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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–SW–04–AD; Amendment 39–13812; AD 2004–20–07]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 222, 222B, 222U, and 230 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Bell Helicopter Textron Canada (BHTC) model helicopters that requires certain inspections of the main rotor yoke (yoke) for a crack, fretting, or buffer deterioration. If a crack is found, the AD requires replacing the yoke with an airworthy yoke before further flight. If fretting or buffer deterioration are found, the AD requires further inspecting the main rotor hub assembly (hub assembly) and repairing or replacing any unairworthy parts. Also, the AD requires a torque inspection of the flapping bearing retaining nuts at specified intervals. This amendment is prompted by the discovery of a crack in a yoke. The actions specified by this AD are intended to prevent failure of the yoke and subsequent loss of control of the helicopter.

DATES: Effective November 9, 2004.

FOR FURTHER INFORMATION CONTACT: Charles Harrison, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5128, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model helicopters was published in the **Federal Register** on June 24, 2004 (69 FR 35273). That action proposed to require certain inspections of the yoke for a crack, fretting, or buffer deterioration and, if a crack is found, replacing the yoke with an airworthy yoke before further flight. If fretting or buffer deterioration are found, that action proposed further inspecting the hub assembly and repairing or replacing any unairworthy parts. Also, the AD proposed a torque inspection of the flapping bearing retaining nuts at specified intervals.

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on BHTC Model 222, 222B, 222U, and 230 helicopters. Transport Canada advises of a fatigue crack being found in a yoke in the area of the flapping bearing bushings.

BHTC has issued Alert Service Bulletin (ASB) Nos. 222–03–97 for the Model 222 and 222B helicopters, 222U–03–68 for the Model 222U helicopters, and 230–03–28 for the Model 230 helicopters, all dated September 23, 2003. The ASB's specify a recurring visual inspection of the yoke for a crack, fretting, or buffer deterioration in the four (4) areas around the flapping bearing attachment bushings. The ASB's also specify verifying the torque of the main rotor flapping bearing retaining bolts/nuts. Transport Canada classified these service bulletins as mandatory and issued AD No. CF–2003–27, dated November 17, 2003, to ensure the continued airworthiness of these helicopters in Canada.

These helicopter models are type certificated in Canada for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that this AD will affect 105 helicopters of U.S. registry. The FAA also estimates that this AD will:

- Take ½ work hour to inspect the yoke every 25 hours time-in-service (TIS), assuming 8 inspections a year that would equal 4 work hours per year;
- Take ½ work hour to inspect the flapping bearing retaining bolts torque every 50 hours TIS, assuming 4 inspections a year that would equal 2 work hours per year;
- Take 4 work hours to remove, inspect, and replace the yoke if required.
- The average labor rate is $65 per work hour.
- Required parts will cost about $32,675.

Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $3,499,125, assuming all yokes are replaced near the end of the first year.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–20–07 Bell Helicopter Textron Canada: Amendment 39–13812. Docket No. 2004–SW–04–AD.

Applicability: The following helicopter models, certificated in any category:

Model	Serial number (S/N)	With main rotor hub (hub) assembly part number installed
(1) 222	47006–47089	222–011–101–ALL or 222–012–101–ALL.
(2) 222B	47131–47156	222–011–101–ALL or 222–012–101–ALL.
(3) 222U	47501–47574	222–011–101–ALL or 222–012–101–ALL.
(4) 230	23001–23038	222–012–101–ALL.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the yoke and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 50 hours time-in-service (TIS) or by the next scheduled inspection for the hub assembly, whichever occurs first, and thereafter at intervals not to exceed 25 hours TIS, using a 10X or higher magnifying glass, visually inspect the main rotor yoke (yoke) for a crack, fretting or buffer deterioration in the four areas around the flapping bearing attachment bushings as shown in the following Figure 1 of this AD:

BILLING CODE 4910–13–P

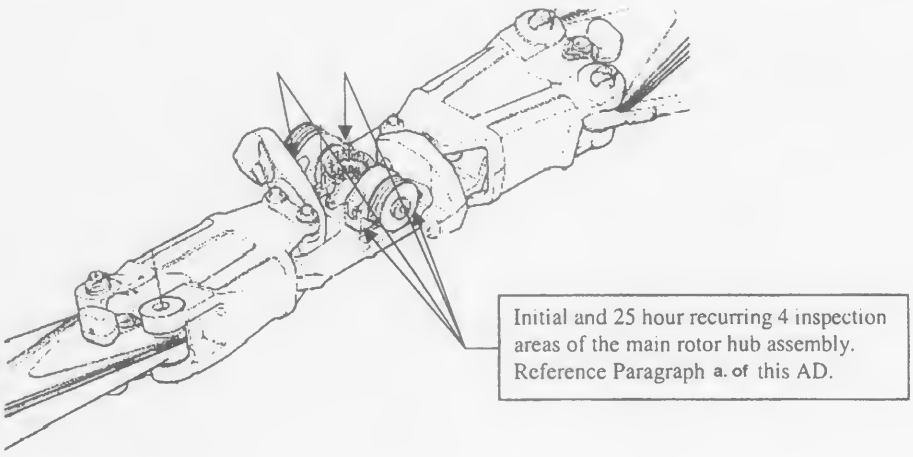

Figure 1. Main Rotor Hub Assembly

Note 1: Bell Helicopter Textron Alert Service Bulletin (ASB) Nos. 222–03–97 for the Model 222 and 222B, 222U–03–68 for the Model 222U, and 230–03–28 for the Model 230, all dated September 23, 2003, pertain to the subject of this AD.

(1) If a crack is found, before further flight, replace the yoke with an airworthy yoke.

(2) If fretting or buffer deterioration is found on the yoke in the areas shown in Figure 1 of this AD, before further flight, disassemble the hub assembly and further

inspect the yoke with a 10X or higher magnifying glass in the four areas shown in Figures 2 and 3 of this AD.

(i) If a crack is found on any part, before further flight, replace the part with an airworthy part.

(ii) If fretting or buffer deterioration is found on any part, before further flight, repair any unairworthy part or replace the part with an airworthy part.

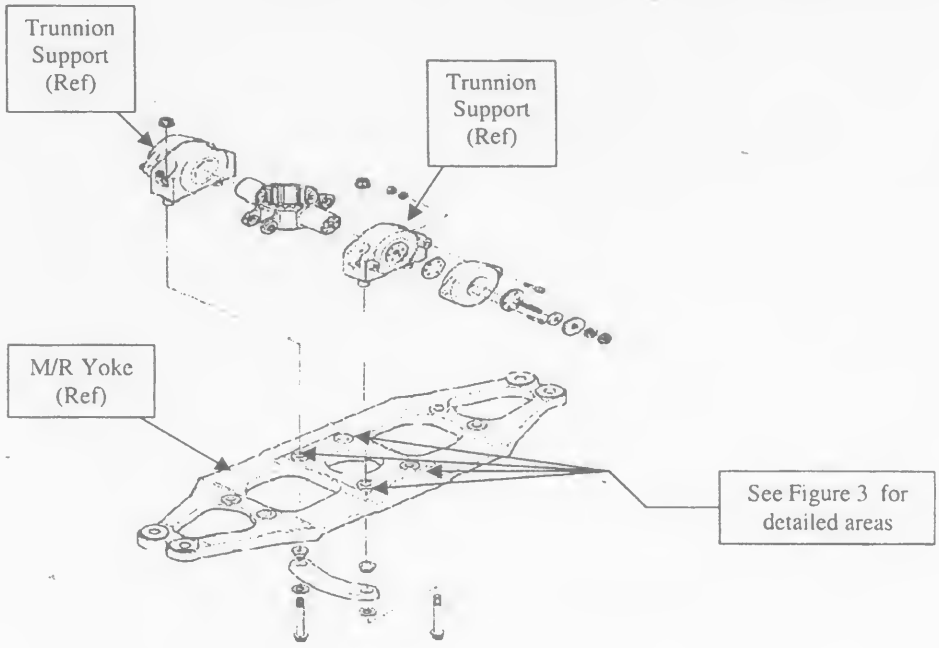

Figure 2. Main Rotor Yoke

Shown with trunnion supports removed.

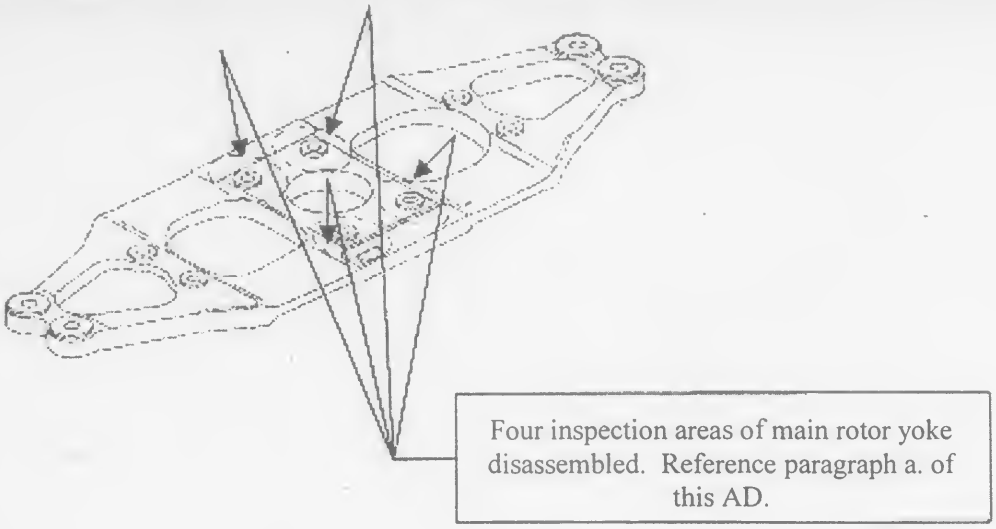

Figure 3. Main Rotor Yoke Inspection Areas

BILLING CODE 4910–13–C

(b) Within 50 hours TIS or by the next scheduled inspection for each hub assembly, whichever occurs first, and thereafter at intervals not to exceed 50 hours TIS, determine the torque of the four main rotor flapping bearing retaining bolts or nuts. While holding the bolt head, apply 100 foot-pounds (135Nm) of torque to the nut in the tightening direction.

(1) If 100 foot-pounds (135Nm) of torque is reached without movement of the nut, before further flight, torque the nut to 125 foot-pounds.

(2) If any nut moves before reaching 100 foot-pounds (135Nm) of torque, before further flight, remove both flapping bearings from the hub assembly. Inspect the yoke, the bolt and nut, and the trunnion supports with a 10X or higher magnifying glass, for a crack, fretting, or buffer deterioration.

(i) If a crack is found on any part, before further flight, replace the part with an airworthy part.

(ii) If fretting or buffer deterioration is found on any part, before further flight, repair any unairworthy part or replace the part with an airworthy part.

(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, FAA, for information about previously approved alternative methods of compliance.

(d) This amendment becomes effective on November 9, 2004.

Note 2: The subject of this AD is addressed in Transport Canada (Canada) AD CF–2003–27, dated November 17, 2003.

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

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 04–22265 Filed 10–4–04; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AB56

Close Out of Offsetting Positions; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Correcting amendment.

SUMMARY: This document contains a correcting amendment to the final rule amendments that were published on October 23, 2001 (66 FR 53510). Those rule amendments related to various aspects of the operations of intermediaries of commodity interest transactions. The particular rule in issue concerns the close out of offsetting positions. The correcting amendment makes clear that an account controller, in addition to the customer, may instruct a futures commission merchant (FCM) to hold open offsetting long and short commodity interest positions.

EFFECTIVE DATE: October 5, 2004.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Deputy Director, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581. Telephone (202) 418–5439.

SUPPLEMENTARY INFORMATION: On October 23, 2001, the Commodity Futures Trading Commission (Commission) published final amendments to Commission Rule 1.46, among others. The Commission amended Rule 1.46 to permit customers or account controllers to instruct FCMs (in writing or orally) if they wish to deviate from the default rule that requires FCMs to close out offsetting long and short commodity interest positions on a first-in, first-out basis, looking across all accounts carried for the same customer. 66 FR 53510, 53514, 53517–18. The Commission stated that, "[i]n order to implement this revision of Rule 1.46, the Commission is amending

the rule by inserting, after the words 'omnibus accounts' in paragraph (a), the phrase 'or where the customer *or account controller* has instructed otherwise.'" *Id.* at 53514 (emphasis added).

Despite this clear statement of the Commission's intent in the preamble of the adopting **Federal Register** release, the regulatory text neglected to include the words "or account controller," so that it appears that only the customer may direct an FCM to deviate from the default rule requiring closing out of offsetting long and short commodity interest positions. *Id.* at 53517. The same discrepancy between the Commission's clear intention as expressed in the preamble and the regulatory text appears in the proposing release,[1] as well as in earlier releases proposing and adopting the same rule amendment.[2] The Commission's clear intention to permit account controllers as well as customers to instruct an FCM to hold open an offsetting position is bolstered by the fact that, prior to the rule amendments, the rule contained exceptions that permitted account controllers to make such an instruction, albeit subject to certain conditions. Amendments intended to broaden, simplify and streamline the rule would not further restrict those persons able to take advantage of the ability to deviate from the normal procedure.

The Commission, to eliminate the inadvertent confusion that it may have created in this area, has determined to make a technical amendment to the introductory text of Rule 1.46(a) so that it is clear that an account controller, as well as the customer, may instruct an FCM to hold open offsetting commodity interest positions. Of course, an FCM retains the discretion to refuse to honor any such instruction from a customer or account controller and to apply the general rule of closing out offsetting long and short commodity interest positions on a first-in, first-out basis.

[1] 66 FR 45221, 45227, 45230 (August 28, 2001).

[2] 66 FR 39008, 39017, 39022 (June 22, 2000) (proposed rules); 66 FR 77993, 78007, 78013 (December 13, 2000) (final rules). Due to the intervening enactment of revisions to the Commodity Exchange Act by the Commodity Futures Modernization Act of 2000 (CFMA), the Commission withdrew almost all of the final rules relating to intermediaries adopted in November 2000, including the amendments to Rule 1.46. Upon further review of the amendments to Rule 1.46 in light of the enactment of the CFMA, the Commission re-proposed and re-adopted the amendments to Rule 1.46 in 2001 without substantive change. Although comments were received on both proposals to amend Rule 1.46, no one pointed out the discrepancy between the preamble and the regulatory text cited above.

Need for Correction

As published, the final rules contain regulatory text that may prove to be misleading and is in need of clarification.

List of Subjects in 17 CFR Part 1

Commodity futures; Reporting and recordkeeping requirements.

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

■ Accordingly, 17 CFR Part 1 is corrected by making the following technical amendments:

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–l, 16, 16a, 19, 21, 23 and 24.

■ 2. In § 1.46, paragraph (a) introductory text is revised to read as follows:

(a) *Application of purchases and sales.* Except with respect to purchases or sales which are for omnibus accounts, or where the customer or account controller has instructed otherwise, any futures commission merchant who, on or subject to the rules of a designated contract market or registered derivatives transaction execution facility:

* * * * *

§ 1.46 Application and closing out of off setting long and short positions.

Issued in Washington, DC on September 28, 2004 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–22298 Filed 10–4–04; 8:45 am]

BILLING CODE 6351–01–M

POSTAL SERVICE

39 CFR Parts 20 and 211

International Mail Manual; Incorporation by Reference

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service announces the issuance of Issue 30 of the International Mail Manual (IMM), and its incorporation by reference in the Code of Federal Regulations.

EFFECTIVE DATE: This final rule is effective on October 5, 2004. The incorporation by reference of Issue 30 of the IMM is approved by the Director of the Federal Register as of October 5, 2004.

FOR FURTHER INFORMATION CONTACT: Obataiye B. Akinwole, (202) 268–7262.

SUPPLEMENTARY INFORMATION: Issue 30 of the International Mail Manual was issued on August 1, 2004. It replaced the previous issue of the IMM, and contained all IMM revisions from June 13, 2003, through July 22, 2004.

This new Issue of the IMM continues to serve the objectives of the Postal Service's Transformation Plan of April 2000, to enable the Postal Service to fulfill its long-standing mission of providing affordable, universal mail service. The Plan's key strategies include improving operational efficiency, supporting growth through added value to customers, and enhancing the Postal Service's performance-based culture.

In addition, Issue 30 sets forth specific changes affecting international postal services, such as the adoption of new customs forms for international mail and military mail, and the network change that removed Washington Dulles International Airport as a U.S. International Exchange Office. The new Issue also corrects various printing and format errors and omissions in the previous Issue.

The International Mail Manual is available to the public on a subscription basis only from: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. The subscription price for one issue is currently $36 to addresses in the United States, and $50.40 to all foreign addresses. The IMM is also published and available to all users on the Internet at *http://pe.usps.gov.*

List of Subjects

39 CFR Part 20

Foreign relations, Incorporation by reference.

39 CFR Part 211

Administrative practice and procedure.

■ In view of the considerations discussed above, the Postal Service hereby amends 39 CFR chapter I as follows:

PART 211—APPLICATION OF REGULATIONS

■ 1. The authority citation for part 211 continues to read as follows:

Authority: 39 U.S.C. 201, 202, 401(2), 402, 403, 404, 410, 1001, 1005, 1209; Pub. L. 91–375, Secs. 3–5, 84 Stat. 773–75.

