph (a)(1)(iv) of § 916.356 continues in effect to reflect these recommendations regarding nectarines, and the amendment to the note at the end of Table 1 of paragraph (a)(1)(iv) of § 917.459 continues in effect to include the recommendation that the stem cavity will be used to determine the appropriate ground color for certain peach varieties.

The NAC and PCC recommended these maturity guide requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the "well-matured" level of maturity for nectarine and peach varieties in production.

**Size Requirements**

Both orders provide (in §§ 916.52 and 917.41) authority to establish size requirements. Size regulations encourage producers to leave fruit on the tree longer, which improves both size and maturity of the fruit. Acceptable fruit size provides greater consumer satisfaction and promotes repeat purchases, and, therefore, increases returns to producers and handlers. In addition, increased fruit size results in increased numbers of packed containers of nectarines and peaches per acre, also a benefit to producers and handlers.

Varieties recommended for specific size regulations have been reviewed and such recommendations are based on the specific characteristics of each variety. The NAC and PCC conduct studies each season on the range of sizes attained by the regulated varieties and those varieties with the potential to become regulated, and determine whether revisions to the size requirements are appropriate.

*Nectarines:* Section 916.356 of the order's rules and regulations specifies minimum size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). This rule continues in effect the revision of § 916.356 to establish variety-specific minimum size requirements for nine varieties of nectarines that were produced in commercially significant quantities of more than 10,000 containers for the first time during the 2003 season. This rule also continues in effect the removal of the variety-specific minimum size requirements for five varieties of nectarines whose shipments fell below 5,000 containers during the 2003 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the White September variety of nectarines, recommended for regulation at a minimum size 80. Studies of the size ranges attained by the White September variety revealed that 100 percent of the containers met the minimum size of 80 during the 2000, 2001, and 2002 seasons. Sizes ranged from size 40 to size 80, with 24.7 percent of the fruit in the 40 sizes, 33.1 percent of the packages in the 50 sizes, 38.9 percent in the 60 sizes, 3.3 percent in the 70 sizes, and 0 percent in the size 80, for the 2002 season. However, the fruit sized down to the 80 sizes during the two previous seasons, and setting the minimum size at size 70 would not be appropriate at this time.

A review of other varieties with the same harvesting period indicated that the White September variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to handle the variety confirm this information regarding minimum size and harvesting period, as well. Thus, the recommendation to place the White September in the variety-specific minimum size regulation at a minimum size 80 is appropriate. This recommendation results from size studies conducted over a three-year period.

Historical data such as this provides the NAC with the information necessary to recommend the appropriate sizes at which to regulate various nectarine varieties. In addition, producers and handlers of the varieties affected are personally invited to comment when such size recommendations are

deliberated. Producer and handler comments are also considered at both NAC and subcommittee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, the revision of the introductory text of paragraph (a)(4) of § 916.356 continues in effect to include the Spring Ray variety; the revision of the introductory text of paragraph (a)(5) of § 916.356 continues in effect to include the Mango variety; and the revision of the introductory text of paragraph (a)(6) of § 916.356 continues in effect to include the Arctic Gold, August Fire, Emelia, Honey Fire, Red Pearl, Ruby Bright, and White September nectarine varieties.

This rule also continues in effect the revision of the introductory text of paragraphs (a)(3), (a)(4), and (a)(6) of § 916.356 to remove five varieties from the variety-specific minimum size requirements specified in these paragraphs because less than 5,000 containers of each of these varieties were produced during the 2003 season. Specifically, the revision of the introductory text of paragraph (a)(3) of § 916.356 continues in effect to remove the Grand Sun nectarine variety; the revision of the introductory text of paragraph (a)(4) of § 916.356 continues in effect to remove the May Grand and Red Glo nectarine varieties; and the revision of the introductory text of paragraph (a)(6) of § 916.356 continues in effect to remove the Firebrite and Sun Diamond nectarine varieties.

Nectarine varieties removed from the nectarine variety-specific minimum size requirements become subject to the non-listed variety size requirements specified in paragraphs (a)(7), (a)(8), and (a)(9) of § 916.356.

*Peaches:* Section 917.459 of the order's rules and regulations specifies minimum size requirements for fresh peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c). The revision of § 917.459 to establish variety-specific minimum size requirements for 17 peach varieties that were produced in commercially significant quantities of more than 10,000 containers for the first time during the 2003 season continues in effect. This rule also continues in effect the removal of the variety-specific minimum size requirements for 14 varieties of peaches whose shipments fell below 5,000 containers during the 2003 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Jupiter variety of peaches, which was recommended for regulation at a minimum size 72. Studies of the size ranges attained by the Jupiter variety revealed that 100 percent of the containers met the minimum size of 72 during the 2000, 2001, and 2002 seasons. The sizes ranged from size 30 to size 70, with 39.1 percent of the containers meeting the size 30, 31.1 percent meeting the size 40, 29.3 percent meeting the size 60, and .05 percent meeting the size 70.

A review of other varieties with the same harvesting period indicated that the Jupiter variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to pack the variety confirm this information regarding minimum size and the harvesting period, as well. Thus, the recommendation to place the Jupiter variety in the variety-specific minimum size regulation at a minimum size 72 is appropriate. This recommendation, as with all other size recommendations for peaches, results from size studies conducted over a three-year period.

Historical data such as this provides the PCC with the information necessary to recommend the appropriate sizes at which to regulate various peach varieties. In addition, producers and handlers of the varieties affected are personally invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at both PCC and subcommittee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, the revision of the introductory text of paragraph (a)(5) of § 917.459 continues in effect to include the Burpeachfourteen (Spring Flame™ 20), Scarlet Queen, Sugar Time (214LC68), and the Supecheight peach varieties; and the revision of the introductory text of paragraph (a)(6) of § 917.459 continues in effect to include the Autumn Fire, Autumn Ruby, Burpeachseven (Summer Flame™ 29), Gypsy Red, Ice Princess, Jupiter, Late September Snow, Magenta Gold, Pink Moon, Ruby Gold, Sugar Crisp, Sugar Red, and Sweet Blaze peach varieties.

This rule also continues in effect the revision of the introductory text of paragraph (a)(4) of § 917.459 to remove the Snow Dance peach variety; continues in effect the revision of the introductory text of paragraph (a)(5) of § 917.459 to remove the Happy Dream, Kern Sun, Kingscrest, Pink Rose, Ray Crest, and Rich Mike peach varieties; and continues in effect the revision of the introductory paragraph (a)(6) of § 917.459 to remove the Cassie, Flamecrest, Kings Lady, Prima Peach XXV, Red Dancer, Sierra Lady, and Sweet Gem peach varieties from the variety-specific minimum size requirements specified in the section because less than 5,000 containers of each of these varieties was produced during the 2003 season.

The removal of the Snow Dance peach variety from the introductory text of paragraph (a)(4) of § 917.459 results in no peach varieties regulated at a minimum size 84 and continues in effect. This paragraph is being reserved for future use. The committees may recommend new peach varieties for regulation at this size in the future.

Peach varieties removed from the peach variety-specific minimum size requirements become subject to the non-listed variety size requirements specified in paragraphs (b) and (c) of § 917.459.

The NAC and PCC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these nectarine and peach varieties, and the consumer acceptance levels for various fruit sizes. This rule continues in effect the establishment of minimum size requirements for fresh nectarines and peaches consistent with expected crop and market conditions.

**Peento Type Peach Tolerances**

The Tree Fruit Quality Subcommittee met on July 25, 2003, to discuss a modified blossom-end growth crack tolerance for Peento type peaches for the 2004 and subsequent seasons. Peento type peaches, also known as donut peaches due to their characteristic flattened shape, have been produced for a decade. Because of their genetic characteristics, these flattened peaches are prone to blossom-end growth cracks. These cracks heal while on the tree and do not affect the edibility of the fruit. Since the 2000 season, this peach has been provided an additional tolerance of 10 percent for well-healed, non-serious blossom-end growth cracks. A grower who produces a large quantity of Peento type peaches advised the subcommittee that adverse weather in the spring of 2003 caused a larger than normal percentage of his fruit to fail inspection even with the additional tolerance for well-healed, non-serious blossom-end growth cracks.

The subcommittee deliberated whether to relax the tolerance for blossom-end growth cracks, carefully weighing the grower's desire to market as much of his crop as possible against the industry's desire of assuring that quality peaches end up in the market place. In the end, the subcommittee

decided that this was a minor defect that did not affect edibility, contribute to internal breakdown, or dramatically detract from fruit appearance, and recommended to the PCC that the tolerance be modified. The modification allows for an unlimited amount of blossom-end cracking as long as the cracks are well healed and do not exceed the aggregate area of a circle 3/8 of an inch in diameter and/or do not exceed a depth that exposes the peach pit.

The PCC adopted the subcommittee's recommendation on blossom-end growth cracks and recommended the relaxations to USDA. Continuation of the relaxed requirements are expected to allow more fruit to be marketed and to return more value to the producer.

This rule reflects the committees' and USDA's appraisal of the need to revise the handling requirements for California nectarines and peaches, as specified. USDA believes that continuing this rule in effect will have a beneficial impact on producers, handlers, and consumers of fresh California nectarines and peaches.

This rule continues in effect the establishment of handling requirements for fresh California nectarines and peaches consistent with expected crop and market conditions, and will help ensure that all shipments of these fruits made each season will meet acceptable handling requirements established under each of these orders. This rule also will help the California nectarine and peach industries provide fruit desired by consumers. This rule continues in effect the establishment and maintenance of orderly marketing conditions for these fruit in the interests of producers, handlers, and consumers.

**Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this 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 in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

*Industry Information*

There are approximately 250 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration [13 CFR 121.201] as those whose annual receipts are less than $5,000,000. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than $750,000. A majority of these handlers and producers may be classified as small entities.

The committees' staff has estimated that there are less than 20 handlers in the industry who could be defined as other than small entities. For the 2003 season, the committees' staff estimated that the average handler price received was $7.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 714,286 containers to have annual receipts of $5,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2003 season, the committees' staff estimates that small handlers represent approximately 94 percent of all the handlers within the industry.

The committees' staff has also estimated that less than 20 percent of the producers in the industry could be defined as other than small entities. For the 2003 season, the committees' estimated the average producer price received was $4.00 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 187,500 containers of nectarines and peaches to have annual receipts of $750,000. Given data maintained by the committees' staff and the average producer price received during the 2003 season, the committees' staff estimates that small producers represent more than 80 percent of the producers within the industry. With an average producer price of $4.00 per container or container equivalent, and a combined packout of nectarines and peaches of 44,202,600 containers, the value of the 2003 packout level is estimated to be $176,810,400. Dividing this total estimated grower revenue figure by the estimated number of producers (1,800) yields an estimate of average revenue per producer of about $98,228 from the sales of peaches and nectarines.

*Regulatory Revisions*

Under §§ 916.52 and 917.41 of the orders, grade, size, maturity, container, container marking, and pack requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis. The NAC and PCC met on November 12, 2003, and unanimously recommended that these handling requirements be revised for the 2004 season. These recommendations had been presented to the committees by various subcommittees, each charged with review and discussion of the changes. The changes: (1) Continue the lot stamping requirements which have been in effect since the 2000 season; (2) authorize shipments of "CA Utility" quality fruit to continue during the 2004 season; (3) revise tolerances for blossom-end growth cracks for Peento type peaches; (4) establish a minimum net weight for volume-filled, five down containers; (5) add an additional container to the list of standard containers and amend the dimensions of another container already regulated; and (6) revise varietal maturity, quality, and size requirements to reflect changes in growing and marketing practices. These changes continue in effect until modified, suspended, or terminated.

**Lot Stamping Requirements—Discussions and Alternatives**

This rule continues in effect the authorization for continuation of the lot stamping requirements for returnable plastic containers under the marketing orders' rules and regulations that have been in effect for such containers since the 2000 season for nectarine and peach shipments. The modified requirements of §§ 916.115 and 917.150 mandated that the lot stamp numbers be printed on a USDA-approved pallet tag, in addition to the requirement that the lot stamp number be applied to cards on all exposed or outside containers, and not less than 75 percent of the total containers on a pallet. Continuation of such requirements for the 2004 and beyond would help the inspection service safeguard the identity of inspected and certified containers of nectarines and peaches, and would help the industry by keeping in place the information necessary to facilitate their "trace-back" program.

The Tree Fruit Quality Subcommittee met on October 23, 2003, and considered possible alternatives to this action. Other alternatives were rejected because the members of the subcommittee determined that given the different styles and configurations of

RPCs available, having a satisfactory adhesive for placement of the cards might not be realistic. Box manufacturers have been very slow to respond to the industry's requests. The subcommittee recognized that as time has passed, the likelihood of getting a suitable adhesive for the cards has decreased significantly. Therefore, the subcommittee determined that it was no longer appropriate to put this regulation into effect annually. When the time comes that an adhesive for the cards becomes available or another method for securing the lot stamp on each container is found, the subcommittee determined that they would make a recommendation to adjust this requirement.

For these reasons, the subcommittee and the committees unanimously recommended continuing the requirement for the lot stamp number to be printed on the cards on each container and for each pallet to be marked with a USDA-approved pallet tag, also containing the lot stamp number for the 2004 season and beyond. Such safeguards are intended to ensure that all the containers on each pallet have been inspected and certified in the event a card on an individual container or containers is removed, misplaced, or lost.

**Grade and Quality Requirements—Discussions and Alternatives**

In 1996, §§ 916.350 and 917.442 were revised to permit shipments of "CA Utility" quality nectarines and peaches as an experiment during that season only. Such shipments have subsequently been permitted each season. Since 1996, shipments of "CA Utility" have ranged from 1 to 5 percent of total nectarine and peach shipments. This rule continues in effect the authority to continue shipments of "CA Utility" quality nectarines and peaches during the 2004 season.

The Tree Fruit Quality Subcommittee met on October 23, 2003, and unanimously agreed that the "CA Utility" quality requirements that are currently in place should be continued. Also, not authorizing such shipments would be an abrupt departure from their current practices. The NAC and PCC also unanimously recommended such continuation at their meetings on November 12, 2003, and have done so continuously since such shipments were first authorized in 1996.

**Container and Container Marking Requirements—Discussions and Alternatives**

Sections 916.350 and 917.442 establish container, pack, and marking requirements for shipments of nectarines and peaches, respectively. This rule continues in effect the changes to the pack and container marking requirements of the orders' rules and regulations to establish a minimum net weight of 29 pounds for all types of five down Euro boxes.

This rule also continues in effect the changes to the pack and container marking requirements to establish one new standard container and to modify the dimensions of a standard container currently being used by the industry.

During the 2003 season, the California Department of Food and Agriculture assigned numbers to one new container, the No. 36, modified the dimensions of the Euro five down container, and assigned that container the No. 35. The new container and the modified dimensions of the Euro five down container were then added to the California Agricultural Code.

By standardizing containers, the State permits handlers to use a new container for more than ten percent of their annual shipments. Otherwise, the container would be considered an experimental container for which handlers would have to file an application and limit shipments in such containers to a maximum of ten percent of their total seasonal shipments. Once containers are standardized within the California Agricultural Code, they are historically added to the orders so that regulated handlers may use them for packaging nectarines and peaches.

At the meeting of the Tree Fruit Quality Subcommittee on October 23, 2003, the addition of these standardized boxes was discussed. The members noted that these two boxes are used increasingly and may continue to be, potentially replacing the older, more conventional boxes. According to one member of the subcommittee, no handler really wants to add extra boxes to the growing inventory of box sizes and styles; but in practical terms, the retail customers prefer the newer boxes, so they must be added to the list of available and standard containers. The alternative of not adding the containers was unacceptable because handlers would not have them available when requested by their retail customers.

The Tree Fruit Quality Subcommittee also discussed the net weight requirement for all five down Euro containers at its meeting on October 23, 2003. At that time, the subcommittee discussed results from the 2003 season during which both a 29- and 31-pound container had been authorized. Experience of handlers during the season resulted in the subcommittee's recommendation that only the 29-pound container continue to be authorized. The subcommittee unanimously recommended the change to the committees. The alternative would have meant that RPC five down Euro containers would have been subject to both the 29- and 31-pound net weight. In consideration of uniformity for five down Euro containers, this alternative was rejected.

**Minimum Maturity and Size Levels—Discussions and Alternatives**

Sections 916.356 and 917.459 establish minimum maturity levels. This rule continues in effect the annual adjustments to the maturity requirements for several varieties of nectarines and peaches. Maturity requirements are based on maturity measurements generally using maturity guides (*e.g.*, color chips), as recommended by SPI. Such maturity guides are reviewed annually by SPI to determine the appropriate guide for each nectarine and peach variety. These annual adjustments reflect refinements in measurements of the maturity characteristics of nectarines and peaches as experienced over previous seasons' inspections. Adjustments in the guides utilized ensure that fruit has met an acceptable level of maturity, ensuring consumer satisfaction while benefiting nectarine and peach producers and handlers.

Currently, in § 916.356 of the nectarine order's rules and regulations, and in § 917.459 of the peach order's rules and regulations, minimum sizes for various varieties of nectarines and peaches, respectively, are established. This rule continues in effect the adjustments to the minimum sizes authorized for various varieties of nectarines and peaches for the 2004 season. Minimum size regulations are put in place to encourage producers to leave fruit on the trees for a longer period of time. This increased growing time not only improves maturity, but also increases fruit size. Increased fruit size increases the number of packed containers per acre, and coupled with heightened maturity levels, also provides greater consumer satisfaction, fostering repeat purchases. Such improved consumer satisfaction and repeat purchases benefit both producers and handlers alike.

Annual adjustments to minimum sizes of nectarines and peaches, such as these, are recommended by the NAC and PCC based upon historical data, producer and handler information regarding sizes attained by different varieties, and trends in consumer purchases.

An alternative to such action would include not establishing minimum size regulations for these new varieties. Such an action, however, would be a significant departure from the committees' practices and represent a substantial change in the regulations as they currently exist; would ultimately increase the amount of less acceptable fruit being marketed to consumers; and would be contrary to the long-term interests of producers, handlers, and consumers. For these reasons, this alternative was not recommended.

**Peento Type Peach Tolerances—Discussions and Alternatives**

The Tree Fruit Quality Subcommittee met on July 25, 2003, to discuss a modified growth-crack tolerance for Peento type peaches for the 2004 and later seasons with a concerned grower. The grower advised the subcommittee that weather problems created some anomalies for his 2003 crop of Peento type peaches. A larger-than-normal percentage of his fruit failed inspection during the 2003 season because of blossom-end growth cracks. This type of peach is prone to such cracks. However, the cracks do not affect the edibility of the fruit, contribute to internal breakdown, or detract from the appearance of the fruit unless the cracks are unusually large or deep.

The subcommittee deliberated whether to relax the tolerance for blossom end growth cracks for the 2004 season, carefully weighing the grower's need to have a crop to market and the need to maintain a quality product in the market place. In the end, the subcommittee determined that peaches of the Peento type should be permitted blossom-end cracking as long as the cracks are well healed, do not exceed the aggregate area of a circle 3/8 inch in diameter, and/or do not exceed a depth that exposes the pit. This relaxation is in lieu of the previous requirement that Peento type peaches should be permitted a 10 percent tolerance for well-healed, non-serious, blossom-end growth cracks.

The PCC agreed with the subcommittee and recommended that the current tolerance for blossom-end growth cracks on Peento type peaches be revised to meet the demands of the growers and buyers of these unique peaches.

An alternative to this action would have been to leave these requirements unchanged. However, this would have meant that the growers of these fruits would be restricted in marketing them, since these fruits exhibit an increased propensity for blossom-end growth cracks, which are only a cosmetic defect. The relaxation is expected to allow more of these peaches to be marketed and to improve producer returns.

The committees make recommendations regarding the revisions in handling and lot stamping requirements after considering all available information, including recommendations by various subcommittees, comments of persons at subcommittee meetings, and comments received by committee staff. Such subcommittees include the Tree Fruit Quality Subcommittee, the Marketing Order Amendment Task Force, and the Executive Committee.

At the meetings, the impact of and alternatives to these recommendations are deliberated. These subcommittees, like the committees themselves, frequently consist of individual producers and handlers with many years of experience in the industry who are familiar with industry practices and trends. Like all committee meetings, subcommittee meetings are open to the public and comments are widely solicited. In the case of the Tree Fruit Quality Subcommittee, many growers and handlers who are affected by the issues discussed by the subcommittee attend and actively participate in the public deliberations, or call and/or write in their concerns and comments to the staff for presentation at the meetings. In addition, minutes of all subcommittee meetings are distributed to committee members and others who have requested them and are available on the committees' Web site, thereby increasing the availability of information within the industry.

An interim final rule concerning this action was published in the **Federal Register** on March 25, 2004. Copies of the rule were posted on the committees' Web site and were also made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period, which ended on May 24, 2004. Two comments were submitted on the rule.

First, a commenter noted that the Spring Ray nectarine variety name should be changed to include the patented name, Burnectone. This rule changes the name in Table 1 of paragraph (a)(1)(iv) in § 916.356 and in the introductory text of paragraph (a)(4) of § 916.356.

The commenter also noted that the peach varieties referred to as 91002 and 012–094 in § 917.459 (a)(2) and (a)(5) should be changed to include their patented names Supechsix and Supecheight, respectively. The peach variety name, Supecheight, in paragraph (a)(5) of § 917.459, is changed by adding the patented name "012–094" in parentheses, Supecheight (012–094). The correction of paragraph (a)(2) of § 917.459 will be made to remove the name "91002" and add the name "Supechsix (91002)".

The interim final rule identified both the Mango and the Honey Dew nectarine varieties as requiring the stem cavity color to be "breaking yellowish-green." The commenter noted that the NAC recommended only the Honey Dew nectarine variety for this designation and asked for a correction on the appropriate "ground color" requirement for the Mango variety nectarines. However, at the NAC meeting where this matter was discussed, the Federal or Federal-State Inspection Service, which includes SPI, recommended that this ground color requirement apply to both varieties of nectarines. As earlier mentioned, maturity requirements are based on maturity measurements generally using maturity guides (*e.g.*, color chips), as recommended by SPI. Such maturity guides are reviewed annually by SPI to determine the appropriate guide for each nectarine variety. These annual adjustments reflect refinements in measurements of the maturity characteristics of nectarines as experienced over previous seasons' inspections. For these reasons, the language in the interim final rule requiring both the Honey Dew and Mango nectarine varieties to exhibit "breaking yellowish-green" color in their stem cavities remains as published.

The commenter also asked for placement of an asterisk in the "Note" footnote at the end of Table 1 of paragraph (a)(1)(iv) in § 916.356 prior to the statement: "Predominant ground color must be breaking yellowish green." Apparently, this asterisk was omitted in the publication of the interim final rule and has been added.

The commenter noted, too, that the term "California Well-Matured" was incorrectly referred to as "California Well-Mature" in the "Note" at the end of Table 1 of paragraph (a)(1)(iv) in § 916.356 and the "Note" at the end of Table 1 of paragraph (a)(1)(iv) of § 917.459. Those corrections have been made, as well.

In the second comment, the commenter noted his support for the lot stamping requirements, container and pack requirements, the authority to ship "CA Utility" quality fruit, and maturity requirements in the interim final rule.

Each of the recommended handling requirement changes for the 2004 season is expected to generate financial benefits for producers and handlers through

increased fruit sales, compared to the situation that would exist if the changes were not adopted. Both large and small entities are expected to benefit from the changes, and the costs of compliance are not expected to be substantially different between large and small entities.

This rule does not impose any additional reporting and recordkeeping requirements on either small or large handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. However, as previously stated, nectarines and peaches under the orders have to meet certain requirements set forth in the standards issued under the Agricultural Marketing Act of 1946 (7 CFR 1621 *et seq.*). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary.

In addition, the committees' meetings are widely publicized throughout the nectarine and peach industry and all interested parties are encouraged to attend and participate in committee deliberations on all issues. These meetings are held annually in the fall and spring. Like all committee meetings, the November 12, 2003, meetings were public meetings, and all entities, large and small, were encouraged to express views on these issues. These regulations were also reviewed and thoroughly discussed at subcommittee meetings held on July 25, October 1, and October 23, 2003. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, comments received, and other information, it is found that finalizing the interim final rule, with changes, as published in the **Federal Register**, (69 FR 15641, March 25, 2004) will tend to effectuate the declared policy of the Act.