§ 211.2 [Amended]

■ 2. In § 211.2(a)(2), remove the words "Publication 42 (International Mail)"

and add "International Mail Manual" in their place.

■ 3. Part 20 is revised to read as follows:

PART 20—INTERNATIONAL POSTAL SERVICE

Sec.

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

§ 20.1 International Mail Manual; incorporation by reference.

(a) Section 552(a) of Title 5, U.S.C., relating to the public information requirements of the Administrative Procedure Act, provides in pertinent part that "* * * matter reasonably available to the class of persons affected thereby is deemed published in the **Federal Register** when incorporated by reference therein with the approval of the Director of the Federal Register." In conformity with that provision, with 39 U.S.C. 410(b)(1), and as provided in this part, the U.S. Postal Service hereby incorporates by reference its International Mail Manual (IMM), Issue 30, dated August, 2004. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(b) The current Issue of the IMM is incorporated by reference in paragraph (a) of this section. Successive Issues of the IMM are listed in the following table:

International Mail Manual	Date of issuance
Issue 1	November 13, 1981.
Issue 2	March 1, 1983.
Issue 3	July 4, 1985.
Issue 4	September 18, 1986.
Issue 5	April 21, 1988.
Issue 6	October 5, 1988.
Issue 7	July 20, 1989.
Issue 8	June 28, 1990.
Issue 9	February 3, 1991.
Issue 10	June 25, 1992.
Issue 11	December 24, 1992.
Issue 12	July 8, 1993.
Issue 13	February 3, 1994.
Issue 14	August 4, 1994.
Issue 15	July 9, 1995.
Issue 16	January 4, 1996.
Issue 17	September 12, 1996.
Issue 18	June 9, 1997.
Issue 19	October 9, 1997.
Issue 20	July 2, 1998.
Issue 21	May 3, 1999.
Issue 22	January 1, 2000.
Issue 23	July 1, 2000.
Issue 24	January 1, 2001.
Issue 25	July 1, 2001.
Issue 26	January 1, 2002.
Issue 27	June 30, 2002.
Issue 28	January 1, 2003.
Issue 29	July 1, 2003.
Issue 30	August 1, 2004.

§ 20.2 Effective date of the International Mail Manual.

The provisions of the International Mail Manual Issue 30, effective August 1, 2004, are applicable with respect to the international mail services of the Postal Service.

§ 20.3 Availability of the International Mail Manual.

Copies of the International Mail Manual may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9371. The IMM is available for examination on the Internet at *http://pe.usps.gov*. Copies are available for public inspection during regular business hours at area and district offices of the Postal Service and at all post offices, classified stations, and classified branches. You may also inspect a copy at the U.S. Postal Service Library, 475 L'Enfant Plaza West SW., Washington, DC 20260–1641, 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*.

§ 20.4 Amendments to the International Mail Manual.

New issues of the International Mail Manual will be incorporated by reference into this part and will be available at *http://pe.usps.gov*. The text of amendments to the International Mail Manual will be published in the **Federal Register** and will be available in the Postal Bulletin, copies of which may be accessed at *http://www.usps.com/cpim/ftp/bulletin/pb.htm*.

§ 20.5 [Reserved]

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 04–22233 Filed 10–4–04; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI117–01–7347a, FRL–7637–2]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Northern Engraving Environmental Cooperative Agreement

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a June 27, 2003, request from Wisconsin to revise its State Implementation Plan (SIP) for a source specific revision for Northern Engraving Corporation (NEC). The Clean Air Act (Act), provides the authority for a state to provide a plan for the implementation, maintenance, and enforcement of the national ambient air quality standards in each air quality control region. The Wisconsin Department of Natural Resources (WDNR) and EPA entered into a memorandum of agreement concerning implementation of a joint cooperative pilot program and agreed to pursue regulatory innovation at two NEC facilities in Holmen, Wisconsin and Sparta, Wisconsin. Since then, the WDNR has amended the agreement to include two additional NEC facilities in Galesville, Wisconsin and West Salem, Wisconsin. Because portions of the Environmental Cooperative Agreement with NEC supercede portions of rules in the Wisconsin SIP, a source-specific SIP revision is required.

DATES: This rule is effective on December 6, 2004, unless EPA receives adverse written comments by November 4, 2004. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You may inspect copies of the documents relevant to this action during normal business hours at the following location: United States Environmental Protection Agency Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Send written comments to: Pamela Blakely, Chief, Permits and Grants Section, United States Environmental Protection Agency (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments may also be submitted electronically or through hand delivery/courier, please follow the detailed instructions described in part (I)(B)(1)(i)

through (iii) of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras at (312) 886–0671. *blathras.constantine@epa.gov.*

SUPPLEMENTARY INFORMATION: This **SUPPLEMENTARY INFORMATION** section is organized as follows:

I. General Information

A. How Can I Get Copies Of This Document and Other Related Information?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under "Region 5 Air Docket WI117." The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

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

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

B. 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 rulemaking identification number by including the text "Public comment on proposed rulemaking Region 5 Air Docket WI117" 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.

1. *Electronically.* 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. 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. *E-mail.* Comments may be sent by electronic mail (e-mail) to *nash.carlton@epa.gov.* Please include the text "Public comment on proposed rulemaking Region 5 Air Docket WI117" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, 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.

ii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then click on the button "TO SEARCH FOR REGULATIONS CLICK HERE", and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. 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.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Pamela Blakely, Chief, Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please include the text "Public comment on proposed rulemaking Regional Air Docket WI117" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Pamela Blakely, Chief, Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. 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 official public regional rulemaking file. 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 file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. Background

On March 25, 1999, the WDNR and the EPA entered into a memorandum of agreement concerning implementation of the joint state/EPA agreement to pursue regulatory innovation and the Wisconsin Environmental Cooperation Pilot Program. On June 7, 2002, Thomas V. Skinner, Regional Administrator, EPA Region 5, sent a letter to Darrell Bazzell, Secretary, WDNR, containing EPA's final response to the WDNR's innovation proposal for alternative permit conditions at the NEC facilities. The NEC facilities affected by that agreement were the Holmen and Sparta facility. On January 24, 2003, EPA published a direct final rule in the **Federal Register** (68 FR 3404) approving the request from Wisconsin to revise its SIP for a source specific revision for NEC's Sparta and Holmen facilities. No comments were received during the comment period for those facilities.

The purpose of this action is to include two additional facilities into the source specific SIP revision under the agreement between WDNR and NEC. The Galesville facility is located at 1200 W. Gale Avenue, Trempeauleau County, Galesville, Wisconsin, and the West Salem facility is located at 600 Brickl Road, La Crosse County, West Salem, Wisconsin. Both Trempealeau and La Crosse counties have been classified as unclassifiable/attainment for ozone, since November 15, 1990. Volatile organic compounds are a precursor to ozone. Each facility's permit includes facility-wide emission rates for volatile organic compounds and hazardous air pollutants. The Northern Engraving Galesville facility manufactures decorative plastic automotive trim and nameplates for the automotive and appliance industries. Operations include screening of plastic sheets, punch pressing, laser cutting and etching, inspection, spray touch-up, shipping and receiving. The Northern Engraving West Salem facility manufactures plastic and metal decorative automotive trim. Operations include screen printing, roll coating, spray coating, lithographic printing and pad printing processes.

The innovative components of the proposal for the NEC Galesville and West Salem facilities include: (1) Waiver from the requirements that facilities obtain a new permit prior to construction; (2) waiver from the requirement that facilities receive an appropriate permit prior to operating new process equipment; (3) waiver in the facilities' minor source permits of individual process line latest available control technology requirements for controlling volatile organic compound emissions; and (4) recordkeeping and reporting flexibility.

The Environmental Cooperative Agreement, specifically section XII. (Operational Flexibility and Variances), proposes to establish new requirements for the two NEC facilities. The proposed new requirements would replace or revise certain requirements that might otherwise apply to those sources. Some of the requirements to be replaced or revised are currently embodied in Wisconsin's SIP for meeting air quality objectives. In such cases, the proposed flexibility in the Environmental Cooperative Agreement cannot be granted by WDNR unless the new requirements are first approved by EPA as a source-specific revision to the SIP. The innovative components of the agreement listed above provide the additional NEC facilities the flexibility to commence construction or operating of the process equipment prior to obtaining a construction. The facility would continue to comply with the facility wide emission limitations in the permit. Additionally, certain processes at the West Salem facility would not have to comply with the reasonable available control technology requirements for controlling volatile organic compounds. The individual process lines at both NEC facilities would not have to apply the latest available control technique for controlling volatile organic compound emissions. The NEC facilities are now required to keep monthly records of emissions for each facility.

The WDNR submitted portions of section XII of the Environmental Cooperative Agreement (Operational Flexibility and Variances) as a source-specific SIP revision.

III. EPA Rulemaking Action

The EPA is approving a June 27, 2003, request from Wisconsin to revise its State Implementation Plan (SIP) for a source specific revision for Northern Engraving Corporation (NEC). Section 110 of the Act, 42 U.S.C. 7410, provides the authority for a state to provide a plan for the implementation, maintenance, and enforcement of the national ambient air quality standards in each air quality control region. The Wisconsin Department of Natural Resources (WDNR) and EPA entered into a memorandum of agreement concerning implementation of a joint cooperative pilot program and agreed to pursue regulatory innovation at two NEC facilities in Holmen, Wisconsin and Sparta, Wisconsin. Since then, the WDNR has amended the agreement to include two additional NEC facilities in Galesville, Wisconsin and West Salem, Wisconsin. Because portions of the Environmental Cooperative Agreement with NEC supercede portions of rules in the Wisconsin SIP, a source-specific SIP revision is required.

The EPA is publishing this SIP revision approval without prior proposal, because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse written comments be filed. The approval of this SIP revision will be effective without further notice unless EPA receives relevant adverse written comments by November 4, 2004. Should EPA receive such comments, we will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If we do not receive comments, this action will be effective on December 6, 2004.

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

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

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

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).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law.

Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

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

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

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

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

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

Congressional Review Act

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged late in proceedings to enforce its requirements.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Volatile organic compounds.

Dated: March 1, 2004.

Jo Lynn Traub,

Acting Regional Administrator, Region 5.

Editorial Note: This document was received at the Office of the Federal Register on September 29, 2004.

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

PART 52—[AMENDED]

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

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

Subpart YY—Wisconsin

■ 2. Section 52.2570 is amended by adding paragraph (c)(110) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(110) On June 27, 2003, the Wisconsin Department of Natural Resources (WDNR) submitted a site specific revision to its state implementation plan for emissions from Northern Engraving Corporation's (Northern Engraving) Galesville and West Salem facilities in the form of operating permit conditions, based upon an Environmental Cooperative Agreement reached between WDNR and Northern Engraving for incorporation into the federally enforceable State Implementation Plan (SIP). An exemption for pre-construction permitting activities for certain physical changes or changes in the method of operation at the Northern Engraving Corporation's Galesville and West Salem facilities is established. Specific permit conditions for these two facilities are incorporated by reference in the SIP.

(i) Incorporation by reference.

(A) Specific Permit Conditions under the Environmental Cooperative Agreement for Northern Engraving Corporation's (NEC) Galesville facility contained in Part I.A. of Wisconsin Air Pollution Control Operation Permit NO. 662008930–F02 issued April 26, 2002 to NEC, 1200 West Gale Avenue, Galesville, Trempeauleau County, Wisconsin. This permit expires April 26, 2007.

(B) Specific Permit Conditions under the Environmental Cooperative Agreement for Northern Engraving Corporation's (NEC) West Salem facility contained in Part I.A. of Wisconsin Air Pollution Control Operation Permit NO. 632024800–F01 issued June 23, 2003 to NEC, 600 Brickl Road, West Salem, La Cross County, Wisconsin. This permit expires June 23, 2008.

[FR Doc. 04–22250 Filed 10–4–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 031015257–3308–02 ; I.D. 092804B]

Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; Suspension of Minimum Surfclam Size for 2005

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

ACTION: Notice of suspension of surfclam minimum size limit.

SUMMARY: NMFS suspends the minimum size limit of 4.75 inches (12.07 cm) for Atlantic surfclams for the 2005 fishing year. This action is taken under the authority of the implementing regulations for this fishery, which allow for the annual suspension of the minimum size limit based upon set criteria. The intended effect is to relieve the industry from a regulatory burden that is not necessary, as the majority of surfclams harvested are larger than the minimum size limit.

DATES: Effective January 1, 2005, through December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Brian R. Hooker, Policy Analyst, 978–281–9220.

SUPPLEMENTARY INFORMATION: Section 648.72(c) of the regulations implementing the Fishery Management Plan (FMP) for the Atlantic Surfclam and Ocean Quahog Fisheries allows the Administrator, Northeast Region, NMFS (Regional Administrator) to suspend annually, by publication of a notification in the **Federal Register**, the minimum size limit for Atlantic surfclams. This action may be taken unless discard, catch, and survey data indicate that 30 percent of the Atlantic surfclam resource is smaller than 4.75 inches (12.07 cm) and the overall reduced size is not attributable to harvest from beds where growth of the individual clams has been reduced because of density-dependent factors.

At its June 2004, meeting, the Mid-Atlantic Fishery Management Council (Council) voted to recommend that the Regional Administrator suspend the minimum size limit for the 2005, 2006, and 2007 fishing years. In accordance with the provisions of the FMP the Regional Administrator will publish the suspension of the surfclam minimum size annually for fishing years 2005–2007 if the proportion of undersized surfclams is under 30 percent of the total surfclam landings for each fishing year. The Council will also continue to review these specifications annually and may modify these specifications, if necessary. Commercial surfclam shell length data for 2004 were analyzed to determine the percentage of surfclams landed that were smaller than the minimum size requirement. The analysis indicated that 0.7 percent of the samples taken overall were composed of surfclams that were less than 4.75 inches (12.07 cm). Based on these data, the Regional Administrator adopts the Council's recommendation and suspends the minimum size limit for Atlantic surfclams from January 1, 2005, through December 31, 2005.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: September 28, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–22342 Filed 10–4–04; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 192
Tuesday, October 5, 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 923

[Docket Nos. AO–F&V–923–3; FV03–923–01]

Sweet Cherries Grown in Designated Counties in Washington; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendments to Marketing Agreement and Order No. 923

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision invites written exceptions on proposed amendments to the marketing agreement and order (order) for sweet cherries grown in Washington. Four amendments were proposed by the Washington Cherry Marketing Committee (Committee), which is responsible for local administration of the order: adding authority for promotion, including paid advertising, and production research projects; adding authority for supplemental rates of assessment for individual varieties of cherries; adding authority for the Committee to accept voluntary contributions for research and promotion; and, adding a public member to the Committee. Two additional amendments are proposed by the Agricultural Marketing Service: establishing tenure limitations for Committee members; and, requiring that continuance referenda be conducted every 6 years.

DATES: Written exceptions must be filed by November 4, 2004.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1081–S, Washington, DC 20250–9200, Facsimile number (202) 720–9776 or *http://www.regulations.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments will be made available for public inspection in the Office of the Hearing Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Post Office Box 1035, Moab, UT 84532, telephone: (435) 259–7988, fax: (435) 259–4945.

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

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding include a Notice of Hearing issued on October 6, 2003, and published in the October 10, 2003, issue of the **Federal Register** (68 FR 58636).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendment of Marketing Agreement and Order No. 923 regulating the handling of sweet cherries grown in designated counties in Washington, and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Melissa Schmaedick, whose address is listed above.

This recommended decision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed amendments are based on the record of a public hearing held November 18, 2003, in Yakima, Washington. Notice of this hearing was published in the **Federal Register** on October 10, 2003. The notice of hearing contained proposals submitted by the Committee and by AMS.

The Committee's proposed amendments include: (1) Adding the authority for promotion, including paid advertising, and production research projects; (2) adding the authority for supplemental rates of assessment for individual varieties of cherries; (3) adding the authority for the Committee to accept voluntary contributions for marketing research and promotion, including paid advertising, and production research projects; and (4) adding a public member and alternate public member to the Committee.

The Fruit and Vegetable Programs of AMS proposed two additional amendments: to establish tenure limitations for Committee members and require that continuance referenda be conducted on a periodic basis to ascertain grower support for the order. In addition, AMS proposed to allow such changes as may be necessary to the order, if any of the proposed changes are adopted, so that all of the order's provisions conform to the effectuated amendments.

Six industry witnesses testified at the hearing. These witnesses represented sweet cherry growers and handlers in the production area, and they all supported the Committee's recommended changes.

Witnesses addressed the need for adding the authority for promotion, including paid advertising, and production research projects. This authority would enable the Committee to develop more efficient growing, harvesting, marketing and distribution techniques for sweet cherries produced in the production area. Promotional activities, including paid advertising, could lead to greater market exposure and consumer demand for sweet cherries, thereby supporting increased grower returns.

Witnesses stated their approval of the Committee's recommendation to add the authority for supplemental rates of assessment for individual varieties of cherries. Funds generated from supplemental rates of assessment would be used for research or promotion projects specific to an individual variety of sweet cherry.

Witnesses also supported the proposal to add authority for the Committee to accept voluntary contributions for marketing research and promotion,

including paid advertising, and production research projects. Witnesses stated that the industry would benefit from this authority as contributions could provide the industry with additional research and marketing opportunities.