**List of Subjects**

*7 CFR Part 916*

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

*7 CFR Part 917*

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

■ Accordingly, the interim final rule amending 7 CFR parts 916 and 917, which was published at 69 FR 15641 on March 25, 2004, is adopted as a final rule with the following changes:

## PART 916—NECTARINES GROWN IN CALIFORNIA

## PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

## PART 916—NECTARINES GROWN IN CALIFORNIA

### § 916.356 [Amended]

■ 2. Section 916.356 is amended by:
■ A. Removing the entry "Spring Ray" and adding in alphabetical order the entry "Burnectone (Spring Ray)" in Table 1, paragraph (a)(1)(iv);
■ B. Removing the words "California Well-Mature" in the "Note" following Table 1, paragraph (a)(1)(iv), and adding the words "California Well-Matured" in their place;
■ C. Adding an asterisk before the words "Predominant ground color must be breaking yellowish green" in the "Note" following Table 1, paragraph (a)(1)(iv); and
■ D. Removing the words "Spring Ray" and adding the words "Burnectone (Spring Ray)" in alphabetical order in paragraph (a)(4) introductory text.

* * * * *

## PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

### § 917.459 [Amended]

■ 4. Section 917.459 is amended by:
■ A. Removing the words "California Well-Mature" in the "Note" following Table 1, paragraph (a)(1)(iv), and adding the words "California Well-Matured" in their place;
■ B. Removing the number "91002" in paragraph (a)(2) and adding "Supechsix (91002)" in its place;
■ C. Removing the number "012–094" in paragraph (a)(5); and
■ D. Removing the word "Supecheight" and adding "Supecheight (012–094)" in its place in paragraph (a)(5).

Dated: June 30, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 04–15332 Filed 7–6–04; 8:45 am]

BILLING CODE 3410–02–P

Federal Register

Wednesday,
July 7, 2004

Part VII

# Federal Communications Commission

47 CFR Parts 0 and 1
Schedule of Application Fees; Final Rule

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 0 and 1

**[GEN Docket No. 86–285; FCC 04–150]**

### Schedule of Application Fees

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document the Commission has amended its Schedule of Application Fees to adjust the fees for processing applications and other filings. Section 8(b) of the Communications Act requires the Commission to adjust its application fees every two years after October 1, 1991 to reflect the net change in the Consumer Price Index for all Urban Consumers (CPI–U). The increased fees reflect the net change in the CPI–U of 7 percent, calculated from October 2001 to October 2003.

**DATES:** Effective August 6, 2004.

**FOR FURTHER INFORMATION CONTACT:** Claudette Pride, Office of the Managing Director at (202) 418–1995.

**SUPPLEMENTARY INFORMATION:** In the Matter of the Schedule of Application Fees Set Forth in §§ 1.1102 through 1.1107 of the Commission's Rules.

*Adopted:* June 23, 2004.

*Released:* June 25, 2004.

By this action, the Commission amends its Schedule of Application Fees, 47 CFR 1.1102 *et seq.*, to adjust the fees for processing applications and other filings. Section 8(b) of the Communications Act, as amended, requires that the Commission review and adjust its application fees every two years after October 1, 1999. 47 U.S.C. 158(b). The adjusted or increased fees reflect the net change in the Consumer Price Index for all Urban Consumers (CPI–U) of 47 percent, calculated from December 1989 to October 2003. The adjustments made to the fee schedule comport with the statutory formula set forth in section 8(b).

### List of Subjects in 47 CFR Parts 0 and 1

Practice and procedures.

Federal Communications Commission.

**Jacqueline R. Coles,**

*Manager, Agenda Publications Group.*

### Rule Changes

■ Parts 0 and 1 of Title 47 of the Code of Federal Regulations are amended as follows:

## PART 0—COMMISSION ORGANIZATION

■ 1. The authority citations for part 0 continue to read as follows:

**Authority:** Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Section 0.481 is revised to read as follows:

**§ 0.481 Place of filing applications for radio authorizations.**

For locations for filing applications, and appropriate fees, see §§ 1.1102 through 1.1107 of this chapter.

## PART 1—PRACTICE AND PROCEDURE

■ 3. The authority citations for Part 1 continue to read as follows:

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303, and 309, unless otherwise noted.

■ 4. Section 1.721 is amended by revising paragraph (a)(13) to read as follows:

**§ 1.721 Format and content of complaints.**

(a)* * *

(13) A declaration, under penalty of perjury, by the complainant or complainant's counsel describing the amount, method, and date of the complainant's payment of the filing fee required under § 1.1106 and the complainant's 10-digit FCC Registration Number, if any;

* * * * *

■ 5. Section 1.735 is amended by revising paragraph (b) introductory text and paragraph (b)(4) to read as follows:

**§ 1.735 Copies; service; separate filings against multiple defendants.**

* * * * *

(b) The complainant shall file an original copy of the complaint, accompanied by the correct fee, in accordance with part 1, subpart G (see § 1.1106) and, on the same day:

* * * * *

(b)(4) If a complaint is addressed against multiple defendants, pay a separate fee, in accordance with part 1, subpart G (see § 1.1106), and file three copies of the complaint with the Office of the Commission Secretary for each additional defendant.

* * * * *

■ 6. Section 1.1102 is revised to read as follows:

**§ 1.1102 Schedule of charges for applications and other filings in the wireless telecommunications services.**

Those services designated with an asterisk in the payment type code column have associated regulatory fees that must be paid at the same time the application fee is paid. Please refer to § 1.1152 for the appropriate regulatory fee that must be paid for this service.