Lastly, the Committee recommended adding a public member and alternate public member to the Committee. Witnesses stated that a public member would benefit Committee deliberations by bringing a non-industry, consumer perspective to the table.

An AMS witness testified in support of tenure limitations as a way to broaden industry participation in the program. That witness also supported continuance referenda as a means of determining grower sentiment on the order's operations.

At the conclusion of the hearing, the Administrative Law Judge stated that the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing would be 30 days after USDA's receipt of the hearing record transcript. No briefs were filed.

Material Issues

The material issues presented on the record of hearing are as follows:

(1) Whether to add authority for promotion, including paid advertising, and production research projects;

(2) Whether to add authority for supplemental rates of assessment for individual varieties of cherries;

(3) Whether to add authority for the Committee to accept voluntary contributions for marketing research and promotion, including paid advertising, and production research projects;

(4) Whether to add a public member and alternate public member seat to the Committee;

(5) Whether to impose term limitations on Committee members; and

(6) Whether to add a requirement that continuance referenda be held every 6 years.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof.

Material Issue Number 1—Authority for Production Research and Promotion, Including Paid Advertising

Section 923.45 of the order should be amended to add authority for production research and promotion, including paid advertising. That order provision currently authorizes only marketing research and development activities.

This authority would enable the Committee to develop more efficient growing, harvesting, marketing and distribution techniques for sweet cherries produced in the production area. Promotional activities, including paid advertising, could lead to greater market exposure and consumer demand for Washington sweet cherries, thereby supporting increased returns for growers.

This authority would enable the Committee to fund production research and promotion efforts. Such activities could be conducted by the Committee itself or be contracted out to other parties. The industry believes that it is important to include promotion and production research under the Federal marketing order as these activities are vital to the long-term health of the industry.

The record evidence shows that sweet cherry acreage in Washington has increased from 21,000 acres in 1997 to an estimated 30,000 acres in 2004. In that same time period, overall tonnage of Washington sweet cherries increased from 62,000 tons to 120,000 tons. Witnesses testified that acreage and production will continue to increase, making promotion and research all that more important. As production increases, there is an increasing need to identify means of increasing quality and more accurately determining the volume of cherries that will be available to consumers in a given year.

For many years, production research and promotion has been carried out by the Washington State Fruit Commission (Commission) and other entities within the industry. Demonstrated success of these research and promotion programs has led to industry support for adding this authority to the order.

Testimony indicated that current industry production research and promotion activities range from the development of more accurate weather detection systems and timely distribution strategies, to in-store promotion activities and paid advertising.

According to the record, production research in forecasting crop yield and harvest timing through Global Positioning Systems (GPS), satellite imagery, and real-time reporting technology has been particularly successful. Sweet cherries are a highly perishable crop. Accurate prediction of crop size and harvest timing is vital to the effective marketing and distribution of high quality cherries to the retail sectors. Because of the new advances in production technology, the industry was able to effectively anticipate the timing and record-breaking volume of the 2003 sweet cherry crop. In 2003, 8.5 million boxes were harvested, marketed and sold over a four week period (June 15 to July 15). Before that year, the industry's record volume for those four weeks was 5.5 million boxes.

Another example of research conducted by the industry involves taste testing of newly developed sweet cherry varieties. According to the record, new varieties developed in Prosser, Washington, were taken to the United Kingdom for consumer taste tests in 2000. This project was a cooperative effort by the Commission, Washington State University and the Washington State Research Commission. This project helped the industry determine consumer receptivity of new varieties introduced into the market.

A representative of the Commission testifying at the hearing stated that, since 1997, both volume and prices of Washington sweet cherries have shown annual increases. Increased market demand can be tied to the Commission's success in working with the retail sector. From 1997 to 2003, the number of retailers running 4-week promotion ads increased from 30 to 79. At the same time, the number of retail chains decreased from 250 to 160. The witness stated that these numbers indicate that the relative proportion of retail exposure for sweet cherries since 1997 has increased considerably.

Consumers have responded to marketing efforts by doubling their purchase volume during targeted retail promotion periods. According to the witness, since 1997, sweet cherries have become a focus item for retail, as they have grown to make up at least 3.5 percent of the total produce category sales. Sweet cherry sales also continue to drive just over 10 percent sales lifts in the U.S. domestic retail market in the months of June and July.

The witness estimates that the dollar impact on the local economy, or the residual benefit of the Commission's marketing efforts and increased sweet cherry demand within the State of Washington, has increased 29.74 percent over the past 5 years. With nearly 70 percent of total sweet cherry production sold domestically, the industry's marketing efforts have enabled the Washington sweet cherry industry to remain profitable in light of increasing production, rather than fall into a non-sustaining oversupply situation with low producer returns.

One witness who produces other crops in addition to sweet cherries indicated that the recent loss of the Washington State Apple Commission

has had a negative impact on his returns for apples. More specifically, the witness indicated that the lack of promotional activities for Washington apples resulted in that industry's inability to respond effectively to last year's increased production. With increased volume in the market and few tools to assist in marketing and distributing that product, grower returns fell below subsistence levels. The witness stated that the Washington sweet cherry industry's ability to continue to meet the industry's challenges of increasing production through research and promotion has resulted in that industry's continued success. While to date that work has been done under the auspices of the Commission, the industry wants to further its ability to conduct these activities by adding research and promotion authority to the order.

When asked whether a voluntary promotion program would work for the Washington sweet cherry industry, witnesses responded that the authority to conduct research and promotion activities under the order would ensure that those activities continue in a consistent manner, and that they would not be subject to economic cycles within the industry. One witness explained that a cooperative approach to funding these activities would operate as an "umbrella" mechanism for the entire industry by providing research and promotion solutions to all industry participants. Witnesses also indicated that this authority would be equally beneficial to small and large grower and handler entities. Grower input into the development of any research or promotion programs would also ensure that these activities, and the use of assessment funds to support them, would remain responsive to industry needs.

Adding this authority to the order would provide the Committee with the flexibility to use research and promotional activities, including paid advertising, to assist and improve production techniques, and promote the marketing, distribution and consumption of Washington sweet cherries. The use of assessments and available funding sources for research and promotion, including paid advertising, would be an important component to increasing demand and consumption of Washington sweet cherries.

The record supports adding authority for production research and promotion to § 923.45 of the order. There was no opposition testimony on this issue.

Material Issue Number 2—Supplemental Rates of Assessment

Section 923.41, Assessments, of the order should be amended to allow additional rates of assessment for individual varieties of cherries. Currently, the order provides for a single rate of assessment for all cherries, regardless of variety, to be established. The base assessment rate is recommended by the Committee for approval by the Department. If authority to establish supplemental rates of assessment by variety was added to the order, those rates would also be recommended by the Committee for approval by USDA. Assessments are used to fund the administrative functions of the Committee, as well as any research and promotion activities. According to the record, supplemental rates of assessment would be used for expenses specific to an individual variety of sweet cherry.

Witnesses stated that there are a number of reasons for which specific varieties may warrant supplemental assessment rates, including differences in production and marketing needs. Supplemental assessments could be used to fund research that is particular to the needs of a specific variety, or could be used to fund promotional projects to market lesser known or off-season varieties. Supplemental rates could also be applied when a particular variety of cherries produces a larger than anticipated crop in a given year. In those cases, extra funds generated through a supplemental rate could be used to support additional marketing efforts needed to stimulate demand and move that crop within the market.

Witnesses stated that any supplemental assessments collected by variety of cherry should only be used to fund projects associated with that variety. While all growers within the production area benefit from general sweet cherry production research and marketing efforts, growers of specific varieties should fund any projects aimed at benefiting that particular variety. For example, if a new variety of sweet cherry is developed, special marketing may be needed to introduce that variety to consumers in the market. While there is a risk associated with the production of that new variety, both the costs and the benefits of producing a unique and potentially higher price product should be attributed to the growers of that product.

It is not anticipated that this authority would unduly burden small growers or handlers. While a supplemental assessment would represent an additional cost, witnesses stated that the benefits derived from that assessment would outweigh its cost. Adding this authority in conjunction with the proposal to add authority to conduct production research and promotion activities, including paid advertising, would allow the Committee to streamline and more specifically focus its research and promotion activities to the needs of the industry.

Record evidence supports amending the marketing order to authorize supplemental rates of assessment for specific varieties of sweet cherries. This proposal would allow the Committee to collect assessment funds to be used for research and promotion activities that are specific to a single variety of sweet cherry in addition to projects that are beneficial to the Washington sweet cherry industry as a whole. There was no opposition expressed with respect to this proposal.

Material Issue Number 3—Voluntary Contributions

A new § 923.43, Contributions, should be added to the order to allow the Washington Cherry Marketing Committee to accept voluntary contributions for the purpose of funding marketing research and promotion (including paid advertising), and production research projects. Such contributions should be free from any encumbrances by the donor so that the Committee would retain complete control of their use.

Currently, the marketing order program does not contain authority for the Committee to accept contributions. All marketing order activities are funded through handler assessments. Witnesses stated that the industry would benefit from this authority as contributions from groups and businesses could provide the industry with additional research and marketing opportunities.

The record shows that contributions could come from equipment and machinery dealers, fertilizer, chemical or seed dealers, container manufacturers and dealers, and companies that currently have their own marketing activities. One witness stated that this authority would have healthy, long-range effects on the industry. Ultimately, this would benefit all growers, handlers and consumers of Washington sweet cherries.

Witnesses testified that voluntary contributions should only be accepted with the understanding that the Committee would retain full discretion over how those funds would be used. Witnesses stated that project selection and spending decisions would rest with the Committee. While a donor could

indicate a specific project that he or she supports, the Committee would decide how those funds should be spent.

Record evidence supports revising the marketing order to incorporate the authority to accept voluntary contributions. There was no opposition given to this proposal.

Material Issue Number 4—Public Member

The marketing order should be revised to add a public member and alternate public member to the Washington Cherry Marketing Committee. This amendment would necessitate revising language in § 923.20, Establishment and membership, and 923.22, Nomination.

If this change were implemented, Committee membership would increase from 16 to 17 members. The public member could not have any financial interest in the Washington sweet cherry industry. The public member would have the same rights and responsibilities as other Committee members, including reimbursement for expenses as approved by the Committee.

Witnesses stated that the addition of a public member to the Committee would be beneficial in that it would bring a non-industry perspective to Committee deliberations and decision-making. The public member and alternate should be persons who can present constructive criticism when needed, and who can work together with other Committee members to build a bridge for better understanding between consumers and agriculture.

The evidence of record is that a non-industry perspective could be especially useful in deliberations over production research and promotion activities. Research and promotion activities are aimed not only at improving production and harvest techniques, but also product quality. High quality is important to the industry's ability to boost consumer demand and maintain adequate grower returns. Moreover, promotion activities are intended to attract or increase consumer interest in the product. Often promotion activities include an educational element about the benefits of the product, or ideas for using the product in cooking or food presentation. A public member could help the Committee to decide which types of production research or promotion activities would be most beneficial in the eyes of the consumer.

Persons serving as public representatives should not be, at the time of selection, nomination or during the term of office, engaged in the commercial production, buying, grading, processing of any agricultural product, nor should they be an officer, director, member, or employee of any firm engaged in the production or processing of any agricultural product. Should the public member or alternate public member become involved in such activities at any time during their term of office, they would become ineligible to continue to serve and a replacement would be nominated for the Department's appointment.

Testimony indicates that the initial public member and alternate public member should be nominated at the first Committee meeting following the selection of industry members for a new term of office, which starts on April 1. Normally, the Committee holds its marketing policy and organization meeting during May of each year, so such meeting could be used to nominate the public member and the alternate.

Witnesses recognized that some delay would occur in the nomination and seating of the initial public member and alternate public member, as recommendation of those candidates would occur after the grower and handler members the Committee were appointed. Witnesses stated that it would be better to have the public member positions vacant for a short period of time until the new Committee members are seated by the Department, rather than create a second later term of office just applicable to the public member and alternate member. This situation would only occur once since all subsequent public members and their alternates would serve until their respective successors are appointed, as is currently practiced for all Committee grower and handler members.

Record evidence supports the addition of a public member and alternate public member to the Washington Cherry Marketing Committee. No opposition to this proposal was presented at the hearing.

Material Issue Number 5—Tenure Limitations

Section 923.21, Term of office, should be revised to establish a limit on the number of consecutive terms a person may serve on the Committee. Currently, the term of office of each member and alternate member of the Committee is three years. There are no provisions related to tenure in the marketing order. Members and alternates may serve on the Committee until their respective successors are selected and have qualified.

The record shows that USDA proposed tenure requirements for Committee members as a means to increase industry participation on the Committee, provide for more diverse membership, provide the Committee with new perspectives and ideas, and increase the number of individuals in the industry with Committee experience.

Experience with other marketing order programs suggests that a period of six years would be appropriate. Since the current term of office for Washington Cherry Marketing Committee members and alternates is two years, the Department is proposing that no member serve more than three consecutive two-year terms or a total of six years. This proposal for a limitation on tenure would not apply to alternates. Once a member has served on the Committee for three consecutive terms, or six years, the member would sit out for one year before being eligible to serve as a member again. The member could serve as an alternate during that time.

One witness testified in opposition to tenure limitations. He indicated that finding growers and handlers willing to serve on the Committee could become more difficult, and the knowledge of experienced Committee members would be difficult to replace.

The Department believes that any additional efforts necessary to find eligible growers and handlers who are willing to serve on the Committee offset by the benefits derived by broader industry participation in order operations.

Therefore, it is recommended that the order be amended to establish tenure requirements for Committee members.

Material Issue Number 6—Continuance Referenda

Section 923.64, Termination, should be amended to require that continuance referenda be conducted every six years to ascertain industry support for the order.

Currently, there is no provision in the marketing order that requires periodic continuance referenda. The record evidence is that growers should have an opportunity to periodically vote on whether the marketing order should continue. Continuance referenda provide an industry with a means to measure grower support for the marketing order program. Experience has shown that programs need significant industry support to operate effectively. Under this proposal, the Department would consider termination of the marketing order if continuance is not favored by at least two-thirds of those voting, or at least two-thirds of the volume represented in the referendum. This is the same as that for issuance of an order. Experience in recent years indicates that six years is an appropriate

period to allow growers an opportunity to vote for continuance of the program. Therefore, the proposal sets forth that a referendum would be conducted six years after the effective date of this amendment and every sixth year thereafter.

One industry witness testified in opposition to this proposal. He indicated that the industry currently has the ability to request a continuance referendum at any time, and requiring unnecessary referenda would be costly and of little value to the industry or the Department. The program has worked successfully since its inception, and growers have been supportive of the order since that time.

The Department believes that growers should have an opportunity to periodically vote on whether the marketing order should continue. Accordingly, it is recommended that the order be amended to require a continuance referendum every six years.

The Agricultural Marketing Service also proposed to make such changes as may be necessary to the order to conform to any amendment that may result from the hearing. The Department has identified no necessary conforming changes.

Small Business Consideration

Pursuant to the 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, the AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Small agricultural growers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms are defined as those with annual receipts of less than $5,000,000.

The record shows that there are approximately 1,500 growers of sweet cherries in the production area and approximately 62 handlers subject to regulation under the order. The average production of sweet cherries in Washington State for the last three years is 64,676 tons with an average grower price of $1,943 per ton. Using this number, the average annual grower revenue is calculated to be approximately $83,777, thus indicating that the average Washington sweet cherry grower would qualify as a small entity according to the SBA definition.

Using Committee data regarding each individual handler's total shipments during the 2002 marketing year, and an estimated average FOB price of $24 per 20-pound container, 79 percent of the Washington sweet cherry handlers shipped under $5 million worth of sweet cherries, and 21 percent shipped over $5 million worth of sweet cherries. Therefore, the majority of Washington sweet cherry handlers may be classified as small entities.

The Committee is currently comprised of 10 growers and 6 handlers. Both small and large growers and handlers are members and member alternates on the Committee. Committee meetings are widely publicized in advance of the meetings and are held in a location central to the production area. The meetings are open to all industry members and all other interested persons, who are encouraged to participate in the deliberations and voice their opinions on topics under discussion.

At a May 22, 2003, full Committee meeting, all industry representatives present could present their views concerning the recommended amendments. Both large and small businesses were represented. The Committee believes that small and large entities would benefit equally from the proposed amendments.

Testimony indicates that the proposal to include paid advertising and production research under the order would assist both small and large growers and handlers in marketing Washington sweet cherry crops. While addition of this authority could result in increased assessments under the order, witnesses stated that the benefits arising from these activities, as evidenced by similar activities under the Commission, would outweigh the costs.

Similarly, the proposal to add authority for supplemental varietal assessments could require additional payments per individual variety of sweet cherry. However, witnesses stated that they believed the benefits of those research and promotion activities would outweigh the costs.

Witnesses used the example of recent Commission activities as evidence that research and promotion activities would lead to increased grower returns and market stability by providing tools to the industry to address expanding production and evolving consumer trends in the industry. Witnesses were unanimous in their belief that the benefits of the Commission's activities more than outweigh the costs of these programs. They stated that the same results would be expected from any such activities conducted under the order.

The proposal to add authority for the Committee to accept voluntary contributions would not result in any increased costs or burdens to the industry. In fact, witnesses stated that this authority would benefit the industry greatly as it could provide for additional funding sources of research and promotional activities. Safeguards against donor control over the use of voluntary contributions would ensure that these funds would be used in the best interest of the industry. The Committee would decide how to use those funds, and the decision-making process would be open to industry input and feedback.

The proposal to add a public member and alternate public member to the Committee is not expected to result in any substantial cost increases. While the new members would be entitled to reimbursement for their expenses, the additional cost would be minimal. Additionally, the benefit of adding a non-industry, consumer perspective to Committee deliberations and decision-making could prove very beneficial. Witnesses stated that this additional perspective would improve the Committee's understanding of the consumer in the marketplace and could enhance Committee activities aimed at increasing consumer demand for Washington sweet cherries.

The proposed amendment to add tenure requirements for Committee members would allow more persons the opportunity to serve as members of the Committee. It would provide for more diverse membership, provide the Committee with new perspectives and ideas, and increase the number of individuals in the industry with Committee experience.

The proposal to require continuance referenda on a periodic basis to ascertain grower support for the order would allow growers to vote on whether to continue the operation of the program. The referenda would be conducted by USDA.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impacts of the proposed amendments to the order on small entities. The record evidence is that while some minimal costs may occur, those costs would be outweighed by the benefits expected to accrue to the sweet cherry industry in designated counties of Washington.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. All of the amendments are designed to enhance the

administration and functioning of the program to the benefit of Washington cherry growers and handlers.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate so that this rulemaking may be completed prior to the 2005–2006 season. All written exceptions timely received will be considered and a grower referendum will be conducted before these proposals are implemented.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS announces its intention to request OMB approval of any increase in information collection burden for the Washington Cherry marketing order.

The Washington Cherry Marketing Committee (Committee) recommended adding a public member and alternate public member to the Committee. In conformance with the recommendation, a confidential qualification and acceptance statement would be used to nominate and appoint the public and alternate public committee members. This form is based on the currently approved Confidential Background Statement for the Washington Cherry Marketing Committee. If this proposal is implemented the form would only be used after approval by OMB.

Civil Justice Reform

The amendments to Marketing Order 923 proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

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

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(1) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of sweet cherries grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of sweet cherries grown in the production area; and

(5) All handling of sweet cherries grown in the production area as defined in the marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 923, is proposed to be amended as follows:

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR part 923 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 923.20 is revised to read as follows:

§ 923.20 Establishment and membership.

There is hereby established a Washington Cherry Marketing Committee consisting of seventeen members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he or she is an alternate. Ten members and their respective alternates shall be growers or officers or employees of corporate growers. Six of the members and their respective alternates shall be handlers, or officers or employees of handlers. One member and his or her respective alternate shall be a public member who is neither a grower nor a handler. The ten members of the committee who are growers or employees or officers of corporate growers are referred to in this part as "grower members" of the committee; and six members of the committee who shall be handlers, or officers or employees of handlers are referred to in this part as "handler members" of the committee. Five of the grower members and their respective alternates shall be growers of cherries in District 1, and five of the grower members and their respective alternates shall be growers of cherries in District 2. Three of the handler members and their respective alternates shall be handlers of cherries in District 1, and three of the handler members and their representative alternates shall be handlers of cherries in District 2.

3. Revise § 923.21 to read as follows:

§ 923.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two years beginning April 1 and ending March 31. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. Committee members shall not serve more than three consecutive terms. Members who have served for three consecutive terms must leave the committee for at least one year before becoming eligible to serve again.

4. Amend § 923.22 by adding a new paragraph (b)(4) to read as follows:

§ 923.22 Nomination.

* * * * *

(b) * * *

(4) The grower and handler members of the committee shall nominate the public member and alternate public member at the first meeting following the selection of members for a new term of office.

5. In § 923.41, paragraph (c) is redesignated as paragraph (d) and a new paragraph (c) is added to read as follows:

§ 923.41 Assessments.

* * * * *

(c) Based upon a recommendation of the committee or other available information, the Secretary shall fix the rate of assessment that handlers shall pay on all cherries handled during each fiscal period, and may also fix supplemental rates of assessment on individual varieties or subvarieties to secure sufficient funds to provide for projects authorized under § 923.45. At any time during the fiscal period when it is determined on the basis of a committee recommendation or other information that a different rate is necessary for all cherries or for any varieties or subvarieties, the Secretary may modify a rate of assessment and such new rate shall apply to any or all varieties or subvarieties that are shipped during the fiscal period.

* * * * *

6. A new § 923.43 is added to read as follows:

§ 923.43 Contributions.

The committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 923.45. Furthermore, such contributions shall be free from any encumbrances by the donor and the committee shall retain complete control of their use.

7. Section § 923.45 is revised to read as follows:

§ 923.45 Production and marketing research, promotion and market development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of projects involving production research, marketing research and development, and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption or efficient production of cherries. The expense of such projects shall be paid from funds collected pursuant to §§ 923.41 and 923.43.

8. Section 923.64 is amended by:

A. Revising paragraph (c).

B. Redesignating paragraph (d) as paragraph (e).

C. Adding a new paragraph (d).

The revisions read as follows:

§ 923.64 Termination.

* * * * *

(c) The Secretary shall terminate the provisions of this part whenever it is found that such termination is favored by a majority of growers who, during a representative period, have been engaged in the production of cherries: *Provided,* that such majority has, during such representative period, produced for market more than 50 percent of the volume of such cherries produced for market.

(d) The Secretary shall conduct a referendum six years after the effective date of this section and every sixth year thereafter, to ascertain whether continuance of this subpart is favored by growers. The Secretary may terminate the provisions of this subpart at the end of any fiscal period in which the Secretary has found that continuance of this subpart is not favored by growers who, during a representative period determined by the Secretary, have been engaged in the production of cherries in the production area.

* * * * *

Dated: September 29, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–22303 Filed 10–4–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–16–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all Airbus Model A300 B2 and B4 series airplanes, that would have superseded an existing AD that currently requires determining the part and amendment numbers of the variable lever arm (VLA) of the rudder control system to verify that the parts were installed using the correct standard, and corrective actions if necessary. For certain VLAs, the proposed AD would also have required repetitive inspections for damage, and replacement with a new VLA if necessary. This new action revises the proposed AD by mandating a terminating modification of the VLA, which would end the repetitive inspections. This new action also changes the applicability in the proposed AD. The actions specified by this new proposed AD are intended to prevent failure of both spring boxes of certain VLAs due to corrosion damage, which could result in loss of rudder control and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 26, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–16–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–16–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as

they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–16–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–16–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to all Airbus Model A300 B2 and B4 series airplanes, was published as a notice of proposed rulemaking (NPRM) (hereafter referred to as the "original NPRM") in the **Federal Register** on May 3, 2004 (69 FR 24097). The original NPRM proposed to supersede AD 2001–22–02, amendment 39–12481 (66 FR 54416, October 29, 2001), which is applicable to certain Airbus Model A300 B2 and B4 series airplanes. That original NPRM would have continued to require determining the part and amendment number of the variable lever arm (VLA) of the rudder control system to verify the parts were installed using the correct standard, and corrective actions if necessary. For certain VLAs, the original NPRM would have added repetitive inspections for damage, and replacement with a new VLA if necessary. The original NPRM would also have provided an optional action to replace the VLA with a new VLA, which would constitute terminating action for the repetitive inspections. The original NPRM was prompted by a new inspection program developed by the manufacturer that introduces a repetitive inspection of VLAs that are equipped with spring boxes having certain part numbers. Failure of both spring boxes of certain VLAs due to corrosion damage could result in loss of rudder control and consequent reduced controllability of the airplane.

In the preamble to the original NPRM, the FAA indicated that the actions required by that NPRM were considered "interim action" and that further rulemaking action was being considered. We have now determined that further rulemaking is indeed necessary, and this supplemental NPRM follows from that determination.

Actions Since Issuance of Original NPRM

Since the issuance of the original NPRM, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, issued French airworthiness directive 2004–091(B), dated June 23, 2004. The French airworthiness directive mandates modification of the VLA, which ends the repetitive inspections required by French airworthiness directive 2003–006(B), dated January 8, 2003 (referenced in the original NPRM). The revised French airworthiness directive supersedes French airworthiness directive F–2003–006(B).

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–27–0198, dated December 1, 2003, which describes procedures for modification of the VLA of the rudder control system. The modification includes installation of new, improved spring boxes, and re-identification of certain placards. The service bulletin specifies that accomplishing the modification eliminates the need for the repetitive inspections specified in Airbus Service Bulletin A300–27–0196, Revision 01, dated November 13, 2002 (which was referenced in the NPRM as the appropriate source of service information for accomplishment of the inspections and corrective actions). The service bulletin also describes procedures for a functional test of the VLA unit. The service bulletin references Goodrich Actuation Systems Service Bulletin 27–21–1H, dated December 8, 2003, as an additional source of service information for accomplishing the modification.

Conclusion

Since these changes expand the scope of the originally proposed rule, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

About 33 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 2001–22–02, and retained in this proposed AD, take about 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $65 per airplane.

The new inspection that would be required by the proposed AD would take about 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the new inspections on U.S. operators is estimated to be $2,145, or $65 per airplane, per inspection cycle.

The new modification that would be required by the proposed AD would take about 4 hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts cost would be minimal. Based on these figures, the cost impact of the new modification on U.S. operators is $8,580, or $260 per airplane.

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

Regulatory Impact

The regulations proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12481 (66 FR 54416, October 29, 2001), and by adding a new airworthiness directive (AD), to read as follows:

Airbus: Docket 2003–NM–16–AD. Supersedes AD 2002–08–13, Amendment 39–12481.

Applicability: Model A300 B2 and B4 series airplanes, certificated in any category; except those airplanes modified by Airbus Modification 12656.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of both spring boxes of the variable lever arm (VLA) due to corrosion damage, which could result in loss of rudder control and consequent reduced controllability of the airplane, accomplish the following:

Restatement of the Requirements of AD 2001–22–02

(a) Within 10 days after November 13, 2001 (the effective date of AD 2001–22–02, amendment 39–12481): Determine the part and amendment numbers of the VLA of the rudder control system to verify the parts were installed using the correct standard, in accordance with Airbus All Operators Telex (AOT) A300–27A0196, dated September 20, 2001; or in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–27–0196, Revision 01, dated November 13, 2002.

(1) If the part and amendment numbers shown are not correct, as specified in the AOT or the service bulletin, before further flight, do a detailed inspection of the VLA tie rod for damage (bent or ruptured rod) in accordance with the AOT or the service bulletin.

(i) If the tie rod is damaged, replace the VLA with a new VLA in accordance with the AOT or the service bulletin. Such replacement ends the requirements of this paragraph.

(ii) If the tie rod is not damaged, no further action is required by this paragraph.

(2) If the part and amendment numbers shown are correct, no further action is required by this paragraph.

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

New Requirements of This AD

(b) For airplanes having a VLA with any part number (P/N) other than 418473–20 or 418473–200: Within 500 flight hours after the effective date of this AD, do a detailed inspection of the tie rod for damage (bent or ruptured rod), in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–27–0196, Revision 01, dated November 13, 2002. Repeat the inspection thereafter at intervals not to exceed 1,000 flight hours, until paragraph (f) of this AD has been accomplished.

Replacement or Repair

(c) If any damage is found to the VLA or the rudder control system during any inspection required by paragraph (a)(1) or (b) of this AD, before further flight, replace the VLA with a new VLA (including a follow-up test) in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–27–0196, Revision 01, dated November 13, 2002.

Actions Accomplished in Accordance With Previous Issue of the Service Bulletin

(d) Actions accomplished before the effective date of this AD in accordance with Airbus Service Bulletin A300–27–0196, dated September 20, 2002, are considered acceptable for compliance with the corresponding actions specified in paragraphs (a), (b), and (c) of this AD.

No Reporting/Parts Return Requirements

(e) Although Airbus Service Bulletin A300–27–0196, Revision 01, dated November 13, 2002, describes procedures for submitting certain information to the manufacturer, and for returning certain parts to the manufacturer, this AD does not require those actions.

Terminating Modification

(f) Within 24 months after the effective date of this AD: Modify the applicable VLA, as required by either paragraph (f)(1) or (f)(2) of this AD, by doing all the applicable actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–27–0198, dated December 1, 2003. Accomplishing this modification ends the repetitive inspections required by paragraph (b) of this AD.

(1) For any VLA having a spring box with P/N 418473–20 or 418473–200: Install a new identification plate and re-identify the VLA.

(2) For any VLA having a spring box with P/N 418473 or 418473–100: Modify the spring box and re-identify the VLA.

Note 2: Airbus Service Bulletin A300–27–0198, dated December 1, 2003, references Goodrich Actuation Systems Service Bulletin 27–21–1H, Revision 3, dated December 8, 2003, as an additional source of service information for accomplishing the modification.

Alternative Methods of Compliance

(g) In accordance with 14 CFR 39.19, the Manager, International Branch, FAA, ANM–116, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 3: The subject of this AD is addressed in French airworthiness directive F–2004–091(B), dated June 23, 2004.

Issued in Renton, Washington, on September 29, 2004.

Kalene C. Yanamura,

Acting Manager, , Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–22356 Filed 10–4–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19245; Directorate Identifier 2004–NM–108–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, –500, –600, –700, –700C, –800 and –900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737–300, –400, –500, –600, –700, –700C, –800 and –900 series airplanes. This proposed AD would require modifying the wiring for the master dim and test system. For certain airplanes, this proposed AD would also require related concurrent actions as necessary. This proposed AD is prompted by a report that the master dim and test system circuit does not have wiring separation of the test ground signal for redundant equipment in the flight compartment. We are proposing this AD to prevent a single fault failure inflight from simulating a test condition and showing test patterns instead of the selected radio frequencies on the communications panels, which could inhibit communication between the flightcrew and the control tower, affecting the continued safe flight of the airplane.

DATES: We must receive comments on this proposed AD by November 19, 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. sbull By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Technical information: Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6485; fax (425) 917–6590.

Plain language information: Marcia Walters, *marcia.walters@faa.gov*.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form "Docket No. FAA–2004–99999." The Transport Airplane Directorate identifier is in the form "Directorate Identifier 2004–NM–999–AD." Each DMS AD docket also lists the directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2004–19245; Directorate Identifier 2004–NM–108–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 website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

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

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received a report indicating that the master dim and test system circuit does not have wiring separation of the test ground signal for redundant equipment in the flight compartment on certain Boeing Model 737–300, –400, –500, –600, –700, –700C, –800 and –900 series airplanes. This condition could allow a single fault to simulate a test condition in the annunciators, switches, and displays in the flight compartment. A single fault failure could also simulate a test condition on the communications panels and show test patterns instead of the selected radio frequencies. The flightcrew needs to know the selected radio frequencies so they can communicate with the control tower. In flight, if test patterns appear instead of the selected radio frequencies on the communications panels, communication between the flightcrew and the control tower could be inhibited, and the continued safe flight of the airplane could be affected.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 737–33–1132, Revision 1, dated March 4, 2004 (for Model 737–300, –400, and–500 series airplanes). We have also reviewed Boeing Service Bulletin 737–33–1133, Revision 2, dated December 4, 2003 (for Model 737–600, –700, –700C, –800, and –900 series airplanes). These service bulletins describe procedures for modifying the wiring for the master dim and test system. The modification includes re-routing existing wiring, creating splices, and performing operational testing.

For certain airplanes, Service Bulletin 737–33–1132 specifies prior or concurrent accomplishment of Boeing Service Bulletin 737–77–1022, currently at Revision 1, dated October 26, 1989. Service Bulletin 737–77–1022 describes procedures for installing an engine instrument system (EIS), and specifies prior or concurrent accomplishment of Boeing Service Bulletin 737–77–1023,

currently at Revision1, dated November 9, 1989. Service Bulletin 737–77–1023 describes procedures for modifying the advisory system for the EIS. Boeing Service Bulletin 737–77–1023 references Smiths Industries Service Bulletin 311EDP–77–348 as an additional source of service information for modifying the existing EIS unit.

For certain other airplanes, Service Bulletin 737–33–1133 specifies prior or concurrent accomplishment of Boeing Service Bulletin 737–26A1083, currently at Revision 1, dated November 15, 2001; and Boeing Service Bulletin 737–33–1121, currently at Revision 1, December 19, 2002. Service Bulletin 737–26A1083 describes procedures for installing a smoke detection and fire extinguishing system in the cargo compartment. Service Bulletin 737–33–1121 describes procedures for installing wiring for the test system for the audio control panel lamp.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require modifying the wiring for the master dim and test system. The proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

This proposed AD would affect about 2,868 airplanes worldwide, and 1,181 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Boeing service bulletin	Work hours	Average labor rate per hour	Parts	Cost per airplane
737–33–1132, Revision 1	14	$65	Nominal	$910
737–33–1133, Revision 2	3	65	Nominal	195

ESTIMATED CONCURRENT SERVICE BULLETIN COSTS

Boeing service bulletin	Work hours	Average labor rate per hour	Parts	Cost per airplane
737–26A1083, Revision 1 (Only one airplane affected).	185	$65	Between $30,000 and $36,400	Between $42,025 and $48,425.
737–33–1121, Revision 1	Between 5 and 6	65	Between $200 and $340	Between $525 and $730.
737–77–1022, Revision 1 (Only four airplanes affected).	72	65	No charge	$4,680.
737–77–1023, Revision 1	Between 1 and 3	65	Nominal	Between $65 and $195.