BILLING CODE 6712–01–U

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| **1. Marine Coast**<br>a. New;<br>Renewal/Modification | 601 & 159 | $105.00 | PBMR* | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| b. Modification,<br>Public Coast CMRS;<br>Non-Profit | 601 & 159 | $105.00 | PBMM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| c. Assignment of Authorization | 603 & 159 | $105.00 | PBMM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| d. Transfer of Control | 603 & 159 | $55.00 | PATM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| e. Duplicate License | 601 & 159 | $55.00 | PADM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130. |
| f. Special Temporary Authority | 601 & 159 | $150.00 | PCMM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| g. Renewal Only | 601 & 159 | $105.00 | PBMR* | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358245<br>Pittsburgh, PA 15251-5245 |
| h. Renewal<br>(Electronic Filing) | 601 & 159 | $105.00 | PBMR* | Federal Communications Commission<br>Wireless Bureau Applications<br>(ELT)<br>P.O. Box 358994<br>Pittsburgh, PA 15251-5994 |
| i. Renewal Only<br>(Non-Profit; CMRS) | 601 & 159 | $105.00 | PBMM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358245<br>Pittsburgh, PA 15251-5245 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| j. Renewal (Electronic Filing) Non-profit, CMRS | 601 & 159 | $105.00 | PBMM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358994<br>Pittsburgh, PA 15251-5994 |
| k. Rule Waiver | 601 & 159 | $155.00 | PDWM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| **2. Aviation Ground**<br>a. New;<br>Renewal/Modification | 601 & 159 | $105.00 | PBVR* | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| b. Modification;<br>Non-Profit | 601 & 159 | $105.00 | PBVM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| c. Assignment of Authorization | 603 & 159 | $105.00 | PBVM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| d. Transfer of Control | 603 & 159 | $55.00 | PATM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| e. Duplicate License | 601 & 159 | $55.00 | PADM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| f. Special Temporary Authority | 601 & 159 | $150.00 | PCVM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| g. Renewal Only | 601 & 159 | $105.00 | PBVR* | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358245<br>Pittsburgh, PA 15251-5245 |
| h. Renewal (Electronic Filing) | 601 & 159 | $105.00 | PBVR* | Federal Communications Commission<br>Wireless Bureau Applications (ELT)<br>P.O. Box 358994<br>Pittsburgh, PA 15251-5994 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| i. Renewal Only (Non-Profit) | 601 & 159 | $105.00 | PBVM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358245 Pittsburgh, PA 15251-5245 |
| j. Renewal (Electronic Filing) (Non-Profit) | 601 & 159 | $105.00 | PBVM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| k.. Rule Waiver | 601 & 159 | $155.00 | PDWM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| **3. Ship** a. New, Renewal Renewal/Modification | 605 & 159 | $55.00 | PASR* | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| b. New, Renewal Renewal/Modification (Electronic Filing) | 605 & 159 | $55.00 | PASR* | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| c. Renewal Only (Non-profit) | 605 & 159 | $55.00 | PASM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| d. Renewal Only (Non-profit) (Electronic Filing) | 605 & 159 | $55.00 | PASM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| e. Modification (Non-profit) | 605 & 159 | $55.00 | PASM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| f. Modification (Non-profit) (Electronic Filing) | 605 & 159 | $55.00 | PASM | Federal Communications Commission Wireless Bureau Applications (ELT) |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| | | | | P.O. Box 358994<br>Pittsburgh, PA 15251-5994 |
| g. Duplicate License | 605 & 159 | $55.00 | PADM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| h. Duplicate License (Electronic Filing) | 605 & 159 | $55.00 | PADM | Federal Communications Commission<br>Wireless Bureau Applications (ELT)<br>P.O. Box 358994<br>Pittsburgh, PA 15251-5994 |
| i. Exemption from Ship Station Requirements | 605 & 159 | $155.00 | PDWM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| j. Rule Waiver | 605 & 159 | $155.00 | PDWM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| k. Exemption from Ship Station Requirements (Electronic Filing) | 605 & 159 | $155.00 | PDWM | Federal Communications Commission<br>Wireless Bureau Applications - ELT<br>P.O. Box 358994<br>Pittsburgh, PA 15251-5994 |
| l. Rule Waiver (Electronic Filing) | 605 & 159 | $155.00 | PDWM | Federal Communications Commission<br>Wireless Bureau Applications - ELT<br>P.O. Box 358994<br>Pittsburgh, PA 15251-5994 |
| **4. Aircraft**<br>a. New; Renewal/Modification | 605 & 159 | $55.00 | PAAR* | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| b. New; Renewal/Modification (Electronic Filing) | 605 & 159 | $55.00 | PAAR* | Federal Communications Commission<br>Wireless Bureau Applications (ELT)<br>P.O. Box 358994<br>Pittsburgh, PA 15251-5994 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| c. Modification Non-Profit | 605 & 159 | $55.00 | PAAM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| d. Modification; (Electronic Filing) | 605 & 159 | $55.00 | PAAM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| e. Renewal Only | 605 & 159 | $55.00 | PAAR* | Federal Communications Commission Wireless Bureau Applications P.O. Box 358245 Pittsburgh, PA 15251-5245 |
| f. Renewal (Electronic Filing) | 605 & 159 | $55.00 | PAAR* | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| g. Renewal Only (Non-Profit) | 605 & 159 | $55.00 | PAAM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358245 Pittsburgh, PA 15251-5245 |
| h. Renewal; Renewal/ Modification (Non-Profit) (Electronic Filing) | 605 & 159 | $55.00 | PAAM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| i. Duplicate License | 605 & 159 | $55.00 | PADM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| j. Duplicate License (Electronic Filing) | 605 & 159 | $55.00 | PADM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| k. Rule Waiver | 605 & 159 | $155.00 | PDWM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| l. Rule Waiver (Electronic Filing) | 605 & 159 | $155.00 | PDWM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| **5. Private Operational Fixed Microwave and Private DEMS** a. New; Renewal/Modification | 601 & 159 | $230.00 | PEOR* | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| b. New; Renewal/Modification (Electronic Filing) | 601 & 159 | $230.00 | PEOR* | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| c. Modification; Consolidate Call Signs; Non-Profit | 601 & 159 | $230.00 | PEOM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| d. Modification; Consolidate Call Signs; Non-Profit (Electronic Filing) | 601 & 159 | $230.00 | PEOM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| e. Renewal Only | 601 & 159 | $230.00 | PEOR* | Federal Communications Commission Wireless Bureau Applications P.O. Box 358245 Pittsburgh, PA 15251-5245 |
| f. Renewal (Electronic Filing) | 601 & 159 | $230.00 | PEOR* | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| g. Renewal Only (Non-Profit) | 601 & 159 | $230.00 | PEOM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358245 Pittsburgh, PA 15251-5245 |
| h.. Renewal (Non-Profit) (Electronic Filing) | 601 & 159 | $230.00 | PEOM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| i. Assignment (Electronic Filing) | 603 & 159 | $230.00 | PEOM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| j. Assignment (Electronic Filing) | 603 & 159 | $230.00 | PEOM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| k. Transfer of Control; | 603 & 159 | $55.00 | PATM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| Spectrum Leasing | 603-T & 159 | | | |
| l. Transfer of Control; | 603 & 159 | $55.00 | PATM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| Spectrum Leasing (Electronic Filing) | 603-T & 159 | $55.00 | PATM | |
| m. Duplicate License | 601 & 159 | $55.00 | PADM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| n. Duplicate License (Electronic Filing) | 601 & 159 | $55.00 | PADM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| o. Special Temporary Authority | 601 & 159 | $55.00 | PAOM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| p. Special Temporary Authority (Electronic Filing) | 601 & 159 | $55.00 | PAOM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| q. Rule Waiver | 601 & 159 | $155.00 | PDWM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| r. Rule Waiver (Electronic Filing) | 601 & 159 | $155.00 | PDWM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| **6. Land Mobile** PMRS; Intelligent Transportation Service a. New or Renewal/Modification (Frequencies below 470 MHz (except 220 MHz) 902-928 MHz & RS | 601 & 159 | $55.00 | PALR* | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| b. New or Renewal/Modification (Frequencies below 470 MHz) (except 220 MHz) (Electronic Filing) | 601 & 159 | $55.00 | PALR* | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| c. New or Renewal/Modification (Frequencies 470 MHz) and above and 220 MHz Local) | 601 & 159 | $55.00 | PALS* | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| d. New or Renewal/Modification (Frequencies 470 MHz) and above and 220 MHz Local) (Electronic Filing) | 601 & 159 | $55.00 | PALS* | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| e. New or Renewal/Modification (220 MHz Nationwide) | 601 & 159 | $55.00 | PALT* | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| f. New or Renewal/Modification (220 MHz Nationwide) (Electronic Filing) | 601 & 159 | $55.00 | PALT* | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| g. Modification; Non-Profit; For Profit Special Emergency and Public Safety; and CMRS | 601 & 159 | $55.00 | PALM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| h. Modification; Non-Profit; For Profit Special Emergency and Public Safety; and CMRS (Electronic Filing) | 601 & 159 | $55.00 | PALM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| i. Renewal Only | 601 & 159 | $55.00<br>$55.00<br>$55.00 | PALR*<br>PALS*<br>PALT* | Federal Communications Commission Wireless Bureau Applications P.O. Box 358245 Pittsburgh, PA 15251-5245 |
| j. Renewal (Electronic Filing) | 601 & 159 | $55.00<br>$55.00<br>$55.00 | PALR*<br>PALS*<br>PALT* | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| k. Renewal Only (Non-Profit; CMRS; For-Profit Special Emergency and Public Safety) | 601 & 159 | $55.00 | PALM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358245 Pittsburg, PA 15251-5245 |
| l. Renewal (Non-Profit; CMRS; For-Profit Special Emergency and Public Safety) (Electronic Filing) | 601 & 159 | $55.00 | PALM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| m. Assignment of Authorization (PMRS & CMRS) | 603 & 159 | $55.00 | PALM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburg, PA 15251-5130 |
| n. Assignment of Authorization (PMRS & CMRS) (Electronic Filing) | 603 & 159 | $55.00 | PALM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| o. Transfer of Control (PMRS & CMRS);<br><br>Spectrum Leasing | 603 & 159<br><br>603-T & 159 | $55.00<br><br>$55.00 | PATM<br><br>PATM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| p. Transfer of Control (PMRS & CMRS);<br><br>Spectrum Leasing (Electronic Filing) | 603 & 159<br><br>603-T & 159 | $55.00<br><br>$55.00 | PATM<br><br>PATM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| q. Duplicate License | 601 & 159 | $55.00 | PADM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| r. Duplicate License (Electronic Filing) | 601 & 159 | $55.00 | PADM | Federal Communications Commission<br>Wireless Bureau Applications (ELT)<br>P.O. Box 358994<br>Pittsburgh, PA 15251-5994 |
| s. Special Temporary Authority | 601 & 159 | $55.00 | PALM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| t. Special Temporary Authority (Electronic Filing) | 601 & 159 | $55.00 | PALM | Federal Communications Commission<br>Wireless Bureau Applications (ELT)<br>P.O. Box 358994<br>Pittsburgh, PA 15251-5994 |
| u. Rule Waiver | 601 & 159 | $155.00 | PDWM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| v. Rule Waiver (Electronic Filing) | 601 & 159 | $155.00 | PDWM | Federal Communications Commission<br>Wireless Bureau Applications (ELT)<br>P.O. Box 358994<br>Pittsburgh, PA 15251-5994 |
| w. Consolidate Call Signs | 601 & 159 | $55.00 | PALM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| x. Consolidate Call Signs (Electronic Filing) | 601 & 159 | $55.00 | PALM | Federal Communications Commission<br>Wireless Bureau Applications (ELT)<br>P.O. Box 358994<br>Pittsburgh, PA 15251-5994 |
| **7. 218-219 MHz (previously IVDS)**<br>a. New; Renewal/Modification | 601 & 159 | $55.00 | PAIR* | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| b. New; Renewal/Modification (Electronic Filing) | 601 & 159 | $55.00 | PAIR* | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| c. Modification | 601 & 159 | $55.00 | PAIM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| d. Modification (Electronic Filing) | 601 & 159 | $55.00 | PAIM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| e. Renewal Only | 601 & 159 | $55.00 | PAIR* | Federal Communications Commission Wireless Bureau Applications P.O. Box 358245 Pittsburg, PA 15251-5245 |
| f. Renewal (Electronic Filing) | 601 & 159 | $55.00 | PAIR* | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| g. Assignment of Authorization | 603 & 159 | $55.00 | PAIM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| h. Assignment of Authorization (Electronic Filing) | 603 & 159 | $55.00 | PAIM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| i. Transfer of Control; | 603 & 159 | $55.00 | PATM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| Spectrum Leasing | 603-T & 159 | $55.00 | PATM | |
| j. Transfer of Control; | 603 & 159 | $55.00 | PATM | Federal Communication Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| Spectrum Leasing **(Electronic Filing)** | 603-T & 159 | $55.00 | PATM | |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| k. Duplicate License | 601 & 159 | $55.00 | PADM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| l. Duplicate License **(Electronic Filing)** | 601 & 159 | $55.00 | PADM | Federal Communications Commission<br>Wireless Bureau Applications (ELT)<br>P.O. Box 358994<br>Pittsburgh, PA 15251-5994 |
| m. Special Temporary Authority | 601 & 159 | $55.00 | PAIM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| n. Special Temporary Authority **(Electronic Filing)** | 601 & 159 | $55.00 | PAIM | Federal Communications Commission<br>Wireless Bureau Applications (ELT)<br>P.O. Box 358994<br>Pittsburgh, PA 15251-5994 |
| **8. General Mobile Radio (GMRS)**<br>a. New; Renewal/Modification | 605 & 159 | $55.00 | PAZR* | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| b. New; Renewal/Modification **(Electronic Filing)** | 605 & 159 | $55.00 | PAZR* | Federal Communications Commission<br>Wireless Bureau Applications (ELT)<br>P.O. Box 358994<br>Pittsburgh, PA 15251-5994 |
| c. Modification | 605 & 159 | $55.00 | PAZM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| d. Modification **(Electronic Filing)** | 605 & 159 | $55.00 | PAZM | Federal Communications Commission<br>Wireless Bureau Applications (ELT)<br>P.O. Box 358994<br>Pittsburgh, PA 15251-5994 |
| e. Renewal Only | 605 & 159 | $55.00 | PAZR* | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358245<br>Pittsburgh, PA 15251-5245 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| f. Renewal (Electronic Filing) | 605 & 159 | $55.00 | PAZR* | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| g. Duplicate License | 605 & 159 | $55.00 | PADM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| h. Duplicate License (Electronic Filing) | 605 & 159 | $5500 | PADM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| i. Special Temporary Authority | 605 & 159 | $55.00 | PAZM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| j. Special Temporary Authority (Electronic Filing) | 605 & 159 | $55.00 | PAZM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| k. Rule Waiver | 605 & 159 | $155.00 | PDWM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| l. Rule Waiver (Electronic Filing) | 605 & 159 | $155.00 | PDWM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| **9. Restricted Radiotelephone** | | | | Federal Communications Commission Wireless Bureau Applications P.O. Box 358245 Pittsburgh, PA 15251-5245 |
| a. New (Lifetime Permit) | 605 & 159 | $55.00 | PARR | |
| New (Limited Use) | 605 & 159 | $55.00 | PARR | |
| b. Duplicate/Replacement Permit | 605 & 159 | $55.00 | PADM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| Duplicate/Replacement Permit (Limited Use) | 605& 159 | $55.00 | PADM | |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| **10. Commercial Radio Operator**<br>a. Renewal Only; Renewal/ Modification | 605 & 159 | $55.00 | PACS | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358245<br>Pittsburgh, PA 15251-5245 |
| b. Duplicate | 605 & 159 | $55.00 | PADM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| **11. Hearing** | Corres & 159 | $9,920.00 | PFHM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| **12. Common Carrier Microwave** (Pt. To Pt., Local TV Trans. & Millimeter Wave Service)<br>a. New; Renewal/Modification (Electronic Filing Required) | 601 & 159 | $230.00 | CJPR* | Federal Communications Commission<br>Wireless Bureau Applications (ELT)<br>P.O. Box 358994<br>Pittsburgh, PA 15251-5994 |
| b. Modification; Consolidate Call Signs (Electronic Filing Required) | 601 & 159 | $230.00 | CJPM | Federal Communications Commission<br>Wireless Bureau Applications (ELT)<br>P.O. Box 358994<br>Pittsburgh, PA 15251-5994 |
| c. Renewal (Electronic Filing Required) | 601 & 159 | $230.00 | CJPR* | Federal Communications Commission<br>Wireless Bureau Applications (ELT)<br>P.O. Box 358994<br>Pittsburgh, PA 15251-5994 |
| d. Assignment of Authorization; Transfer of Control; | 603 & 159 | $85.00 | CCPM | Federal Communications Commission<br>Wireless Bureau Applications (ELT)<br>P.O. Box 358994<br>Pittsburgh, PA 15251-5994 |
| Spectrum Leasing | 603-T & 159 | $85.00 | CCPM | |
| Additional Stations (Electronic Filing Required) | 603/603-T & 159 | $55.00 | CAPM | |
| e. Duplicate License (Electronic Filing Required) | 601 & 159 | $55.00 | PADM | Federal Communications Commission<br>Wireless Bureau Applications (ELT)<br>P.O. Box 358994<br>Pittsburgh, PA 15251-5994 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| f. Extension of Construction Authority (Electronic Filing Required) | 601 & 159 | $85.00 | CCPM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| g. Special Temporary Authority | 601 & 159 | $105.00 | CEPM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| h. Special Temporary Authority (Electronic Filing) | 601 & 159 | $105.00 | CEPM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| **13. Common Carrier Microwave (DEMS)** a. New; Renewal/Modification (Electronic Filing Required) | 601 & 159 | $230.00 | CJLR* | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| b. Modification; Consolidate Call Signs (Electronic Filing Required) | 601 & 159 | $230.00 | CJLM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| c. Renewal (Electronic Filing Required) | 601 & 159 | $230.00 | CJLR* | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| d. Assignment of Authorization; Transfer of Control; | 603 & 159 | $85.00 | CCLM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| Spectrum Leasing | 603-T & 159 | $85.00 | CCLM | |
| Additional Stations (Electronic Filing Required) | 603/603-T & 159 | $55.00 | CALM | |
| e. Duplicate License (Electronic Filing Required) | 601 & 159 | $55.00 | PADM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| f. Extension of Construction Authority (Electronic Filing Required) | 601 & 159 | $85.00 | CCLM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| g. Special Temporary Authority | 601 & 159 | $105.00 | CELM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| h. Special Temporary Authority (Electronic Filing) | 601 & 159 | $105.00 | CELM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| **14. Broadcast Auxiliary (Aural and TV Microwave)** a. New; Modification; Renewal/Modification | 601 & 159 | $125.00 | MEA | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| b. New; Modification; Renewal/Modification (Electronic Filing) | 601 & 159 | $125.00 | MEA | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| c. Special Temporary Authority | 601 & 159 | $150.00 | MGA | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| d. Special Temporary Authority (Electronic Filing) | 601 & 159 | $150.00 | MGA | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| e. Renewal Only | 601 & 159 | $55.00 | MAA | Federal Communications Commission Wireless Bureau Applications P.O. Box 358245 Pittsburgh, PA 15251-5245 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| f. Renewal (Electronic Filing) | 601 & 159 | $55.00 | MAA | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| **15. Broadcast Auxiliary (Remote and Low Power** a. New; Modification Renewal/Modification | 601 & 159 | $125.00 | MEA | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| b. New; Modification Renewal/Modification (Electronic Filing) | 601 & 159 | $125.00 | MEA | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| c. Renewal Only | 601 & 159 | $55.00 | MAA | Federal Communications Commission Wireless Bureau Applications P.O. Box 358245 Pittsburgh, PA 15251-5245 |
| d. Renewal (Electronic Filing) | 601 & 159 | $55.00 | MAA | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| e. Special Temporary Authority | 601 & 159 | $150.00 | MGA | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| f. Special Temporary Authority (Electronic Filing) | 601 & 159 | $150.00 | MGA | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| **16. Pt 22 Paging & Radiotelephone** a. New; Major Mod; Additional Facility; Major Amendment; Major Renewal/Mod; Fill in Transmitter (Per Transmitter) (Electronic Filing Required) | 601 & 159 | $340.00 | CMD | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| b. Minor Mod; Renewal; Minor Renewal/Mod; (Per Call Sign) 900 MHz Nationwide Renewal Net Organ; New Operator (Per Operator/Per City Notice of Completion of Construction or Extension of Time to Construct (Per Application (Electronic Filing Required) | 601 & 159 | $55.00 | CAD | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| c. Auxiliary Test (Per Transmitter); Consolidate Call Signs (Per Call Sign (Electronic Filing Required) | 601 & 159 | $295.00 | CLD | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| d. Special Temporary Authority (Per Location/Per Frequency) | 601 & 159 | $295.00 | CLD | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| e. Special Temporary Authority (Per Location/Per Frequency) (Electronic Filing) | 601 & 159 | $295.00 | CLD | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| f. Assignment of License or Transfer of Control; | 603 & 159 | $340.00 | CMD | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| Spectrum Leasing (Full or Partial) (Per First Call Sign); | 603-T & 159 | $340.00 | CMD | |
| Additional Call Signs (Per Call Signs) (Electronic Filing Required) | 603/603-T & 159 | $55.00 | CAD | |
| g. Subsidiary Comm. Service (Per Request) (Electronic Filing Required) | 601 & 159 | $150.00 | CFD | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| h. Air Ground Individual (Initial License; Mod; Renewal (Per Station) | 409 & 159 | $55.00 | CAD | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| **17. Cellular** a. New; Major Mod; Additional Facility; Major Renewal/Mod (Per Call Sign) (Electronic Filing Required) | 601 & 159 | $340.00 | CMC | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| b. Minor Modification; Minor Renewal/Mod (Per Call Sign (Electronic Filing Required) | 601 & 159 | $90.00 | CDC | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| c. Assignment of License; Transfer of Control (Full or Partial) (Per Call Sign) | 603 & 159 | $340.00 | CMC | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| Spectrum Leasing (Electronic Filing Required) | 603-T & 159 | $340.00 | CMC | |
| d. Notice of Extension of Time to Complete Construction; (Per Request) Renewal (Per Call Sign) (Electronic Filing Required) | 601 & 159 | $55.00 | CAC | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| e. Special Temporary Authority (Per Request) | 601 & 159 | $295.00 | CLC | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| f. Special Temporary Authority (Per Request) (Electronic Filing) | 601 & 159 | $295.00 | CLC | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| g. Combining Cellular Geographic Areas (Per Area) (Electronic Filing Required) | 601 & 159 | $75.00 | CBC | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| **18. Rural Radio** | | | | |
| a. New; Major Renew/Mod; Additional Facility (Per Transmitter) (Electronic Filing Required) | 601 & 159 | $155.00 | CGRR* | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| b. Major Mod; Major Amendment (Per Transmitter) (Electronic Filing Required) | 601 & 159 | $155.00 | CGRM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| c. Minor Modification; (Per Transmitter) (Electronic Filing Required) | 601 & 159 | $55.00 | CARM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| d. Assignment of License; Transfer of Control (Full or Partial) (Per Call Sign) | 603 & 159 | $155.00 | CGRM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| Spectrum Leasing | 603-T & 159 | $155.00 | CGRM | |
| Additional Calls (Per Call Sign) (Electronic Filing Required) | 603/603-T & 159 | $55.00 | CARM | |
| e. Renewal (Per Call Sign); Minor Renewal/Mod (Per Transmitter) (Electronic Filing Required) | 601 & 159 | $55.00 | CARR* | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| f. Notice of Completion of Construction or Extension of Time to Construct (Per Application) (Electronic Filing Required) | 601 & 159 | $55.00 | CARM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| g. Special Temporary Authority (Per Transmitter) | 601 & 159 | $295.00 | CLRM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| h. Special Temporary Authority (Per Transmitter) (Electronic Filing Required) | 601 & 159 | $295.00 | CLRM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| i. Combining Call Signs (Per Call Sign) (Electronic Filing Required) | 601 & 159 | $295.00 | CLRM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| j. Auxiliary Test Station (Per Transmitter) (Electronic Filing Required) | 601 & 159 | $295.00 | CLRM | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| **19. Offshore Radio** a. New; Major Mod; Additional Facility; Major Amendment; Major Renew/Mod; Fill in Transmitters (Per Transmitter) (Electronic Filing Required) | 601 & 159 | $155.00 | CGF | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| b. Consolidate Call Signs (Per Call Sign); Auxiliary Test (Per Transmitter) (Electronic Filing Required) | 601 & 159 | $295.00 | CLF | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| c. Minor Modification; Minor Renewal/Modification (Per Transmitter); Notice of Completion of Construction or Extension of Time to Construct (Per Application); Renewal (Per Call Sign) (Electronic Filing Required) | 601 & 159 | $55.00 | CAF | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| d. Assignment of License; Transfer of Control (Full or Partial) | 603 & 159 | $155.00 | CGF | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| Spectrum Leasing | 603-T & 159 | $155.00 | CGF | |
| Additional Calls (Electronic Filing Required) | 603/603-T & 159 | $55.00 | CAF | |
| e. Special Temporary Authority (Per Transmitter) | 601 & 159 | $295.00 | CLF | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| f. Special Temporary Authority (Per Transmitter) (Electronic Filing Required) | 601 & 159 | $295.00 | CLF | Federal Communications Commission Wireless Bureau Applications (ELT) P.O. Box 358994 Pittsburgh, PA 15251-5994 |
| **20. Multipoint Distribution Service** (Including Multi-channel MDS) a. Conditional License | 304 & 159 or 331 & 159 | $230.00 | CJM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| b. Major Modification of Conditional Licenses or License Authorization | 304 & 159 or 331 & 159 | $230.00 | CJM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| c. Certification of Completion of Construction (Per Channel) | 304-A & 159 | $670.00 | CPM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |
| d. License Renewal | 405 & 159 | $230.00 | CJM | Federal Communications Commission Wireless Bureau Applications P.O. Box 358130 Pittsburgh, PA 15251-5130 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| e. Assignment or Transfer<br>(i) First Station on Application | 305 & 159<br>or<br>306 & 159 | $85.00 | CCM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| (ii) Each Additional Station | 305 & 159<br>or<br>306 & 159 | $55.00 | CAM | |
| f. Extension of Construction Authorization | 701 & 159 | $195.00 | CHM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization | Corres & 159 | $105.00 | CEM | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| h. Signal Booster<br>(i) Application | 304 & 159<br>331 & 159 | $75.00 | CSB | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| (ii) Certification of Completion of Construction | 304A & 159 | $85.00 | CCB | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |
| **21. Communication Assistance for Law Enforcement (CALEA) Petitions** | Corres & 159 | $5,210.00 | CALA | Federal Communications Commission<br>Wireless Bureau Applications<br>P.O. Box 358130<br>Pittsburgh, PA 15251-5130 |