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2004–19245; Directorate Identifier 2004–NM–108–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by November 19, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–300, –400, and –500 series airplanes listed in Boeing Special Attention Service Bulletin 737–33–1132, Revision 1, dated March 4, 2004; and Model 737–600, –700, –700C, –800, and –900 series airplanes listed in Boeing Service Bulletin 737–33–1133, Revision 2, dated December 4, 2003; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report that the master dim and test system circuit does not have wiring separation of the test ground signal for redundant equipment in the flight compartment. We are issuing this AD to prevent a single fault failure inflight from simulating a test condition and showing test patterns instead of the selected radio frequencies on the communications panels, which could inhibit communication between the flightcrew and the control tower, affecting the continued safe flight 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.

Modification

(f) Within 30 months after the effective date of this AD: Modify the wiring for the master dim test system in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–33–1132, Revision 1, dated March 4, 2004 (for Model 737–300, –400, –500 series airplanes); and Boeing Service Bulletin 737–33–1133, Revision 2, dated December 4, 2003 (for Model 737–600, –700, –700C, –800, and –900 series airplanes); as applicable.

Actions Required To Be Accomplished Prior to or Concurrently With Paragraph (f) of This AD

(g) Prior to or concurrently with accomplishment of paragraph (f) of this AD, do the actions specified in Table 1 of this AD, as applicable.

TABLE 1—PRIOR/CONCURRENT ACTIONS

For—	Accomplish all actions associated with—	According to the Accomplishment Instructions of—
Group 57 airplanes identified in Boeing Service Bulletin 737–33–1132, Revision 1, dated March 4, 2004.	Installing an engine instrument system (EIS) and.	Boeing Service Bulletin 737–77–1022, Revision 1, dated October 26, 1989.
	Modifying the advisory system for the EIS	Boeing Service Bulletin 737–77–1023, Revision 1, dated November 9, 1989.
Group 4, 5, 7, 15, 16, 20, 24, 25, 29, 30, 33, 37, 39, 40, 41, and 46 airplanes identified in Boeing Service Bulletin 737–33–1133, Revision 2, dated December 4, 2003.	Installing wiring for the test system for the audio control panel lamp.	Boeing Service Bulletin 737–33–1121, Revision 1, dated December 19, 2002.
Group 2 airplanes identified in Boeing Service Bulletin 737–33–1121, Revision 1, dated December 19, 2002.	Installing splice SP896	Boeing Service Bulletin 737–26A1083, Revision 1, dated November 15, 2001.
Group 39 airplanes identified in Boeing Service Bulletin 737–33–1133, Revision 2, dated December 4, 2003.	Installing a smoke detection and fire extinguishing system in the cargo compartment.	Boeing Service Bulletin 737–26A1083, Revision 1, dated November 15, 2001.

Actions Accomplished per Previous Issue of Service Bulletins

(h) Actions accomplished before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 737–33–1132, dated March 20, 2003; Boeing Service Bulletin 737–33–1133, dated December 19, 2002; or Boeing Service Bulletin 737–33–1133, Revision 1, dated April 17, 2003, as applicable, are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on September 27, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–22355 Filed 10–4–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR 133

RIN 1505–AB51

Recordation of Copyrights and Enforcement Procedures To Prevent the Importation of Piratical Articles

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: As a result of technological advances available to those pirating copyrighted works, there has been a global increase in the importation of piratical works. Because of this increased risk to owners of protected copyrighted works and because most owners of copyrights in non-U.S. works do not register their copyrights as a matter of course, the Bureau of Customs and Border Protection (CBP) is proposing regulations that allow CBP to be more responsive to claims of piracy.

The CBP Regulations currently require that in order to be eligible for border protection all claims to copyright, foreign and domestic, be registered with the U.S. Copyright Office. This document proposes to allow sound recordings and motion pictures or similar audio-visual works to be recorded with CBP while pending registration with the U.S. Copyright Office. This document also proposes to amend the CBP Regulations to enhance the protection of all non-U.S. works by allowing recordation without requiring registration with the U.S. Copyright Office. Lastly, the proposed regulations set forth changes to CBP's enforcement procedures, including, among other things, enhanced disclosure provisions, protection for live musical performances and provisions to enforce the Digital Millennium Copyright Act.

DATES: Written comments must be submitted on or before November 4, 2005.

ADDRESSES: You may submit comments, identified by RIN 1505–AB51, by either of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul Pizzeck, Esq. or George F. McCray, Esq., Intellectual Property Rights Branch, Office of Regulations and Rulings, (202) 572–8710.

SUPPLEMENTARY INFORMATION:

Background

Due to a global increase in piracy and an increased risk to owners of protected copyrighted works as a result of technological advances available to those pirating such works, the Bureau of Customs and Border Protection (CBP) is proposing regulations that allow CBP to be more responsive to claims of piracy. In this document, CBP is proposing changes designed to better facilitate the recordation process with CBP for certain works and to strengthen the enforcement procedures to protect those rights.

Recordation of Protected Copyrighted Works

CBP is proposing several changes to subpart D of part 133 of the CBP Regulations regarding the recordation process, as set forth below.

Protection of Sound Recordings and Motion Pictures or Similar Audio-Visual Works Pending Registration With the U.S. Copyright Office

Presently, the CBP Regulations provide that only those claims to copyright, foreign and domestic, which have been registered with the U.S. Copyright Office may be recorded with CBP. Subparts D and E of part 133, CBP Regulations (19 CFR part 133, subparts D and E) prohibit the importation of piratical works that have been properly registered and recorded. However, piratical copies of sound recordings and motion pictures or similar audio-visual works are often found in the market before the owner of a copyright in those works can effect registration of the copyright with the U.S. Copyright Office. Although the copyrightability of these types of works is rarely a substantive issue, because of the time lapse between the application for registration and the granting of registration with the U.S. Copyright Office, significant imports of piratical articles can often occur before the copyright owner is able to secure registration with the U.S. Copyright Office.

For these types of works, it is during the periods of time prior to and immediately following the release of the work in which piracy is most likely to occur. As a result, pre-release copyright registration applications are generally avoided due to concerns about leaks arising from the sample copies submitted with the application which are made available to the public.

Securing border protection simultaneously with (or in some cases prior to) the commercial release of sound recordings and motion pictures or similar audio-visual works should help to prevent the importation into the U.S. of piratical goods. As a result, CBP is proposing to revise subparts D and E of part 133, CBP Regulations, in order to provide for border enforcement of U.S. copyrights for sound recordings and motion pictures or similar audio-visual works in which copyrightability is rarely a substantive issue, that are pending registration with the U.S. Copyright Office.

Concerning sound recordings and motion pictures or similar audio-visual works, CBP intends to accept a copy of a valid application for registration that has been filed with the U.S. Copyright Office as evidence of a copyrightable interest entitled to protection by CBP. The proposed regulations require that an applicant provide to CBP proof of registration with the U.S. Copyright Office no later than six months after the date of the application for recordation. If the applicant fails to provide proof of registration in a timely manner, CBP would cancel the related recordation. In addition, CBP proposes to reserve the right to cancel any recordation which it determines to have been obtained in any manner contrary to law. Permitting copyright owners of those certain categories of works for which copyrightability is rarely a substantive issue to make an initial recordation with CBP based on a filed, pending application for copyright registration rather than a perfected certificate of registration, will allow CBP to prevent the importation of piratical goods prior to the completion of the registration process.

Accordingly, in § 133.32 which covers the recordation procedure for protected copyrighted works, a new paragraph (b)(4) is proposed to include claims to copyright in sound recordings and motion pictures or similar audio-visual works which are not yet registered with the U.S. Copyright Office.

CBP notes that the above proposed change may result in an increased number of applications for recordation and, as each application is required to be accompanied by a $190 fee, an increased administrative burden in the processing of an increased number of individual payments. In order to mitigate processing costs for business and government, we are considering allowing alternative fee arrangements. For example, one annual payment may be made in lieu of individual application fees. The difference between the amount paid per recordation under the alternative arrangement and the standard single recordation fee (currently, $190) would not exceed the difference in processing costs. We are particularly interested in any comments on the fairness, equity, and potential administrative efficiency of such arrangements under 31 U.S.C. 9701.

Non-U.S. Works Entitled to Border Enforcement Protection

Under the current regulations, in order to seek protection from the importation of piratical copies, non-U.S. claimants holding a copyright entitled to enforcement are required to provide CBP with a valid certificate of registration issued by the U.S. Copyright Office and to record such registration with CBP. However, because most countries do not have registration systems and most non-U.S. copyright claimants do not register their works in the U.S. as a matter of course, and at the same time, due to technological advances available for pirating such works, there is an overall global increase in piracy and increased risk to owners of protected copyrighted works originating from throughout the world. Accordingly, CBP believes that it would be appropriate for non-U.S. claimants holding copyrights in such works to be entitled to record their claims with CBP regardless of whether they have registered their copyrights with the U.S. Copyright Office at the time of recordation.

Accordingly, in § 133.31(a) covering protected copyrighted works eligible for recordation, new regulatory text is proposed to include, among other things, certain claims to copyright in non-U.S. works that have not been registered with the U.S. Copyright Office, but which are recognized under the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention).

Recordation Application Process

Based on the above described changes, CBP is also proposing to amend § 133.32 of the CBP Regulations (19 CFR 133.32) which outlines the procedure for recordation and the information required in all applications to record a copyright with CBP. To carry out CBP protection of claims to copyright in certain U.S. works pending registration with the U.S. Copyright Office and claims to copyright in non-U.S. works which are entitled to protection under 17 U.S.C. 104, new paragraphs (b)(3) and (4) are proposed to be added to expand § 133.32 to provide for such claims.

New paragraph (b)(3) would permit owners of claims to copyrights in non-U.S. works to apply for recordation with CBP for the enforcement of such claims, even if not registered with the U.S. Copyright Office. This new paragraph

sets forth that non-U.S. works will be entitled to border enforcement protection when sufficient evidence of ownership of copyright in those works is provided to CBP through recordation with CBP. Sufficient evidence of ownership consists of a written affidavit (in English), appropriately sworn to by a duly authorized party, validating the existence, ownership, and nature of the rights claimed.

New paragraph (b)(4) would allow owners of claims to copyrights in U.S. sound recordings and motion pictures or similar audio-visual works for which copyrightability is rarely a substantive issue and for which securing border protection on an immediate basis is essential for purposes of preventing the importation of piratical articles, to record these works with CBP when registration is pending with the U.S. Copyright Office. The filing of such a claim will require the submission to CBP of a copy of a valid registration application officially filed with the U.S. Copyright Office for the specific work. Claims for protection made pursuant to either provision ((b)(3) or (4)) will be subject to independent verification by CBP, which will maintain sole discretion as to whether to accept such claims for enforcement.

In addition, to further clarify and simplify the recordation process and reduce the burden on those applying for recordation of claims to copyright, CBP is proposing other changes to §§ 133.32 and 133.33 which would: (1) Allow a "duly appointed representative" to record a claim to copyright for the copyright owner thereby eliminating the need for the copyright owner to personally file the application; (2) eliminate the requirement that an applicant supply four additional photocopies (or likenesses) of the protected copyrighted work with the application; (3) update the address to which completed applications are submitted; and (4) update the name of the agency to which fees are submitted for recordation of copyright to reflect the new name of the former U.S. Customs Service.

CBP is also proposing to require information regarding the citizenship of a copyright owner. Moreover, the current regulation requires that photographic or other likenesses be provided with an application for recordation in order to ensure that CBP has adequate information regarding a claim to copyright to enforce such rights. Works such as books, magazines, periodicals and sound recordings are excepted from this requirement. CBP is proposing to require that, as appropriate, either a sample, a digital image, or photograph of the protected work be submitted with the application to record the copyright. CBP is further proposing to require samples of sound recordings.

Enforcing the Prohibition on the Importation of Piratical Articles

CBP is proposing several changes to subpart E of part 133 of the CBP Regulations to achieve consistency with the above proposed changes concerning subpart D of part 133. The proposed changes, as set forth below, also serve to strengthen CBP's ability to enforce the prohibition against the importation of piratical articles.

Definition of "Protected Copyrighted Works"

Section 133.42(a) currently provides that "Infringing copies or phonorecords are 'piratical' articles." In order to more accurately and completely define "piratical articles," CBP is proposing to revise paragraph (a) of § 133.42 to define "piratical articles" as those which constitute unlawful copies (made without the authorization of the copyright owner) or phonorecords of "protected copyrighted works." The proposed amended language defines "protected copyrighted works" to encompass works registered with the U.S. Copyright Office and recorded with CBP, non-U.S. works which are entitled to protection under 17 U.S.C. 104 (including sound recordings and motion pictures or similar audio-visual works) for which relevant ownership information is recorded with CBP, and certain U.S. works pending registration with the U.S. Copyright Office that are duly recorded with CBP.

Disclosure to Copyright Owners Upon Infringement

CBP has determined that, in order to pursue all avenues of relief from copyright infringement, including seeking criminal prosecution of violators and pursuing private civil remedies for copyright infringement, an affected copyright owner must have access to certain information regarding parties attempting to import infringing piratical articles. In cases involving seizures of articles that circumvent copyright protection systems (technological measures) under the Digital Millennium Copyright Act (Pub. L. 105–304, 112 Stat. 2860, DMCA) (*see* Other Proposed Changes to the Regulations below), such information would be provided to the producers, or their duly authorized agents, of such copyright protection systems. Accordingly, CBP is proposing to amend its disclosure provisions regarding copyright violations in order to expand the information provided to copyright owners, or, in the case of articles seized pursuant to 19 CFR 133.42(c)(3) information provided to duly authorized agents of producers of copyright protection systems (technical measures), when merchandise violating their rights is seized at the border including information regarding articles seized for violation of the DMCA.

Currently § 133.42(d) provides that, when CBP seizes goods under that section, CBP will disclose to the owner of the copyright:

(1) The date of importation;
(2) The port of entry;
(3) A description of the merchandise;
(4) The quantity involved;
(5) The name and address of the manufacturer;
(6) The country of origin of the merchandise;
(7) The name and address of the exporter; and
(8) The name and address of the importer.

CBP is proposing to amend § 133.42(d) to provide that, in addition to the information above, when CBP seizes goods under that section, CBP will also disclose to the copyright owner or, for merchandise seized pursuant to § 133.42(c)(3), to the producer of the copyright protection system:

(9) Information from available shipping documents (such as manifests, air waybills, and bills of lading), including mode or method of shipping (such as airline carrier and flight number) and the intended final destination of the merchandise.

Procedures on the Suspicion of Piratical Copies

Section 133.43 contains the current procedures to be employed when CBP suspects that certain articles may be piratical articles. The current § 133.43 provides for: (1) Notice of detention of suspected articles to an importer and to a copyright owner, including the disclosure of certain information; (2) the disclosure of samples of suspected articles to the copyright owner; (3) the release of the goods in the case of inaction by the copyright owner and in cases where the copyright owner makes a written demand for the exclusion of the suspected articles, a bonding requirement and exchange of briefs process; and (4) alternative procedures to the administrative process (court action). In general, the current regulations provide that upon notification by a port director that CBP has reason to believe that an imported article may be a piratical copy or phonorecord of a copyrighted work, the

copyright owner may file a written demand for exclusion of the suspected infringing copies. Additional evidence, legal briefs, and other pertinent material to substantiate a claim or denial of piracy are then exchanged between the parties and eventually submitted to CBP for administrative review.

CBP believes that the existing procedures contained in § 133.43 are an outdated and inefficient mechanism to address the situation where CBP has a suspicion that certain goods may be piratical. These provisions are rarely used and unduly burdensome on CBP and all other parties involved. Essentially, these procedures interfere with CBP's ability to conduct the required investigation in a timely and efficient manner. Moreover, the process inhibits CBP from applying its expertise in an expedient manner to determine whether or not merchandise is piratical. Most importantly, these procedures are ineffective in aiding CBP in resolving the issue of whether certain merchandise is indeed piratical.

Likewise, § 133.44 outlines the actions to be taken when a claim of piracy under § 133.43 is sustained or denied.

Accordingly, CBP is proposing to remove § 133.43 and § 133.44 in their entirety. Instead, CBP is proposing regulations allowing CBP to detain merchandise when CBP has reasonable suspicion to believe that the merchandise is piratical and to seize merchandise that it determines to be piratical. In addition, the proposed regulations would facilitate the exchange of information between the copyright owners and CBP in order to assist CBP in making this determination.

Detention of Sound Recordings and Motion Pictures or Similar Audio Visual Works

CBP is proposing to add regulatory text in a newly created paragraph (b)(2) to § 133.42 that specifies CBP's power to detain articles that appear to be piratical copies of sound recordings, motion pictures, or similar audio-visual works to conduct further investigation. Accordingly, paragraph (b)(2) in § 133.42 proposes to allow CBP to detain, for up to 30 days, sound recordings and motion pictures or similar audio-visual works prior to registration with the U.S. Copyright Office when CBP has reasonable suspicion to believe that they constitute piratical copies even though there is no underlying copyright registration or recordation on file with CBP. Reasonable suspicion that certain articles are piratical may be based upon factors such as poor product quality, substandard packaging, irregular invoicing, methods of shipment, or other indicia of piracy.

Waiver of Bond Requirement for Samples Less Than $50.00

Section 133.42(e) of the CBP Regulations (19 CFR 133.42(e)) allows CBP to provide a sample of suspect merchandise to the owner of the copyright. The copyright owner seeking to obtain a sample is required to furnish a bond to CBP. CBP is proposing to allow port directors, at their discretion, to waive the bond requirement where the value of the sample is less than $50.00.

Other Proposed Changes to the Regulations

Adding DMCA Violations to Enforcement Provisions of Subpart E

In 1998, Congress enacted the DMCA. Among other things, the DMCA prohibits the circumvention of technological measures used by copyright owners to protect their works. A technological measure "effectively controls access to a work" if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.

Although the current CBP Regulations do not specifically provide for detention and seizure of articles that constitute violations of the DMCA, CBP has implemented the DMCA by providing CBP personnel with internal enforcement guidelines and advice on how to enforce DMCA violations. Where CBP finds that certain devices violate the DMCA, the goods are subject to seizure and forfeiture under 19 U.S.C. 1595a(c)(2)(C) for a violation of the DMCA (17 U.S.C. 1201(b)(1)).

Accordingly, CBP is proposing to include provisions for the detention and seizure of articles that constitute violations under the DMCA to the enforcement provisions of subpart E. Specifically, CBP is proposing to add paragraph (b)(3) to § 133.42 to provide for the detention of articles that CBP reasonably believes constitute violations of 17 U.S.C. 1201(b)(1). Such detentions will be limited to 30 days in duration. In the event that the Intellectual Property Rights (IPR) Branch within CBP's Office of Regulations & Rulings determines that such detained articles violate 17 U.S.C. 1201(b)(1), CBP will then seize them and institute forfeiture proceedings in accordance with part 162 of chapter I of the CBP Regulations. Articles determined by the IPR Branch not to violate 17 U.S.C. 1201(b)(1), will be released.

CBP is also proposing to add paragraph (c)(3) to § 133.42 to provide for the seizure of articles that the IPR Branch determines to violate 17 U.S.C. 1201(b)(1). Importers may petition for relief from the seizure and forfeiture under the provisions of part 171 of chapter I. Articles that have been seized and forfeited to the U.S. Government under part 133 will be disposed of in accordance with § 133.52(b).

Adding Recordings of Live Musical Performances in Violation of 18 U.S.C. 2319A to Enforcement Provisions of Subpart E

Section 2319A of title 18 (18 U.S.C. 2319A) states that copies of live musical performance that are "fixed" outside of the U.S. without the consent of the performer or performers involved are subject to seizure and forfeiture in the same manner as property imported in violation of the customs laws. Although CBP has had enforcement guidelines in place for several years, CBP has not promulgated regulations implementing section 2319A.

Accordingly, CBP is proposing to add, at § 133.52(c)(2)(iii), recordings of live musical performances determined by CBP to be in violation of 18 U.S.C. 2319A to the types of sound recordings subject to seizure.

Comments

Before adopting this proposed regulation as a final rule, consideration will be given to any written comments timely submitted to CBP, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 103.11(b), CBP Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that these

proposed amendments will not have a significant economic impact on a substantial number of small entities. The regulatory amendments reflect, implement, or clarify existing statutory and regulatory requirements created to protect the rights of legitimate copyright owners. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Signing Authority

The authority to approve regulations concerning copyright enforcement, was retained by the Secretary of the Treasury. The signing authority for these amendments, therefore, falls under § 0.1(a)(1), CBP Regulations (19 CFR 0.1(a)(1)). Accordingly, this document is signed by the Secretary of Homeland Security (or his or her delegate) and the Secretary of the Treasury (or his or her delegate).

Paperwork Reduction Act

The collection of information in this document is contained in § 133.32(b) of title 19 (19 CFR 133.32(b)). Under § 133.32(b), the information would be required and used to record copyrights with CBP for border enforcement protection of copyrights. The collection of this information would ensure that CBP has adequate information regarding a claim to copyright in order to protect the copyright owner's rights.

The collection of information encompassed within this proposed rule has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

Estimated annual reporting and/or recordkeeping burden: 4,000 hours.

Estimated average annual burden per respondent/recordkeeper: 2 hours.

Estimated number of respondents and/or recordkeepers: 2,000.

Estimated annual frequency of responses: 1.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) Whether the collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchases of services to provide information.

Part 178, CBP Regulations (19 CFR part 178), containing the list of approved information collections, would be revised to add an appropriate reference to 133.32(b), upon adoption of the proposal as a final rule.

List of Subjects in 19 CFR Part 133

Copying or simulating trademarks, Copyrights, Counterfeit trademarks, Customs duties and inspection, Detentions, Fees assessment, Imports, Labeling, Penalties, Piratical articles, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Seizures and forfeitures, Trademarks.

Proposed Amendments to the Regulations

It is proposed to amend part 133 of the Customs and Border Protection Regulations (19 CFR part 133), as discussed above and set forth below. For the reasons stated in the preamble, part 133 of the CBP Regulations (19 CFR part 133) is proposed to be amended to read as follows:

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

1. The general authority citation for part 133 and the specific citation for § 133.42 is revised to read as follows:

Authority: 15 U.S.C. 1124, 1125; 17 U.S.C. 101, 106, 501, 601, 602, 603; 19 U.S.C. 66, 1499, 1595a, 1526, 1624; 31 U.S.C. 9701.

* * * * *

Section 133.42 also issued under 17 U.S.C. 1201(b), 18 U.S.C. 2319A.

* * * * *

2. The heading to subpart D is revised to read as follows:

Subpart D—Recordation of Protected Copyrighted Works

3. Section 133.31 is revised to read as follows:

§ 133.31 Recordation of protected copyrighted works.

(a) *Eligible works.* The following works, collectively referred to in this part as "protected copyrighted works", when properly recorded with the Bureau of Customs and Border Protection (CBP) in accordance with the provisions of § 133.32, are eligible for border enforcement by CBP in accordance with the provisions of § 133.42:

(1) Non-expired claims to copyright in U.S. works which are registered with the U.S. Copyright Office and recorded with CBP;

(2) Claims to copyright in non-U.S. works entitled to protection under 17 U.S.C. 104 which are recorded with CBP; and

(3) Claims to copyright in sound recordings and motion pictures or similar audio-visual works eligible for recordation under the provisions of § 133.32.

(b) *Persons eligible to record.* The owner of a copyright registered with the U.S. Copyright Office, including any person who has acquired copyright ownership through an exclusive license, assignment, or otherwise, who has registered that ownership interest with the U.S. Copyright Office, or their duly appointed representative may file an application to record that registered copyright. In addition, claimants to copyright in non-US works protected under 17 U.S.C. 104 and claimants to copyright in sound recordings and motion pictures or similar audio-visual works may also file an alternative application to record such claims in accordance with the provisions of § 133.32 of this subpart. The term "copyright owner," with respect to any of the exclusive rights comprised in a copyright (*see* 17 U.S.C. 106), refers to the owner of a particular right protected under title 17.

(c) *Notice of recordation and other action.* Applicants will be notified of the approval or denial of an application filed in accordance with § 133.32 upon completion of review.

4. Section 133.32 is revised to read as follows:

§ 133.32 Procedure for recording protected copyrighted works.

(a) *Address.* Applications to record protected copyrighted works under this section must be submitted in writing, addressed to the Intellectual Property Rights Branch, Office of Regulations and

Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

(b) *Contents; format.* (1) All recordation applications must include the following information (an electronic copyright recordation template can be found at the CBP Web site (*http://www.cbp.gov*)):

(i) The name, complete business address, and citizenship of the copyright owner (or owners) or claimants to copyright for protected works (if a partnership, the citizenship of each partner; if an association or corporation, the state, country, or other political jurisdiction within which it was organized, incorporated, or created);

(ii) A complete description of the rights asserted which adequately identifies the work including, as appropriate, either: a sample of the article(s) containing the claimed protected work; a digital image of same; or a photograph of same reproduced on paper no larger than 8 ½″ x 11″ in size (an application will be excepted from this requirement if the subject matter is a work such as a book, magazine, periodical, or similar copyrighted matter readily identifiable by title and author);

(iii) The foreign title of the work, if different from the U.S. title;

(iv) In the case of copyright in a sound recording, a statement setting forth the name(s) of the performing artist(s) and any other information identifying the content thereof appearing on the reproduction surface of the sound recording or its label or container; and

(v) The place(s) of manufacture of genuine copyrighted articles and the identity of the manufacturer(s).

(2) For claims to copyright in U.S. works which have been registered with the U.S. Copyright Office, recordation applications must also contain an additional certificate of registration issued by the U.S. Copyright Office. Where the name of the applicant differs from the name of the copyright owner identified in the registration certificate issued by the U.S. Copyright Office, the application must be accompanied by a certified copy of any assignment, exclusive license, or other document showing that the applicant has acquired an ownership interest in the copyright.

(3) For claims to copyright in non-U.S. works, including sound recordings and motion pictures or similar audio-visual works, entitled to protection under 17 U.S.C. 104, recordation applications must also contain a written affidavit (in English), appropriately sworn to by a duly authorized party, validating the existence, ownership, and nature of the rights claimed. Claims for protection made under this provision are subject to independent verification by CBP, which maintains sole discretion as to whether to accept such claims for enforcement. CBP may require additional information where the written affidavit fails to provide sufficient clarity as to the nature or ownership of the work for which enforcement is being sought.

(4) For claims to copyright in U.S. sound recordings and motion pictures or similar audio-visual works pending registration with the U.S. Copyright Office, recordation applications must also contain a copy of a valid registration application with respect to the work and acceptable proof that such has been officially filed with the U.S. Copyright Office. Claims for protection made under this section are subject to independent verification by CBP, which maintains sole discretion as to whether to accept such claims for enforcement. CBP may require additional information where the copy of the registration application provided fails to provide sufficient clarity as to the nature or ownership of the work for which enforcement is being sought. The applicant must provide proof of registration with the U.S. Copyright Office no later than six months after the date of the application for recordation. Such proof will consist of an "additional certificate of registration" (*see* 17 U.S.C. 706) issued by the U.S. Copyright Office. In the event that the applicant fails to provide CBP with proof that a registration has been issued by the U.S. Copyright Office, CBP will cancel the related recordation. Where the name of the applicant for CBP recordation differs from the name of the copyright owner identified in the registration application filed with the U.S. Copyright Office, the application for recordation must be accompanied by a certified copy of any assignment, exclusive license, or other document showing that the party applying for recordation has acquired an ownership interest in the copyright.

(c) CBP reserves the right to cancel any recordation which it determines has been obtained in any manner contrary to law.

(d) *Fee.* Applications to record protected copyrighted works with CBP must be accompanied by a fee of $190 in the form of a check or money order made payable to the Bureau of Customs and Border Protection for each claim to copyright to be recorded. In order to reduce processing costs for business and government, CBP may enter into alternative fee arrangements with persons, companies, agents, or associations. Such alternative fee structures will be subject to review on a periodic basis to ensure fairness, equity, and administrative efficiency. Fees in any such alternative structure will reflect costs for services provided in processing the applications for recordation, including data input, tracking of amounts paid, review for sufficiency, interface with field officers (principally, maintenance of intranet and internet databases for field and trade use), record maintenance, and any correspondence and associated administrative costs regarding filing, issue resolution, and recordation. Any recordation under such an alternative arrangement will remain in effect for twenty years or until the copyright ownership expires. Any lump sum fee arrangement will be valid only for renewable annual periods. No such alternative arrangement will become effective until published in the **Federal Register** by DHS/CBP, with Treasury concurrence. The difference in the per recordation rate under the alternative arrangement and the standard single recordation fee should not exceed the difference in processing costs. If the difference in the per recordation rate under the alternative arrangement and the standard single recordation fee exceeds the difference in processing costs, the alternative arrangement fees in the following year will be adjusted to compensate for that difference.

§ 133.33 [Removed]

5. Section 133.33 is removed and reserved.

6. The heading to subpart E is revised to read as follows:

Subpart E—Enforcement of the Prohibition on Importation of Infringing Copies or Phonorecords

7. Section 133.42 is revised to read as follows:

§ 133.42 Piratical articles; Unlawful copies or phonorecords of protected copyrighted works.

(a) *Definition.* "Piratical articles" are those which are unlawfully made (without the authorization of the copyright owner) copies or phonorecords of protected copyrighted works. "Protected copyrighted works" for these purposes refers to works falling into any of the following categories:

(1) U.S. works registered with the U.S. Copyright Office and duly recorded with CBP pursuant to § 133.32;

(2) Non-U.S. works that are protected under 17 U.S.C. 104 (including sound recordings and motion pictures or similar audio-visual works) and where relevant ownership information is recorded with CPB pursuant to § 133.32;

(3) U.S. sound recordings and motion pictures or similar audio-visual works which have been duly recorded with CBP pursuant to § 133.32.

(b) *Detention.*

(1) *Detention of suspected piratical articles (other than sound recordings and motion pictures or similar audio-visual works) that are recorded with CBP.* Imported articles appearing to be piratical copies of protected copyrighted works, other than sound recordings and motion pictures or similar audio-visual works, for which a claim to copyright has previously been recorded with CBP pursuant to § 133.32, may be detained for a period not to exceed 30 days, if CBP has reasonable suspicion to believe that they constitute piratical copies. Upon determination by the IPR Branch, CBP Office of Regulations & Rulings, that such detained articles constitute piratical copies, CBP will seize them and institute forfeiture proceedings in accordance with part 162 of this chapter. Articles that are not determined by the IPR Branch within 30 days to be piratical copies will be released.

(2) *Detention of suspected piratical sound recordings and motion pictures or similar audio-visual works.* Imported articles consisting of sound recordings and motion pictures or similar audio-visual works may be detained for a period not to exceed 30 days if CBP has reasonable suspicion to believe that they constitute piratical copies. Where the genuine works or sound recordings are not recorded with CBP at the time of detention of suspected piratical copies, recordation must take place no later than 30 days after the date on which the suspect articles were detained. Upon determination by CBP that such detained articles constitute piratical copies, CBP will seize them and institute forfeiture proceedings in accordance with part 162 of this chapter, provided that the copyright has been recorded with CBP pursuant to § 133.32. Articles not recorded with CBP within 30 days or articles which are not determined by CBP to be piratical copies will be released.

(3) *Detention of articles suspected of constituting violations of the Digital Millennium Copyright Act (17 U.S.C. 1201(b)(1)).* Imported articles appearing to constitute violations of 17 U.S.C. 1201(b)(1) may be detained for a period not to exceed 30 days if CBP reasonably believes that such articles are primarily designed or produced for the purpose of circumventing protection afforded by a technological measure that effectively protects a right of a copyright owner; have only limited commercially significant purpose or use other than to circumvent such protection; or are marketed by the importer or trafficker, or another acting in concert with the importer or trafficker, for use in circumventing such protection. Upon determination by the IPR Branch, CBP Office of Regulations & Rulings, that such detained articles constitute violations of 17 U.S.C. 1201(b)(1) CBP will seize them and institute forfeiture proceedings in accordance with part 162 of this chapter. Articles that are not determined by the IPR Branch to constitute violations of 17 U.S.C. 1201(b)(1) will be released.

(c) *Seizure and forfeiture.* Articles which have been seized and forfeited to the U.S. Government will be disposed of in accordance with § 133.52 of this part, subject to the importer's right to petition for relief from the seizure and forfeiture under the provisions of part 171 of this chapter.

(1) *Seizure of copies of articles (other than sound recordings and motion pictures or similar audio-visual works).* (i) Imported articles which, at the time of presentment to CBP, clearly constitute piratical copies of protected copyrighted works other than sound recordings and audio-visual works, for which a claim to copyright has previously been recorded with CBP pursuant to § 133.32 are subject to immediate seizure. After seizure, piratical goods are subject to forfeiture proceedings in accordance with part 162 of this chapter. CBP will notify the importer of the seizure in accordance with part 162 of this chapter.

(ii) Imported articles detained pursuant to § 133.42(b)(1) that are determined by CBP to constitute piratical copies are subject to seizure. After seizure, piratical goods are subject to forfeiture proceedings in accordance with part 162 of this chapter. CBP will notify the importer of the seizure in accordance with part 162 of this chapter.

(2) *Seizure of sound recordings and motion pictures or similar audio-visual works.* (i) Imported articles which, at the time of presentment to CBP, clearly constitute piratical copies or phonorecords of protected copyrighted works, for which a claim to copyright has previously been recorded with CBP pursuant to § 133.32 are subject to immediate seizure. After seizure, piratical goods are subject to forfeiture proceedings in accordance with part 162 of this chapter. CBP will notify the importer of the seizure in accordance with part 162 of this chapter.

(ii) Imported articles which have been detained pursuant to § 133.42(b)(2), for which a claim to copyright has been recorded with CBP within 30 days after the date on which the suspect articles were detained, that are determined by CBP to constitute piratical copies are subject to seizure. After seizure, piratical goods are subject to forfeiture proceedings in accordance with part 162 of this chapter. CBP will notify the importer of the seizure in accordance with part 162 of this chapter.