■ 7. Section 1.1103 is revised to read as follows:

**§ 1.1103 Schedule of charges for equipment approval, experimental radio services, and international telecommunications settlement services.**

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| **1. Certification**<br>a. Receivers (except TV and FM) **(Electronic Filing Only)** | 731 & 159 | $420.00 | EEC | Federal Communications Commission<br>Equipment Approval Services<br>P.O. Box 358315<br>Pittsburgh, PA 15251-5315 |
| b. Devices Under Parts 11, 15 & 18 (except receivers) **(Electronic Filing Only)** | 731 & 159 | $1,080.00 | EGC | Federal Communications Commission<br>Equipment Approval Services<br>P.O. Box 358315<br>Pittsburgh, PA 15251-5315 |
| c. All Other Devices **(Electronic Filing Only)** | 731 & 159 | $545.00 | EFT | Federal Communications Commission<br>Equipment Approval Services<br>P.O. Box 358315<br>Pittsburgh, PA 15251-5315 |
| d. Modifications and Class II Permissive Changes **(Electronic Filing Only)** | 731 & 159 | $55.00 | EAC | Federal Communications Commission<br>Equipment Approval Services<br>P.O. Box 358315<br>Pittsburgh, PA 15251-5315 |
| e. Request for Confidentiality under Certification **(Electronic Filing Only)** | 731 & 159 | $155.00 | EBC | Federal Communications Commission<br>Equipment Approval Services<br>P.O. Box 358315<br>Pittsburgh, PA 15251-5315 |
| f.. Class III Permissive Changes **(Electronic Filing Only)** | 731 & 159 | $545.00 | ECC | Federal Communications Commission<br>Equipment Approval Services<br>P.O. Box 358315<br>Pittsburgh, PA 15251-5315 |
| **2. Advance approval of Subscription TV Systems** | Corres & 159 | $3,310.00 | EIS | Federal Communications Commission<br>Equipment Approval Services<br>P.O. Box 358315<br>Pittsburgh, PA 15251-5315 |
| a. Request for Confidentiality For Advance Approval of Subscription TV Systems | Corres & 159 | $155.00 | EBS | Federal Communications Commission<br>Equipment Approval Services<br>P.O. Box 358315<br>Pittsburgh, PA 15251-5315 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| **3. Assignment of Grantee Code** a. New Applicants for all Application Types, except Subscription TV **(Electronic Filing Optional)** | Corres & 159 or optional electronic filing & 159 | $55.00 | EAG | Federal Communications Commission Equipment Approval Services P.O. Box 358315 Pittsburgh, PA 15251-5315 |
| **4. Experimental Radio Service** a. New Station Authorization | 442 & 159 | $55.00 | EAE | Federal Communications Commission Equipment Radio Services P.O. Box 358320 Pittsburg, PA 15251-5320 |
| b. Modification of Authorization | 442 & 159 | $55.00 | EAE | Federal Communications Commission Equipment Radio Services P.O. Box 358320 Pittsburg, PA 15251-5320 |
| c. Renewal of Station Authorization | 405 & 159 | $55.00 | EAE | Federal Communications Commission Equipment Radio Services P.O. Box 358320 Pittsburg, PA 15251-5320 |
| d. Assignment of Transfer of Control | 702 & 159 or 703 & 159 | $55.00 | EAE | Federal Communications Commission Equipment Radio Services P.O. Box 358320 Pittsburg, PA 15251-5320 |
| e. Special Temporary Authority | Corres & 159 | $55.00 | EAE | Federal Communications Commission Equipment Radio Services P.O. Box 358320 Pittsburg, PA 15251-5320 |
| f. Additional fee required for any of the above applications that request withholding from public inspection | Corres & 159 | $55.00 | EAE | Federal Communications Commission Equipment Radio Services P.O. Box 358320 Pittsburg, PA 15251-5320 |
| **5. International Telecommunications** | 99 & 159 | $2.00 | IAT | Federal Communications Commission International Telecommunications Settlements P.O. Box 358001 Pittsburgh, PA 15251-5001 |

■ 8. Section 1.1104 is revised to read as follows:

**§ 1.1104 Schedule of charges for applications and other filings for media services.**

Those services designated with an asterisk in the Payment Type Code column accept multiples if filing in the same post office box.

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| **1. Commercial TV Services** a. New and Major Change Construction Permits (per application) (Electronic Filing) | 301 & 159 301-CA & 159 | $3,720.00 | MVT | Federal Communications Commission Media Services P.O. Box 358165 Pittsburgh, PA 15251-5165 |
| b. Minor Change (per application) (Electronic Filing) | 301 & 159 301-CA & 159 | $830.00 | MPT | Federal Communications Commission Media Services P.O. Box 358165 Pittsburgh, PA 15251-5165 |
| c. Main Studio Request | Corres & 159 | $830.00 | MPT | Federal Communications Commission Media Services P.O. Box 358165 Pittsburgh, PA 15251-5165 |
| d. New License (per application) | 302-TV & 159 302-CA & 159 302-DTV & 159 | $250.00 | MJT | Federal Communications Commission Media Services P.O. Box 358165. Pittsburgh, PA 15251-5165 |
| e. License Renewal (per application) | 303-S & 159 | $150.00 | MGT | Federal Communications Commission Media Services P.O. Box 358165 Pittsburgh, PA 15251-5165 |
| f. License Assignment (i) Long Form (Electronic Filing) | 314 & 159 | $830.00 | MPT* | Federal Communications Commission Media Services P.O. Box 358350 Pittsburgh, PA 15251-5350 |
| (ii) Short Form (Electronic Filing) | 316 & 159 | $120.00 | MDT* | Federal Communications Commission Media Services P.O. Box 358350 Pittsburgh, PA 15251-5350 |
| g. Transfer of Control (i) Long Form (Electronic Filing) | 315 & 159 | $830.00 | MPT* | Federal Communications Commission Media Services P.O. Box 358350 Pittsburgh, PA 15251-5350 |
| (ii) Short Form (Electronic Filing) | 316 & 159 | $120.00 | MDT* | Federal Communications Commission Media Services P.O. Box 358350 Pittsburgh, PA 15251-5350 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| h. Hearing(New and Major/Minor Change, Comparative Construction Permit) | Corres & 159 | $9,920.00 | MWT | Federal Communications Commission Media Services P.O. Box 358170 Pittsburgh, PA 15251-5170 |
| i. Call Sign (Electronic Filing) | 380 & 159 | $85.00 | MBT | Federal Communications Commission Media Services P.O. Box 358165 Pittsburgh, PA 15251-5165 |
| j. Special Temporary Authority | Corres & 159 | $150.00 | MGT | Federal Communications Commission Media Services P.O. Box 358165 Pittsburgh, PA 15251-5165 |
| k. Petition for Rulemaking for New Community of License | 301 & 159 302-TV & 159 | $2,300.00 | MRT | Federal Communications Commission Media Services P.O. Box 358165 Pittsburgh, PA 15251-5165 |
| l. Ownership Report | 323 & 159 Corres & 159 | $55.00 | MAT | Federal Communications Commission Media Services P.O. Box 358180 Pittsburgh, PA 15251-5180 |
| **2. Commercial AM Radio Stations** a. New or Major Change Construction Permit **(Electronic Filing)** | 301 & 159 | $3,310.00 | MUR | Federal Communications Commission Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190 |
| b. Minor Change (per application) **(Electronic Filing)** | 301 & 159 | $830.00 | MPR | Federal Communications Commission Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190 |
| c. Main Studio Request (per request) | Corres & 159 | $830.00 | MPR | Federal Communications Commission Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190 |
| d. New License (per application) | 302-AM & 159 | $545.00 | MMR | Federal Communications Commission Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| e. AM Directional Antenna (per application) | 302-AM & 159 | $625.00 | MOR | Federal Communications Commission Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190 |
| f. AM Remote Control (per application) **(Electronic Filing)** | 301 & 159 | $55.00 | MAR | Federal Communications Commission Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190 |
| g. License Renewal (per application) | 303-S & 159 | $150.00 | MGR | Federal Communications Commission Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190 |
| h. License Assignment (i) Long Form **(Electronic Filing)** | 314 & 159 | $830.00 | MPR* | Federal Communications Commission Media Services P.O. Box 358350 Pittsburgh, PA 15251-5350 |
| (ii) Short Form **(Electronic Filing)** | 316 & 159 | $120.00 | MDR* | Federal Communications Commission Mass Media Services P.O. Box 358350 Pittsburgh, PA 15251-5350 |
| i. Transfer of Control (i) Long Form **(Electronic Filing)** | 315 & 159 | $830.00 | MPR* | Federal Communications Commission Media Services P.O. Box 358350 Pittsburgh, PA 15251-5350 |
| (ii) Short Form **(Electronic Filing)** | 316 & 159 | $120.00 | MDR* | Federal Communications Commission Media Services P.O. Box 358350 Pittsburgh, PA 15251-5350 |
| j. Hearing (New or Major/Minor Change, Comparative Construction Permit Hearings) | Corres & 159 | $9,920.00 | MWR | Federal Communications Commission Media Services P.O. Box 358170 Pittsburgh, PA 15251-5170 |
| k. Call Sign **(Electronic Filing)** | 380 & 159 | $85.00 | MBR | Federal Communications Commission Media Services P.O. Box 358165 Pittsburgh, PA 15251-5165 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| l. Special Temporary Authority | Corres & 159 | $150.00 | MGR | Federal Communications Commission<br>Media Services<br>P.O. Box 358190<br>Pittsburgh, PA 15251-5190 |
| m. Ownership Report | 323 & 159<br>or<br>Corres & 159 | $55.00 | MAR | Federal Communications Commission<br>Media Services<br>P.O. Box 358180<br>Pittsburgh, PA 15251-5180 |
| **3. Commercial FM Radio Stations**<br>a. New or Major Change Construction Permit **(Electronic Filing)** | 301 & 159 | $2,980.00 | MTR | Federal Communications Commission<br>Media Services<br>P.O. Box 358195<br>Pittsburgh, PA 15251-5195 |
| b. Minor Change **(Electronic Filing)** | 301 & 159 | $830.00 | MPR | Federal Communications Commission<br>Mass Media Services<br>P.O. Box 358195<br>Pittsburgh, PA 15251-5195 |
| c. Main Studio Request (per request) | Corres & 159 | $830.00 | MPR | Federal Communications Commission<br>Media Services<br>P.O. Box 358195<br>Pittsburgh, PA 15251-5195 |
| d. New License (Electronic Filing) | 302-FM & 159 | $170.00 | MHR | Federal Communications Commission<br>Media Services<br>P.O. Box 358195<br>Pittsburgh, PA 15251-5195 |
| e. FM Directional Antenna (Electronic Filing) | 302-FM & 159 | $525.00 | MLR | Federal Communications Commission<br>Media Services<br>P.O. Box 358195<br>Pittsburgh, PA 15251-5195 |
| f. License Renewal | 303-S & 159 | $150.00 | MGR | Federal Communications Commission<br>Media Services<br>P.O. Box 358190<br>Pittsburgh, PA 15251-5190 |
| g. License Assignment<br>(i) Long Form (Electronic Filing) | 314 & 159 | $830.00 | MPR* | Federal Communications Commission<br>Media Services<br>P.O. Box 358350<br>Pittsburgh, PA 15251-5350 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| (ii) Short Form (Electronic Filing) | 316 & 159 | $120.00 | MDR* | Federal Communications Commission Media Services P.O. Box 358350 Pittsburgh, PA 15251-5350 |
| h. Transfer of Control (i) Long Form (Electronic Filing) | 315 & 159 | $830.00 | MPR* | Federal Communications Commission Media Services P.O. Box 358350 Pittsburgh, PA 15251-5350 |
| (ii) Short Form (Electronic Filing) | 316 & 159 | $120.00 | MDR* | Federal Communications Commission Media Services P.O. Box 358350 Pittsburgh, PA 15251-5350 |
| i. Hearing (New or Major/Minor Change, Comparative Construction Permit Hearings) (per application) | Corres & 159 | $9,920.00 | MWR | Federal Communications Commission Media Services P.O. Box 358170 Pittsburgh, PA 15251-5170 |
| j. Call Sign **(Electronic Filing)** | 380 & 159 | $85.00 | MBR | Federal Communications Commission Media Services P.O. Box 358165 Pittsburgh, PA 15251-5165 |
| k. Special Temporary Authority | Corres & 159 | $150.00 | MGR | Federal Communications Commission Media Services P.O. Box 358195 Pittsburgh, PA 15251-5195 |
| l. Petition for Rulemaking for New Community of License or Higher Class Channel | 301 & 159 or 302-FM & 159 | $2,300.00 | MRR | Federal Communications Commission Media Services P.O. Box 358195 Pittsburgh, PA 15251-5195 |
| m. Ownership Report | 323 & 159 or Corres & 159 | $55.00 | MAR | Federal Communications Commission Media Services P.O. Box 358180 Pittsburgh, PA 15251-5180 |
| **4. FM Translators** a. New or Major Change Construction Permit (Electronic Filing) | 349 & 159 | $625.00 | MOF | Federal Communications Commission Media Services P.O. Box 358200 Pittsburgh, PA 15251-5200 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| b. New License (Electronic Filing) | 350 & 159 | $125.00 | MEF | Federal Communications Commission Media Services P.O. Box 358200 Pittsburgh, PA 15251-5200 |
| c. License Renewal | 303-S & 159 | $55.00 | MAF | Federal Communications Commission Mass Media Services Media Services P.O. Box 358190 Pittsburgh, PA 15251-5190 |
| d. Special Temporary Authority | Corres & 159 | $150.00 | MGF | Federal Communications Commission Media Services P.O. Box 358200 Pittsburgh, PA 15251-5200 |
| e. License Assignment | 345 & 159<br>314 & 159<br>316 & 159 | $120.00 | MDF* | Federal Communications Commission Media Services P.O. Box 358350 Pittsburg, PA 15251-5350 |
| f. Transfer of Control | 345 & 159<br>315 & 159<br>316 & 159 | $120.00 | MDF* | Federal Communications Commission Media Services P.O. Box 358350 Pittsburgh, PA 15251-5350 |
| **5. TV Translators and LPTV Stations**<br>a. New or Major Change Construction Permit (per application) (Electronic Filing) | 346 & 159 | $625.00 | MOL | Federal Communications Commission Media Services P.O. Box 358185 Pittsburgh, PA 15251-5185 |
| b. New License (per application) | 347 & 159 | $125.00 | MEL | Federal Communications Commission Media Services P.O. Box 358185 Pittsburgh, PA 15251-5185 |
| c. License Renewal | 303-S & 159 | $55.00 | MAL* | Federal Communications Commission Media Services P.O. Box 358165 Pittsburgh, PA 15251-5165 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| d. Special Temporary Authority | Corres & 159 | $150.00 | MGL | Federal Communications Commission<br>Media Services<br>P.O. Box 358185<br>Pittsburgh, PA 15251-5185 |
| e. License Assignment | 345 & 159<br>314 & 159<br>316 & 159 | $120.00 | MDL* | Federal Communications Commission<br>Media Services<br>P.O. Box 358350<br>Pittsburgh, PA 15251-5350 |
| f. Transfer of Control | 345 & 159<br>315 & 159<br>316 & 159 | $120.00 | MDL* | Federal Communications Commission<br>Media Services<br>P.O. Box 358350<br>Pittsburgh, PA 15251-5350 |
| **6. FM Booster Stations**<br>a. New or Major Change Construction Permit **(Electronic Filing)** | 349 & 159 | $625.00 | MOF | Federal Communications Commission<br>Media Services<br>P.O. Box 358200<br>Pittsburgh, PA 15251-5200 |
| b. New License **(Electronic Filing)** | 350 & 159 | $125.00 | MEF | Federal Communications Commission<br>Media Services<br>P.O. Box 358200<br>Pittsburgh, PA 15251-5200 |
| c. Special Temporary Authority | Corres & 159 | $150.00 | MGF | Federal Communications Commission<br>Media Services<br>P.O. Box 358200<br>Pittsburgh, PA 15251-5200 |
| 7. TV Booster Stations<br>a. New or Major Change **(Electronic Filing)** | 346 & 159 | $625.00 | MOF | Federal Communications Commission<br>Media Services<br>P.O. Box 358185<br>Pittsburgh, PA 15251-5185 |
| b. New License **(Electronic Filing)** | 347 & 159 | $125.00 | MEF | Federal Communications Commission<br>Media Services<br>P.O. Box 358185<br>Pittsburgh, PA 15251-5185 |
| c. Special Temporary Authority | Corres & 159 | $150.00 | MGF | Federal Communications Commission<br>Media Services<br>P.O. Box 358185<br>Pittsburgh, PA 15251-5185 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| **8. Cable Television Services** a. CARS License | 327 & 159 | $230.00 | TIC | Federal Communications Commission Media Services P.O. Box 358205 Pittsburgh, PA 15215-5205 |
| b. CARS Modifications | 327 & 159 | $230.00 | TIC | Federal Communications Commission Media Services P.O .Box 358205 Pittsburgh, PA 15215-5205 |
| c. CARS License Renewal | 327 & 159 | $230.00 | TIC | Federal Communications Commission Media Services P.O. Box 358205 Pittsburgh, PA 15215-5205 |
| d. CARS License Assignment | 327 & 159 | $230.00 | TIC | Federal Communications Commission Media Services P.O. Box 358205 Pittsburgh, PA 15215-5205 |
| e. CARS Transfer of Control | 327 & 159 | $230.00 | TIC | Federal Communications Commission Media Services P.O. Box 358205 Pittsburgh, PA 15215-5205 |
| f. Special Temporary Authorization | Corres & 159 | $150.00 | TGC | Federal Communications Commission Media Services P.O. Box 358205 Pittsburgh, PA 15215-5205 |
| g. Cable Special Relief Petition | Corres & 159 | $1,160.00 | TQC | Federal Communications Commission Media Services P.O. Box 358205 Pittsburgh, PA 15215-5205 |
| h. Cable Community Registration **(Electronic Filing)** | 322 & 159 | $55.00 | TAC | Federal Communications Commission Media Services P.O. Box 358205 Pittsburgh, PA 15215-5205 |