(iii) Recordings of live musical performances determined by CBP to be in violation of 18 U.S.C. 2319A will be subject to seizure regardless of the recordation of any right with CBP. After seizure, piratical goods are subject to forfeiture proceedings in accordance with part 162 of this chapter. CBP will notify the importer of the seizure in accordance with part 162 of this chapter.

(3) *Seizure of articles determined by CBP to constitute violations of the Digital Millennium Copyright Act (17 U.S.C. 1201(b)(1)).* Imported articles determined by the IPR Branch, CBP Office of Regulations & Rulings to constitute violations of 17 U.S.C. 1201(b)(1) are subject to seizure regardless of the recordation of any right with CBP. After seizure, such goods are subject to forfeiture proceedings in accordance with part 162 of this chapter. CBP will notify the importer of the seizure in accordance with part 162 of this chapter.

(d) *Disclosure.* When merchandise is seized under this section, CBP will disclose to the owner of the protected copyrighted work (in the case of copyright piracy) or the producer, or duly authorized agent thereof, of circumvented copyright protection systems (in seizures effected for DMCA violations), the following information, if available, within 30 days, excluding weekends and holidays, of the date of the notice of seizure:

(1) The date of importation;

(2) The port of entry;

(3) A description of the merchandise;

(4) The quantity involved;

(5) The name and address of the manufacturer;

(6) The country of origin of the merchandise, if known;

(7) The name and address of the exporter;

(8) The name and address of the importer; and

(9) Information from available shipping documents (such as manifests, air waybills, and bills of lading), including mode or method of shipping (such as airline carrier and flight number) and the intended final destination of the merchandise.

(e) *Samples available to the copyright owner.* At any time following detention or seizure of the merchandise, CBP may provide a sample of the suspect

merchandise to the owner of the protected work for examination, testing, or any other use in pursuit of a related private civil remedy for copyright infringement. To obtain a sample under this section, the owner of the protected work must furnish to CBP a bond in the form and amount specified by the port director at the port of importation, conditioned to hold the U.S., its officers and employees, and the importer or owner of the imported article harmless from any loss or damage resulting from the furnishing of a sample by CBP to the copyright owner. This requirement may be waived at the discretion of the port director where the value of the sample is less than $50.00. CBP may demand the return of the sample at any time. The owner of the protected work must return the sample to CBP upon demand or at the conclusion of the examination, testing, or other use in pursuit of a related private civil remedy for copyright infringement. In the event that the sample is damaged, destroyed, or lost while in the possession of the owner of the protected work, the owner of the protected work must, in lieu of return of the sample, certify to CBP that: "The sample described as [insert description] provided by CBP pursuant to § 133.42(e) of the CBP Regulations was (damaged/destroyed/lost) during examination, testing, or other use."

(f) *Parallel Imports.* Copies or phonorecords made lawfully and imported into the U.S. without the consent of the owner of the protected copyrighted work, are not subject to detention, seizure, or forfeiture by CBP.

§ 133.43 [Removed]

8. Section 133.43 is removed and reserved.

§ 133.44 [Removed]

9. Section 133.44 is removed and reserved.

10. Section 133.46 is revised to read as follows:

§ 133.46 Demand for redelivery of released articles.

If CBP determines that articles which have been released from CBP custody are subject to the prohibitions or restrictions of this subpart, the appropriate field officer will promptly make demand for redelivery of the articles pursuant to § 141.113 of this chapter, under the terms of the bond on CBP Form 301, containing the bond conditions set forth in § 113.62 of this chapter. If the articles are not redelivered to CBP custody, a claim for liquidated damages may be made in accordance with § 141.113(h) of this chapter.

Dated: September 30, 2004.

Robert C. Bonner,

Commissioner of Customs and Border Protection.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 04–22334 Filed 10–4–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 361

[Docket No. 2004N–0432]

Radioactive Drugs for Certain Research Uses; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to discuss the use of certain radioactive drugs for research purposes without an investigational new drug application (IND) under the conditions set forth in FDA regulations (typically, use of radioactive drugs to determine drug disposition in the body). We are seeking public input on the potential need to modify the conditions under which these radioactive drugs are studied in light of the scientific and technological developments since we adopted the regulations in 1975.

DATES: The public meeting will be held on November 16, 2004, from 8 a.m. to 4 p.m. Submit electronic requests to speak plus a presentation abstract by October 19, 2004, to Maria R. Walsh. Submit final presentations and requests for special accommodations (due to disability) by November 2, 2004, to Maria R. Walsh. Submit written or electronic comments by January 16, 2005, to Division of Dockets Management.

ADDRESSES: The public meeting will be held at the CDER Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD 20857.

You may submit comments, identified by Docket No. 2004N–0432, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.
- E-mail: *fdadockets@oc.fda.gov*. Include Docket No. 2004N–0432 in the subject line of your e-mail message.
- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

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

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

Transcripts of the public meeting will be available for review at the Division of Dockets Management (see **ADDRESSES**) and on the Internet at *http://www.fda.gov/ohrms/dockets*.

FOR FURTHER INFORMATION CONTACT: Maria R. Walsh, Center for Drug Evaluation and Research (HFD–103), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3139, FAX 301–480–3761, e-mail: *walsh@cder.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing a public meeting to discuss research on radioactive drugs that is conducted under § 361.1 (21 CFR 361.1). We added this section to FDA regulations in 1975 (40 FR 31298 at 31308, July 25, 1975). Under § 361.1, certain radioactive drugs (drugs that exhibit spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons) are considered generally recognized as safe and effective under specified conditions of use when administered to human research subjects for certain basic research uses. These uses include studies intended to obtain basic information regarding the metabolism (including pharmacokinetics,

distribution, and localization) of a radioactive drug or regarding human physiology, pathophysiology, or biochemistry, but not those intended for immediate therapeutic, diagnostic, or similar purposes or those intended to determine the safety and effectiveness of the drug. When conducted in accordance with § 361.1, clinical investigations of radioactive drugs are not subject to the requirements for INDs stated in part 312 (21 CFR part 312).

In general, to conduct studies using radioactive drugs under § 361.1, an FDA-approved Radioactive Drug Research Committee (RDRC) must first conclude the following:

1. The pharmacological dose is limited such that the amount of active ingredient or ingredients administered is known not to cause any clinically detectable pharmacological effect, based on data available from published literature or from other valid human studies (§ 361.1(b)(2) and (d)(2)).

2. The radiation dose is limited such that the amount of radioactive material administered is the smallest radiation dose practical to perform the study without jeopardizing the benefits obtained from the study, and the dose, for adult subjects, does not exceed the following:

TABLE 1.—LIMITS OF RADIATION DOSE FOR ADULTS

Organ or System	Single Dose Sieverts (Rems)	Annual and Total Dose Sieverts (Rems)
Whole body	0.03 (3)	0.05 (5)
Active blood-forming organs	0.03 (3)	0.05 (5)
Lens of the eye	0.03 (3)	0.05 (5)
Gonads	0.03 (3)	0.05 (5)
Other organs	0.05 (5)	0.15 (15)

For subjects under 18 years of age, the radiation dose must not exceed 10 percent of the adult dose (§ 361.1(b)(3)).

3. The design and quality of the study and the importance of the information it seeks to obtain justify the exposure of research subjects to radiation (§ 361.1(b)(1)(iii)).

4. The investigator has appropriate qualifications for the conduct of a study involving radioactive drugs (§ 361.1(d)(3)).

5. The investigator has the appropriate licensure for handling radioactive materials (§ 361.1(d)(4)).

6. The mechanisms for selecting research subjects and obtaining informed consent are appropriate (§ 361.1(d)(5)).

7. The radioactive drug to be administered meets appropriate chemical, pharmaceutical, radiochemical, and radionuclidic standards for identity, strength, quality, and purity; and radioactive drugs for parenteral use are prepared in sterile and pyrogen-free form (§ 361.1(d)(6)).

8. The study is based on a sound rationale and is of sound design such that information of scientific value may result (§ 361.1(d)(7)).

9. There are mechanisms in place for identifying and reporting adverse reactions (§ 361.1(d)(8)).

10. The study has been reviewed and approved by an institutional review board (IRB) (§ 361.1(d)(9)).

Since we added § 361.1 in 1975, there have been numerous developments in imaging technology, pharmacology, toxicology, and dosimetry that have had a significant impact on the use of radioactive drugs. In light of these changes, we are considering whether issuance of guidance on, or even revision of, § 361.1 would be appropriate. To that end, we are holding a public meeting to obtain input on what actions we should take, if any, concerning the regulation of basic research involving radioactive drugs. To facilitate discussion at the public meeting and assist us in our review of this matter, we have the following questions concerning the application of § 361.1:

1. *Pharmacology Issues*: Section 361.1(b)(2) requires that the amount of radioactive drug to be administered be known not to cause any clinically detectable pharmacological effect in humans. According to § 361.1(d)(2), investigators must provide pharmacological dose calculations based on published literature or other human data to demonstrate an absence of a clinically detectable pharmacological effect (thus, no radioactive drug may be studied "first in humans" under current § 361.1).

a. For an active ingredient chemically manufactured in the laboratory that is also a body constituent (an endogenous substance), what percentage of estimated daily endogenous production could be considered to have no pharmacological effect? (Because heterogeneous biological products (e.g., monoclonal antibodies and therapeutic proteins such as interferon, interleukin, other cytokines, and enzymes) are foreign proteins and are assumed to have the potential to produce an antigenic response, they should be excluded from consideration unless they have been shown to have no immunologic response.)

b. For an active ingredient that is not endogenous, what animal, in vitro, and/or in vivo data would be needed to demonstrate that there is no human pharmacological effect? Is there an absolute dose that would ensure no pharmacological effect? If so, what data would be needed to support that dose?

c. How may an investigator confirm that a radioactive drug causes no clinically detectable pharmacological effect in humans in accordance with § 361.1(b)(2)? What parameters should be measured, how frequently, and what criteria should be used to determine if a pharmacologic effect has occurred?

2. *Radiation Dose Limits for Adult Subjects*: The radiation dose limits for adult subjects specified in § 361.1(b)(3)(i) are based on the basic occupational radiation protection criteria established by the Nuclear Regulatory Commission under 10 CFR 20.101. FDA's thinking in 1975 was that these criteria would enable a potential research subject to make an informed decision regarding participation in a study under § 361.1 because the subject would, in effect, be deciding whether he or she was willing to assume the same risk as a radiation worker for the duration of the study. Considering the advances in scientific knowledge and regulatory changes that have occurred

since 1975, including new data on radiation effects (Ref. 1) and new recommendations on radiation dose limits (Refs. 2, 3, and 4), are the current dose limits for adults still appropriate for research conducted under § 361.1? If not, what dose limits are appropriate? Should there be different dose limits for different adult age groups?

3. *Assurance of Safety for Pediatric Subjects*: Currently, § 361.1 allows for the study of radioactive drugs in subjects less than 18 years of age without an IND if:

- The study presents a unique opportunity to gain information not currently available, requires the use of research subjects less than 18 years of age, is without significant risk to subjects, and is supported with review by qualified pediatric consultants to the RDRC;
- The radiation dose does not exceed 10 percent of the adult radiation dose specified in § 361.1(b)(3)(i); and
- As with adult subjects, the following requirements, among others, are met: (1) The study is approved by an institutional review board (IRB) that conforms to 21 CFR part 56, (2) informed consent of the subjects' legal representative is obtained in accordance with 21 CFR part 50, and (3) the study is approved by the RDRC that assures all other requirements of § 361.1 are met.

Alternatively, when a study is conducted under an IND in accordance with part 312, the sponsor must submit to FDA the study protocol, protocol changes and information amendments, pharmacology/toxicology and chemistry information, and information regarding prior human experience with the same or similar drugs (see §§ 312.22, 312.23, 312.30, and 312.31). Additionally, § 312.32 requires that sponsors promptly review all information relevant to the safety of the drug obtained or otherwise received by the sponsor from any source, foreign or domestic. This includes information derived from any clinical or epidemiological investigations, animal investigations, commercial marketing experience, reports in the scientific literature, and unpublished scientific papers, as well as reports from foreign regulatory authorities. Section 312.32 also requires that sponsors submit IND safety reports to FDA.

a. Does § 361.1 provide adequate safeguards for pediatric subjects during the course of a research project intended to obtain basic information about a radioactive drug, or should these studies only be conducted under an IND?

b. If we assume that § 361.1 provides adequate safeguards for pediatric subjects during such studies, given our present knowledge about radiation and its effects, can we conclude that the current dose limits for pediatric subjects do not pose a significant risk? If not, what dose limits would be appropriate to ensure no significant risk for pediatric subjects? Should there be different dose limits for different pediatric age groups?

4. *Quality and Purity*: What standards for quality and purity should apply to radioactive drugs administered under § 361.1 to ensure the safety of research subjects?

5. *Exclusion of Pregnant Women*: Section 361.1(d)(5) requires that each female research subject of childbearing potential state in writing that she is not pregnant or, on the basis of a pregnancy test, be confirmed as not pregnant before she may participate in any research study involving a radioactive drug under § 361.1. Is written attestation adequate assurance that female research subjects are not pregnant? If not, what other assurance should be provided?

6. *RDRC Membership*:

a. Under § 361.1(c)(1), an RDRC must include the following expertise: (1) A physician recognized as a specialist in nuclear medicine, (2) a person qualified to formulate radioactive drugs, and (3) a person with special competence in radiation safety and radiation dosimetry. Would an RDRC benefit from any additional expertise, such as a pharmacologist or toxicologist? Should such memberships be required?

b. Under § 361.1(c)(4), changes in the membership of an RDRC must be submitted to FDA as soon as, or before, vacancies occur on the committee. However, the regulations do not require approval of new members by FDA before a new member assumes committee responsibilities. We review the qualifications of new members when we receive them and contact the RDRC when we identify new members we consider to be unqualified, but we do not always receive notifications of changes in membership in a timely manner. At times, this has resulted in unqualified members serving on RDRCs for extended periods. Should the regulations specifically require that FDA approve RDRC membership changes before new members assume committee responsibilities? For example, would it be appropriate for the regulations to allow FDA 15 days to review the qualifications of a proposed new member before the member could assume committee responsibilities?

II. Registration and Presentations

No registration is required to attend the meeting. Seating is limited to 120 and will be on a first-come, first-served basis. If you need special accommodations due to a disability, please inform Maria R. Walsh by November 2, 2004.

If you wish to present information at the public meeting, submit your electronic request and an abstract of your presentation by the close of business on October 19, 2004, to Maria Walsh (see **FOR FURTHER INFORMATION CONTACT**).

The request to participate should contain the following information:

(1) Presenter's name; (2) address; (3) telephone number; (4) e-mail address; (5) affiliation, if any; (6) abstract of the presentation; and (7) approximate amount of time requested for the presentation.

We request that persons and groups having similar interests consolidate their comments and present them through a single representative. We will allocate the time available for the meeting among the persons who request to present. Because of limited time, we will accept only one presenter per organization. We reserve the right to deny requests if the proposed topic is not germane. After reviewing the requests to present and abstracts, we will schedule each appearance and notify each participant by e-mail or telephone of the time allotted to the person and the approximate time the person's presentation is scheduled to begin. Presenters planning to use electronic presentations in Microsoft PowerPoint, Microsoft Word, or Adobe Acrobat PDF must send them to us by the close of business on November 2, 2004. Presenters who do not meet this deadline may provide handouts of their presentations at the meeting.

The meeting schedule will be available on the Internet at *http://www.fda.gov/cder/meeting/clinicalResearch/default.htm* and at the meeting. After the meeting, the schedule and presentations will be placed on file in the Division of Dockets Management under the docket number listed in the heading of this notice.

III. Comments

Interested persons may submit written or electronic comments on or before January 16, 2005, to the Division of Dockets Management (see **ADDRESSES**). You must submit two copies of comments identified with the docket number found in brackets in the heading of this document. The received comments may be seen at the Division of Dockets Management, Monday through Friday between 9 a.m. and 4 p.m.

IV. Transcripts

Approximately 30 days after the public meeting, you can examine a transcript of the meeting on the Internet at *http://www.fda.gov/ohrms/dockets/default.htm* or at the Division of Dockets Management (see **ADDRESSES**), Monday through Friday between 9 a.m. and 4 p.m. You may also request a copy of the transcript from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, at a cost of 10 cents per page or on CD at a cost of $14.25 each.

V. References

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

1. Preston, D.L., Y. Shimizu, D.A. Pierce, A. Suyama, and K. Mabuchi, "Studies of mortality of atomic bomb survivors, Report 13: Solid cancer and noncancer disease mortality: 1950–1997," Vol. 160, No. 4, pp. 381–407, Radiation Research, 2003.

2. International Commission on Radiological Protection, "1990 Recommendations of the International Commission on Radiological Protection," Annals of the International Commission on Radiological Protection (ICRP), ICRP Publication 60, vol. 21, No. 1–3, pp. 1–201, 1991.

3. National Council on Radiation Protection Measurements (NCRP), "Limitation of Exposure to Ionizing Radiation," NCRP Report no. 116, Bethesda, MD, 1993.