■ 9. Section 1.1105 is revised to read as follows:

**§ 1.1105 Schedule of charges for applications and other filings for the wireline competition service.**

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| **1. Communication Assistance for Law Enforcement (CALEA)** Petitions | Corres & 159 | $5,210.00 | CLEA | Federal Communications Commission Wireline Competition Bureau - IA&TD CALEA P.O. Box 358140 Pittsburgh, PA 15251-5140 |
| **2. Domestic 214 Applications** a. Domestic Cable Construction | Corres & 159 | $895.00 | CUT | Federal Communications Commission Wireline Competition Bureau - CPD - 214 Appls. P.O.Box 358145 Pittsburgh, PA 15251-5145 |
| b. Other | Corres & 159 | $895.00 | CUT | Federal Communications Commission Wireline Competition Bureau - CPD - 214 Appls. P.O. Box 358145 Pittsburgh, PA 15251-5145 |
| **3. Tariff Filings** a. Filing Fees (per transmittal or cover letter) | Corres & 159 | $720.00 | CQK | Federal Communications Commission Wireline Competition Bureau - PPD Tariffs Filings P.O. Box 358150 Pittsburgh, PA 15251-5150 |
| b. Application for Special Permission Filing (request for waiver of any rule in Part 61 of the Commission's Rules) (per request) | Corres & 159 | $720.00 | CQK | Federal Communications Commission Wireline Competition Bureau - PPD Tariffs Filings P.O. Box 358150 Pittsburgh, PA 15251-5150 |
| c. Waiver of Part 69 Tariff Rules (per request) | Corres & 159 | $720.00 | CQK | Federal Communications Commission Wireline Competition Bureau - PPD Tariffs Filings P.O. Box 358150 Pittsburgh, PA 15251-5150 |
| **4. Accounting** a. Review of Depreciation Update Study (i) (single state) | Corres & 159 | $30,350.00 | BKA | Federal Communications Commission Wireline Competition Bureau - PPD - Depreciation P.O. Box 358140 Pittsburgh, PA 15251-5140 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| (ii) Each Additional State | Corres & 159 | $1,000.00 | CVA | Federal Communications Commission<br>Wireline Competition Bureau - PPD - Depreciation<br>P.O. Box 358140<br>Pittsburgh, PA 15251-5140 |
| b. Petition for Waiver (per petition)<br>Waiver of Part 69 Accounting Rules & Part 32 Accounting Rules,<br>Part 36 Separation Rules,<br>Part 43 Reporting Requirements<br>Part 64 Allocation of Costs Rules<br>Part 65 Rate of Return & Rate Base Rules | Corres & 159 | $6,840.00 | BEA | Federal Communications Commission<br>Wireline Competition Services - PPD Accounting Rule Waiver<br>P.O. Box 358140<br>Pittsburgh, PA 15251-5140 |

■ 10. Section 1.1106 is revised to read as follows:

**§ 1.1106 Schedule of charges for applications and other filings for the enforcement service.**

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| **1. Formal Complaints** | Corres & 159 | $180.00 | CIZ | Federal Communications Commission<br>Enforcement<br>P.O. Box 358120<br>Pittsburgh, PA 15251-5120 |
| **2. Accounting and Audits**<br>a. Field Audit | Corres & 159 | $91,390.00 | BMA | Carriers will be billed |
| b. Review of Arrest Audit | Corres & 159 | $49,885.00 | BLA | Carriers will be billed |
| **3. Development and Review of Agreed upon - Procedures Engagement** | Corres & 159 | $49,885.00 | BLA | Federal Communications Commission<br>Enforcement<br>P.O. Box 358125<br>Pittsburgh, PA 15251-5125 |
| **4. Pole Attachment Complaint** | Corres & 159 | $225.00 | TPC | Federal Communications Commission<br>Enforcement<br>P.O .Box 358110<br>Pittsburgh, PA 15215-5110 |

■ 11. Section 1.1107 is revised to read as follows:

**§ 1.1107 Schedule of charges for applications and other filings for the international service.**

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| **1. International Fixed Public Radio** (Public & Control Stations) a. Initial Construction Permit (per station) | 407 & 159 | $750.00 | CSN | Federal Communications Commission International Bureau - Fixed Public Radio P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| b. Assignment or Transfer (per Application) | 702 & 159 or 704 & 159 | $750.00 | CSN | Federal Communications Commission International Bureau - Fixed Public Radio P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| c. Renewal ( per license ) | 405 & 159 | $545.00 | CON | Federal Communications Commission International Bureau - Fixed Public Radio P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| d. Modification (per station) | 403 & 159 | $545.00 | CON | Federal Communications Commission International Bureau - Fixed Public Radio P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| e. Extension of Construction Authorization (per station) | 701 & 159 | $275.00 | CKN | Federal Communications Commission International Bureau - Fixed Public Radio P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| f. Special Temporary Authority or request for Waiver(per request) | Corres & 159 | $275.00 | CKN | Federal Communications Commission International Bureau - Fixed Public Radio P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| **2. Section 214 Applications** a. Overseas Cable Construction | Corres & 159 | $13,390.00 | BIT | Federal Communications Commission International Bureau - Telecommunications P.O. Box 358115 Pittsburgh, PA 15251-5115 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| b. Cable Landing License (i) Common Carrier | Corres & 159 | $1,505.00 | CXT | Federal Communications Commission International Bureau - Telecommunications P.O. Box 358115 Pittsburgh, PA 15251-5115 |
| (ii) Non-Common Carrier | Corres & 159 | $14,895.00 | BJT | Federal Communications Commission International Bureau - Telecommunications P.O. Box 358115 Pittsburgh, PA 15251-5115 |
| c. All other International 214 Applications | Corres & 159 | $895.00 | CUT | Federal Communications Commission International Bureau - Telecommunications P.O. Box 358115 Pittsburgh, PA 15251-5115 |
| d. Special Temporary Authority (all services) | Corres & 159 | $895.00 | CUT | Federal Communications Commission International Bureau - Telecommunications P.O. Box 358115 Pittsburgh, PA 15251-5115 |
| e. Assignments or transfers (all services) | Corres & 159 | $895.00 | CUT | Federal Communications Commission International Bureau - Telecommunications P.O. Box 358115 Pittsburgh, PA 15251-5115 |
| **3. Fixed Satellite Transmit/Receive Earth Stations** a. Initial Application (per station) | 312 Main & Schedule B & 159 | $2,240.00 | BAX | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| b. Modification of License (per station) | 312 Main & Schedule B & 159 | $155.00 | CGX | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| c. Assignment or Transfer (i) First station | 312 Main & Schedule A & 159 | $445.00 | CNX | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| (ii) Each Additional Station | Attachment to FCC 312 Schedule A & 159 | $150.00 | CFX | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| d. Renewal of License ( per station ) | 405 & 159 | $155.00 | CGX | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| e. Special Temporary Authority or Waiver of Prior Construction Authorization ( per request ) | Corres & 159 | $155.00 | CGX | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| f. Amendment of Pending Application ( per station ) | 312 Main & Schedule B & 159 | $155.00 | CGX | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| g. Extension of Construction Permit ( per station ) | 701 & 159 | $155.00 | CGX | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| **4. Fixed Satellite transmit/receive Earth Stations (2 meters or less operating in the 4/6 GHz frequency band)** a. Lead Application | 312 Main & Schedule B & 159 | $4,960.00 | BDS | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| b. Routine Application ( per station ) | 312 & Main & Schedule B & 159 | $55.00 | CAS | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| c. Modification of License (per station) | 312 Main & Schedule B & 159 | $155.00 | CGS | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| d. Assignment or Transfer (i) First Station | 312 Main & Schedule A & 159 | $445.00 | CNS | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| (ii) Each Additional Station | Attachment to 312 & Schedule A & 159 | $55.00 | CAS | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| e. Renewal of License ( per station ) | 405 & 159 | $155.00 | CGS | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| f. Special Temporary Authority or Waiver of Prior Construction Authorization ( per request ) | Corres & 159 | $155.00 | CGS | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| g. Amendment of Pending Application ( per station ) | 312 Main & Schedule A or B & 159 | $155.00 | CGS | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| h. Extension of Construction Permit ( per station ) | 701 & 159 | $155.00 | CGS | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| **5. Receive Only Earth Stations** a. Initial Applications for Registration or License (per station) | 312 Main & Schedule B & 159 | $340.00 | CMO | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| b. Modification of License or Registration ( per station ) | 312 Main & Schedule B & 159 | $155.00 | CGO | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| c. Assignment or Transfer (i) First Station | 312 Main & Schedule A & 159 | $445.00 | CNO | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| (ii) Each Additional Station | Attachment to 312 - Schedule A & 159 | $150.00 | CFO | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| d. Renewal of License (per station) | 405 & 159 | $155.00 | CGO | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| e. Amendment of Pending Application ( per station ) | 312 Main & Schedule A or B & 159 | $155.00 | CGO | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| f. Extension of Construction Permit ( per station ) | 701 & 159 | $155.00 | CGO | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| g. Waivers ( per request ) | Corres & 159 | $155.00 | CGO | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| **6. Fixed Satellite Very Small Aperture Terminal (VSAT) Systems** a. Initial Application (per station) | 312 Main & Schedule B & 159 | $8,260.00 | BGV | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| b. Modification of License ( per system ) | 312 Main & Schedule B & 159 | $155.00 | CGV | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| c. Assignment or Transfer of System | 312 Main & Schedule A & 159 | $2,210.00 | CZV | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| d. Renewal of License ( per system ) | 405 & 159 | $155.00 | CGV | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| e. Special Temporary Authority or Waiver of Prior Construction Authorization ( per request ) | Corres & 159 | $155.00 | CGV | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| f. Amendment of Pending Application ( per system ) | 312 Main & Schedule A or B & 159 | $155.00 | CGV | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| g. Extension of Construction Permit ( per system ) | 701 & 159 | $155.00 | CGV | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| **7. Mobile Satellite Earth Stations** a. Initial Applications of Blanket Authorization | 312 Main & Schedule B & 159 | $8,260.00 | BGB | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| b. Initial Application for Individual Earth Station | 312 Main & Schedule B & 159 | $1,985.00 | CYB | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| c. Modification of License ( per system ) | 312 Main & Schedule B & 159 | $155.00 | CGB | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| d. Assignment or Transfer ( per system ) | 312 Main & Schedule A & 159 | $2,210.00 | CZB | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| e. Renewal of License ( per system ) | 405 & 159 | $155.00 | CGB | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| f. Special Temporary Authority of Waiver of Prior Construction Authorization ( per request ) | Corres & 159 | $155.00 | CGB | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| g. Amendment of Pending Application ( per system ) | 312 Main & Schedule B & 159 | $155.00 | CGB | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| h. Extension of Construction Permit ( per system ) | 701 & 159 | $155.00 | CGB | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| **8. Radio Determination Satellite Earth Stations** a. Initial Application of Blanket Authorization | 312 Main & Schedule B & 159 | $8,260.00 | BGH | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| b. Initial Application for Individual Earth Station | 312 Main & Schedule B & 159 | $1,985.00 | CYH | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| c. Modification of License ( per system ) | 312 Main & Schedule B & 159 | $155.00 | CGH | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| d. Assignments or Transfer ( per system ) | 312 Main & Schedule B & 159 | $2,210.00 | CZH | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| e. Renewal of License ( per system ) | 405 & 159 | $155.00 | CGH | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| f. Special Temporary Authority or Waiver of Prior Construction Authorization ( per request ) | Corres & 159 | $155.00 | CGH | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| g. Amendment of Pending Application ( per system ) | 312 & Schedule B & 159 | $155.00 | CGH | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| h. Extension of Construction Permit ( per system ) | 701 & 159 | $155.00 | CGH | Federal Communications Commission International Bureau - Earth Stations P.O. Box 358160 Pittsburgh, PA 15251-5160 |
| **9. Space Stations( Geostationary)** | | | | |
| a. Application for Authority to Launch & Operate | | | | |
| (i) Initial Application | 312 Main & 159 | $102,700.00 | BNY | Federal Communications Commission International Bureau - Satellites P.O. Box 358210 Pittsburgh, PA 15251-5210 |
| (ii) Replacement Satellite | 312 Main & 159 | $102,700.00 | BNY | |
| b. Assignment or Transfer ( per satellite ) | 312 Main & Schedule A & 159 | $7,340.00 | BFY | Federal Communications Commission International Bureau - Satellites P.O. Box 358210 Pittsburgh, PA 15251-5210 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| c. Modification | 312 Main & 159 | $7,340.00 | BFY | Federal Communications Commission International Bureau - Satellites P.O. Box 358210 Pittsburgh, PA 15251-5210 |
| d. Special Temporary Authority ( per request ) | Corres & 159 | $735.00 | CRY | Federal Communications Commission International Bureau - Satellites P.O. Box 358210 Pittsburgh, PA 15251-5210 |
| e. Amendment of Pending Application ( per request ) | 312 Main & 159 | $1,470.00 | CWY | Federal Communications Commission International Bureau - Satellites P.O. Box 358210 Pittsburgh, PA 15251-5210 |
| f. Extension of Launch Authority | Corres & 159 | $735.00 | CRY | Federal Communications Commission International Bureau - Satellites P.O. Box 358210 Pittsburgh, PA 15251-5210 |
| **10. Space Stations (NGSO)** a. Application for Authority to Launch & Operate (per system of technically identical satellites) satellites) | 312 Main & 159 | $353,690.00 | CLW | Federal Communications Commission International Bureau - Satellites P.O. Box 358210 Pittsburgh, PA 15251-5210 |
| b. Assignment or Transfer ( per request ) | 312 Main & 159 | $10,110.00 | CZW | Federal Communications Commission International Bureau - Satellites P.O. Box 358210 Pittsburgh, PA 15251-5210 |
| c. Modification ( per request ) | 312 Main & 159 | $25,265.00 | CGW | Federal Communications Commission International Bureau - Satellites P.O. Box 358210 Pittsburgh, PA 15251-5210 |
| d Special Temporary Authority ( per request ) | Corres & 159 | $2,535.00 | CXW | Federal Communications Commission International Bureau - Satellites P.O. Box 358210 Pittsburgh, PA 15251-5210 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| e. Amendment of Pending Application ( per request ) | 312 Main & 159 | $5,055.00 | CAW | Federal Communications Commission International Bureau - Satellites P.O. Box 358210 Pittsburgh, PA 15251-5210 |
| f. Extension of Launch Authority | Corres & 159 | $2,535.00 | CXW | Federal Communications Commission International Bureau - Satellites P.O. Box 358210 Pittsburgh, PA 15251-5210 |
| **11. Direct Broadcast Satellites** a. Authorization to Construct or Major Modification ( per request ) | Corres & 159 | $2,980.00 | MTD | Federal Communications Commission International Bureau - Satellites P.O. Box 358210 Pittsburgh, PA 15251-5210 |
| b. Construction Permit and Launch Authority ( per request ) | Corres & 159 | $28,920.00 | MXD | Federal Communications Commission International Bureau - Satellites P.O. Box 358210 Pittsburgh, PA 15251-5210 |
| c. License to Operate ( per request ) | Corres & 159 | $830.00 | MPD | Federal Communications Commission International Bureau - Satellites P.O. Box 358210 Pittsburgh, PA 15251-5210 |
| d. Special Temporary Authority ( per request ) | Corres & 159 | $150.00 | MGD | Federal Communications Commission International Bureau - Satellites P.O. Box 358210 Pittsburgh, PA 15251-5210 |
| e. Hearing ( New and Major/ Minor change, comparative construction permit hearings; comparative license renewal hearings) ( per request ) | Corres & 159 | $9,920.00 | MWD | Federal Communications Commission International Bureau P.O. Box 358270 Pittsburgh, PA 15251 - 5170 |
| **12. International Broadcast Stations** a. New Station & Facilities Change Construction Permit ( per application ) | 309 & 159 | $2,505.00 | MSN | Federal Communications Commission International Bureau P.O. Box 358175 Pittsburgh, PA 15251 - 5175 |

| Service | FCC Form No. | Fee Amount | Payment Type Code | Address |
|---|---|---|---|---|
| b. New License ( per application ) | 310 & 159 | $565.00 | MNN | Federal Communications Commission International Bureau P.O. Box 358175 Pittsburgh, PA 15251 - 5175 |
| c. License Renewal ( per application ) | 311 & 159 | $140.00 | MFN | Federal Communications Commission International Bureau P.O. Box 358175 Pittsburgh, PA 15251 - 5175 |
| d. License Assignment or Transfer of Control (per station license) | 314 & 159 or 315 & 159 or 316 & 159 | $90.00 | MCN | Federal Communications Commission International Bureau P.O. Box 358175 Pittsburgh, PA 15251 - 5175 |
| e. Frequency Assignment & Coordination (per frequency hour) | Corres & 159 | $55.00 | MAN | Federal Communications Commission International Bureau P.O. Box 358175 Pittsburgh, PA 15251 - 5175 |
| f. Special Temporary Authorization (per application) | Corres & 159 | $150.00 | MGN | Federal Communications Commission International Bureau P.O. Box 358175 Pittsburgh, PA 15251 - 5175 |
| **13. Permit to Deliver Programs to Foreign Broadcast Stations** (per application) a. Commercial Television Stations | 308 & 159 | $85.00 | MBT | Federal Communications Commission International Bureau P.O. Box 358175 Pittsburgh, PA 15251 - 5175 |
| b. Commercial AM or FM Radio Stations | 308 & 159 | $85.00 | MBR | Federal Communications Commission International Bureau P.O. Box 358175 Pittsburgh, PA 15251 - 5175 |
| **14. Recognized Private Operating Status** (per application) | Corres & 159 | $895.00 | CUG | Federal Communications Commission International Bureau P.O. Box 358115 Pittsburgh, PA 15251 - 5115 |

BILLING CODE 6712–01–C

■ 12. Section 1.1111 is amended by revising paragraph (a)(2) and paragraph (c) to read as follows:

**§ 1.1111 Filing Locations.**

(a) * * *

(2) Bills for collection will be paid at the Commission's lockbox bank at the address of the appropriate service as established in §§ 1.1102 through 1.1107, as set forth on the bill sent by the Commission. Payments must be accompanied by the bill sent by the Commission. Payments must be accompanied by the bill to ensure proper credit.

* * * * *

(c) Fees for applications and other filings pertaining to the Wireless Radio Services that are submitted electronically via ULS may be paid electronically or sent to the Commission's lock box bank manually. When paying manually, applicants must include the application file number (assigned by the ULS electronic filing system on FCC Form 159) and submit such number with the payment in order for the Commission to verify that the payment was made. Manual payments must be received no later than ten (10) days after receipt of the application on ULS or the application will be dismissed. Payment received more than ten (10) days after electronic filing of an application on a Bureau/Office electronic filing system (*e.g.*, ULS) will be forfeited (*see* §§ 1.934 and 1.1109.)

* * * * *

■ 13. Section 1.1113 is amended by revising paragraph (a)(6) and paragraph (c) to read as follows:

**§ 1.1113 Return or refund of charges.**

(a) * * *

(6) When an application for new or modified facilities is not timely filed in accordance with the filing window as established by the Commission in a public notice specifying the earliest and latest dates for filing such applications.

* * * * *

(c) Applicants in the Media Services for first-come, first-served construction permits will be entitled to a refund of the fee, if, within fifteen days of the issuance of a Public Notice.

* * * * *

■ 14. Section 1.1114 is amended by revising the introductory text to read as follows:

**§ 1.1114 General exemptions to charges.**

No fee established in 1.1102 through 1.1107 of this subpart, unless otherwise qualified herein, shall be required for:

* * * * *

■ 15. Section 1.1115 is amended by revising paragraph (a) introductory text and paragraph (a)(2) to read as follows:

**§ 1.1115 Adjustment to charges.**

(a) The Schedule of Charges established by §§ 1.1102 through 1.1107 of this subpart shall be reviewed by the Commission on October 1, 1999 and every two years thereafter, and adjustments made, if any, will be reflected in the next publication of Schedule of Charges.

* * * * *

(2) Adjustments based upon the percentage change in the CPI–U will be applied against the base fees as enacted or amended by Congress in the year the fee was enacted or amended.

* * * * *

■ 16. Section 1.1116 is amended by revising paragraph (a) introductory text to read as follows:

**§ 1.1116 Penalty for late or insufficient payments.**

(a) Filings subject to fees and accompanied by defective fee submissions will be dismissed under § 1.1109(d) of this subpart where the defect is discovered by the Commission's staff within 30 calendar days from the receipt of the application or filing by the Commission.

* * * * *

■ 17. Section 1.1119 is amended by revising paragraph (a) to read as follows:

**§ 1.1119 Billing procedures.**

(a) The fees required for the International Telecommunications Settlements (§ 1.1103 of this subpart), Accounting and Audits Field Audits and Review of Arrest Audits (§ 1.1106 of this subpart) should not be paid with the filing or submission of the request. The fees required for requests for Special Temporary Authority (*see* generally §§ 1.1102, 1.1104, 1.1106 & 1.1107 of this subpart) that the applicant believes is of an urgent or emergency nature and are filed directly with the appropriate Bureau or Office should not be paid with the filing of the request with that Bureau or Office.

* * * * *

[FR Doc. 04–15431 Filed 7–6–04; 8:45 am]

BILLING CODE 6712–01–U

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Federal Register

Vol. 69, No. 129

Wednesday, July 7, 2004

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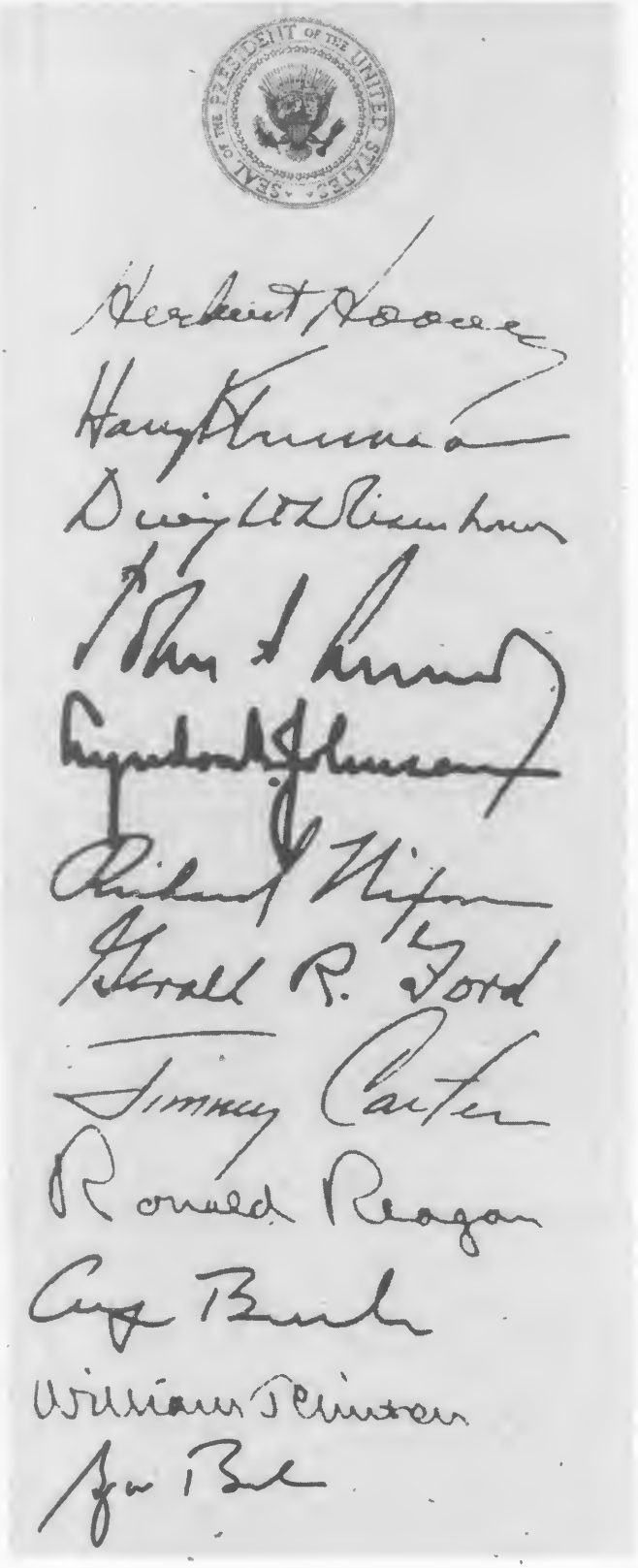

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