4. National Council on Radiation Protection and Measurements, "Principles and Application of Collective Dose in Radiation Protection," NCRP Report No. 121, Bethesda, MD, 1995.

Dated: September 24, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–22354 Filed 10–4–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[REG–120616–03]

RIN 1545–BC08

Entry of Taxable Fuel; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document contains a notice of public hearing on proposed regulations relating to the tax on the entry of taxable fuel into the United States.

DATES: The public hearing is being held on January 12, 2005, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by December 1, 2004.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

Mail outlines to: CC:PA:LPD:PR (REG–120616–03) , room 5203, Internal Revenue Service POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–120616–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS-REG–120616–03).

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing LaNita Van Dyke, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed regulations (REG–120616–03) that was published in the **Federal Register** on Friday, July 30, 2004 (69 FR 45631).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who have submitted written comments and wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight copies) by December 1, 2004.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of agenda will be made available, free of charge, at the hearing. Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Associate Chief Counsel, Legal Processing Division (Procedures and Administration).

[FR Doc. 04–22372 Filed 10–4–04; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI117–01–7347b; FRL–7637–1]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Wisconsin regulations as they pertain to Northern Engraving Corporation (NEC) facilities in Galesville and West Salem, Wisconsin as requested by the State of Wisconsin on June 27, 2003. This State Implementation Plan (SIP) revision makes changes to Wisconsin air pollution control rules federally enforceable. The rule revisions modify the emission limits adopted by the state that are part of the current Wisconsin SIP. The revised rules, specifically portions of the Environmental Cooperative Agreement with NEC, supercede portions of the rules in the Wisconsin SIP.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The rationale for approval is set forth in the direct final rule. If EPA receives no written adverse comments, EPA will take no further action on this proposed rule. If EPA receives written adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect. In that event, EPA will address all relevant public comments in a subsequent final rule based on this proposed rule. In either event, EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments on this action must be received by November 4, 2004.

ADDRESSES: Written comments should be mailed to: Pamela Blakley, Chief, Air Permits Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. *Blakley.Pamela@epa.gov.*

Comments may also be submitted electronically or through hand delivery/courier. Commenters are advised to review the information and follow the instructions for submitting comments as described in Part (I)(B) of the Supplementary Information section of the companion direct final rule published in the rules section of this **Federal Register**.

A copy of the state's request is available for inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras at (312) 886–0671, *Blathras.Constantine@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking today?

II. Where can I find more information about this proposal and corresponding direct final rule?

I. What Action Is EPA Taking Today?

The EPA is proposing to approve a revision to the Wisconsin regulations as they pertain to NEC's Galesville and West Salem, Wisconsin facilities as requested by the State of Wisconsin on June 27, 2003. The SIP revision makes changes to Wisconsin air pollution control rules federally enforceable. These rule changes were made at the request of NEC and the State of Wisconsin and they apply to the operation of the NEC Galesville and West Salem facilities. The rule revisions modify the emission limits adopted by the State of Wisconsin, which are part of the current Wisconsin SIP. The rule revisions and portions of the Environmental Cooperative Agreement supercede portions of rules in the Wisconsin SIP requiring a source-specific SIP revision.

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

For additional information see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Volatile organic compounds.

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

Dated: March 1, 2004.

Jo Lynn Traub,

Acting Regional Administrator, Region 5.

[FR Doc. 04–22251 Filed 10–4–04; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 69, No. 192
Tuesday, October 5, 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

Food Safety and Inspection Service

[Docket No. 04–035N]

Food Safety Institute of the Americas

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The Food Safety and Inspection Service will hold a public meeting on October 13–15, 2004, in Miami, Florida, to review and discuss the establishment of the Food Safety Institute of the Americas (FSIA). The creation of the FSIA is an innovative idea for integrating scientific food safety education, information, communication, and outreach in the Americas. During the public meeting, the following issues relating to the FSIA will be discussed: (1) Identifying and assessing educational and informational needs; (2) fostering collaboration and partnership development; (3) establishing strategies and best practices for developing and delivering programs; and (4) planning next steps for the FSIA.

The public meeting will be an interactive session. Discussions will be conducted in plenary sessions as well as in small group workshops for each of the above four issues.

DATES: The public meeting will begin on Wednesday, October 13, 2004, from 12 p.m. to 5 p.m. and on Thursday, October 14, from 8:30 a.m. to 5:30 p.m. and Friday, October 15, from 8:30 a.m. to 2 p.m.

ADDRESSES: All FSIA meetings will take place at the Radisson Hotel Miami, 1601 Biscayne Boulevard, Miami, Florida, 33132.

In addition, a block of rooms has been held for participants at the Marriott Biscayne Bay Hotel, 1633 North Bayshore Drive, Miami, Florida 33132. (Phone: 305–374–3900). Participants for the FSIA meeting will receive a special rate of $119.00 per night. Reservations must be confirmed with the necessary credit card or payment information no later than October 8, 2004. Please reference the USDA–FSIA meeting when making reservations.

A meeting agenda is available on the Internet at *http://www.fsis.usda.gov/News_&_Events/Meetings_&_Events* which is a sub-website of the FSIS home page, at *http://www.fsis.usda.gov*. FSIS invites interested persons to submit comments on the topics to be discussed at the public meeting. Comments may be submitted by any of the following methods:

- Mail, including floppy disks or CD–ROM's, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102, Cotton Annex, Washington, DC 20250–3700.

All submissions received must include the Agency name and docket number 04–035N.

All comments submitted on the topics to be discussed at the public meeting will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations/2004_notices_index/index.asp*.

FOR FURTHER INFORMATION CONTACT: Linda Swacina, The Food Safety Institute of the Americas office at 305–347–5552, *linda.swacina@fsis.usda.gov* or Mr. Robert Tynan, SIPO–Office of Public Affairs Education and Outreach at 202–690–6522, *robert.tynan@fsis.usda.gov* for technical information.

All meeting participants will be required to pre-register before entering the meeting. A pre-registration form is located at: *http://www.fsis.usda.gov/News_&_Events/Meetings_&_Events*. You may also call in your registration using a special toll free number that has been established for the public meeting. To phone in registration, please call 866–520–8999.

Persons requiring a sign language interpreter or other special accommodations should notify the FSIA office no later than October 7, 2004, at the above number or by e-mail.

SUPPLEMENTARY INFORMATION:

Background

The explosive growth of the international food market has brought a variety of food never before available to the ordinary consumer's table throughout the Americas. People can consume new products from different regions and enjoy traditional seasonal favorites throughout the year. Countries are now more dependent on each other's safeguards to guarantee their citizens a wholesome food supply and to protect the public health of their country and the region.

The nations of the Americas make up a community committed to meeting the many challenges of ensuring food safety and security. One approach to these complex problems is for our countries to develop and effectively exchange scientific information and education on food safety and security risks and on how to manage them.

The FSIA is an innovative approach for harmonizing, developing, and distributing food safety and security information and education throughout the Americas; coordinating programs so that we concentrate on areas where our needs are the greatest; sharing resources on programs that already exist within our community; promoting the development of international food safety standards; and protecting ourselves as a region from food security threats.

To do this, the FSIA will develop and enlist the support of existing networks among researchers, public health officials, regulatory officials, and food and animal producers and distributors. There are many academic, governmental and nongovernmental organizations with wide-ranging expertise that would make them potential partners in FSIA's development and implementation.

FSIA Subject Areas or Colleges

In one scenario, the FSIA would be divided into the following nine colleges and include development and implementation of training, education, and information materials in these areas: (1) Codex Alimentarius; (2) Regulatory Foundation Studies; (3) Public Health Studies; (4) Food Security; (5) Manufactured Foods; (6) Animal and Food Production Studies; (7) Retail Programs; (8) Laboratory Studies; and (9) Consumer Education and Information Programs.

FSIA Benefits

The major goal of the FSIA is to improve and harmonize food safety education, information, and communication throughout the Americas in order to improve public health within each and among the countries of the region. It will provide major outreach activities to identify, develop, and coordinate educational programs and to promote the development of international food safety standards and common food security protection.

FSIA will provide the region with greater access to food safety information and the technical assistance necessary to ensure the safety of meat, poultry, and egg products. In addition, FSIA will promote the activities of the Codex Alimentarius Commission to bring about standardization of food safety requirements and become a forum for scientific discussion relevant to food safety and international standards in the Americas. In this way, it will encourage and support development of science-based agreements that strengthen national and local economies.

Conclusion

The FSIA will help establish working relationships among collaborating countries through regular interaction of academic researchers and educators, government regulators, and food safety professionals. Enhancing and fostering these contacts are critically important in addressing regional food safety concerns and improving understanding about requirements for imported and exported products.

All interested parties are welcome to attend the meetings and to submit written comments and suggestions addressing issues concerning the FSIA that will be reviewed and discussed. The comments and the official transcript of the meeting, when they become available, will be kept in the FSIS Docket Room at the address provided above. All comments received in response to this notice will be considered part of the public record and will be available for viewing in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday, except for Federal holidays.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that the public and in particular that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web site located at *http://www.fsis.usda.gov*.

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

Done at Washington, DC on September 30, 2004.

Bryce Quick,

Acting Administrator.

[FR Doc. 04–22392 Filed 10–1–04; 8:45 am]

BILLING CODE 1410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 04–034N]

Salmonella Enteritidis in Shell Eggs and *Salmonella* spp. in Liquid Egg Products Risk Assessments Technical Meeting

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting and availability of draft risk assessments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that it will hold a public meeting to discuss two draft quantitative risk assessments on *Salmonella* Enteritidis (SE) in shell eggs and *Salmonella* spp. in liquid egg products. The first is a quantitative risk assessment of SE in shell eggs. The second is a quantitative risk assessment of *Salmonella* spp. in pasteurized liquid egg products. The Agency is also announcing the availability of these draft risk assessments and an opportunity to comment on them. The Agency has prepared these draft risk assessments to provide scientific information on which to base pathogen reduction lethality performance standards that the Agency intends to propose for pasteurized shell eggs and pasteurized egg products. These performance standards are intended to reduce the incidences of foodborne illness associated with eggs and egg products.

At the public meeting, FSIS will discuss the technical design and assumptions used to create these draft risk assessments. The draft risk assessments will be available in the FSIS docket room (address below) and will be posted to the FSIS Web site at *http://www.fsis.usda.gov/regulations_&_policies/2004_Notices_Index/index.asp* on or before October 15, 2004.

DATES: The public meeting is scheduled for Friday, October 22, 2004. The meeting will be held from 9 a.m. to 12:30 p.m. Submit written comments on the draft risk assessments on or before November 15, 2004.

ADDRESSES: The public meeting will be held at the Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC, 20001.

A tentative agenda is available in the FSIS docket room (address below) and on the FSIS Web site at *http://www.fsis.usda.gov/regulations_&_policies/2004_Notices_Index/index.asp*. FSIS invites interested persons to submit comments on the two draft risk assessments by any of the following methods:

- Mail, including floppy disks or CD-ROM's, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102, Cotton Annex, Washington, DC 20250.

All submissions received must include the Agency name and docket number 04–034N.

All comments received and the official transcript of the meeting will be available for viewing in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/OPPDE/rdad/FRDockets.htm*.

FOR FURTHER INFORMATION CONTACT: Philip Derfler, Assistant Administrator, Office of Policy, Program, and Employee Development, FSIS, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–3700, (202) 720–2709. For technical information, contact Carl Schroeder, Ph.D., at (202) 690–6346 or e-mail *carl.schroeder@fsis.usda.gov*. Members of the public will be required to pre-register for this meeting. Persons may pre-register by calling (202) 690–6516 or e-mailing *renee.ellis@usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

FSIS administers the Egg Products Inspection Act (21 U.S.C. 1031–1056). The Agency's current activities are intended to prevent the distribution in domestic and foreign commerce, as human food, of unwholesome, adulterated, or misbranded pasteurized egg products.

For the past several years, FSIS and the Food and Drug Administration (FDA) have been developing a joint and coordinated strategy to more effectively deal with egg safety. Pursuant to this coordinated strategy, FDA recently published a proposed rule that would require shell egg producers to implement measures to prevent SE from contaminating eggs on the farm (69 FR 56823, Sept. 22, 2004). FSIS, in turn, is focusing its pathogen reduction efforts on egg products plants and egg handling operations that pasteurize shell eggs.

To better evaluate potential mitigations for reducing the public health impact of SE and *Salmonella* spp., as well as improve the safety of pasteurized shell eggs and liquid egg products, FSIS has developed two draft quantitative risk assessments on SE in shell eggs and *Salmonella* spp. in liquid egg products. These draft risk assessments build upon the 1998 joint FSIS–FDA *Salmonella* Enteritidis Risk Assessment (SERA), which was developed to establish the risk of SE in shell eggs and *Salmonella* spp. in liquid egg products to human health and to identify and evaluate potential risk reduction strategies. However, the 1998 SERA did not have sufficient data to provide a scientific basis for FSIS to develop egg safety standards for egg products.

Since 1998, new data have become available that has allowed FSIS to develop risk assessments that are more useful for developing FSIS performance standards for SE in pasteurized shell eggs and *Salmonella* spp. in liquid egg products. This new information includes data collected from a national baseline survey conducted by FSIS to measure *Salmonella* levels in liquid egg products and data collected by the University of Nebraska on the lethality kinetics of *Salmonella* spp. in a wide variety of liquid egg products. These draft risk assessments provide important data that the Agency intends to use in deciding what pathogen reduction lethality standards to propose for the processing of pasteurized shell eggs and pasteurized egg products.

FSIS requests comment on these draft risk assessments and will hold a public meeting to discuss and seek input on them on October 22, 2004, at (*see* **ADDRESSES** above). The draft risk assessments will be made available for review on October 15, 2004, when they will be posted on the FSIS Web site.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov.*

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

Done in Washington, DC, on: September 29, 2004.

Barbara J. Masters,

Acting Administrator.

[FR Doc. 04–22302 Filed 10–4–04; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Coast Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Province Advisory Committee will meet in Corvallis, OR, October 14, 2004. The theme of the meeting is Introduction/Overview/Business Planning. The agenda includes: PAC Subcommittee Updates, RiverPrize Update, Special Forest Products, 2005 Meeting Theme/Agenda/Dates, Public Comment and Round Robin.

DATES: The meeting will be held October 14, 2004, beginning at 9 a.m.

ADDRESSES: The meeting will be held at the Siuslaw National Forest Headquarters, 4077 SW. Research Way, Corvallis, Oregon, 97333.

FOR FURTHER INFORMATION CONTACT: Joni Quarnstrom, Public Affairs Specialist, Siuslaw National Forest, 541–750–7075, or write to Siuslaw National Forest Supervisor, P.O. Box 1148, Corvallis, OR 97339.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council Discussion is limited to Forest Service/BLM staff and Council Members. Lunch will be on your own. A public input session will be at 2 p.m. for fifteen minutes. The meeting is expected to adjourn around 3 p.m.

Dated: September 29, 2004.

Michael A. Harvey,

Assistant Recreational Staff.

[FR Doc. 04–22341 Filed 10–4–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) approval of minutes, (3) public comment, (4) chairman report, (5) new members welcome, (6) review of projects funded to date, (7) general discussion, (8) next agenda.

DATES: The meeting will be held on October 14, 2004 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; Email *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after

the meeting. Public input sessions will be provided and individuals who made written requests by October 12, 2004 will have the opportunity to address the committee at those sessions.

Dated: September 29, 2004.

James F. Giachino,

Designated Federal Official.

[FR Doc. 04–22324 Filed 10–4–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Integrated Resource Contracts FS–2400–13 and FS–2400–13T

AGENCY: Forest Service, USDA.

ACTION: Notice of interim contracts, request for comments.

SUMMARY: The Forest Service is implementing Integrated Resource Contracts, FS–2400–13, for use when timber products are measured after harvest, and FS–2400–13T, for use when timber products are measured before harvest. The contracts are for use in stewardship end result contracting pursuant to section 323 of Public Law 108–7, the Consolidated Appropriations Resolution (16 U.S.C. 2104 note), when the value of timber exceeds the cost of service work. Except for additions addressing new stewardship contracting authorities, both contracts parallel the recently revised Timber Sale Contracts FS–2400–6 and FS–2400–6T which became effective upon notice in the **Federal Register** on May 6, 2004 (69 FR 25367). The Integrated Resource Contracts are available electronically and in paper copy, as provided in the **ADDRESSES** section of this notice. Comments received will be considered when the Forest Service prepares the final Integrated Resource Contracts.

DATES: Comments must be received in writing on or before November 4, 2004.

ADDRESSES: Send written comments by mail to USDA Forest Service, Director Forest Management, 1400 Independence Avenue, SW., Mail Stop 1103, Washington, DC 20250–0003; via e-mail to: *integratedresourcecontracts@fs.fed.us;* or via facsimile to (202) 205–1045. Comments may also be submitted via the World Wide Web Internet Web site at: *http://www.regulations.gov.* All comments including names and addresses when provided are placed in the record and are available for public inspection and copying. The Integrated Resource Contracts are available for public review on the Forest Service World Wide Web/Internet site at: *http://www.fs.fed.us/forestmanagement/projects/stewardship/contracts.* Alternatively, these can be viewed in the office of the Director of Forest Management, Third Floor, Northwest Wing, Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead to (202) 205–0893 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Richard Fitzgerald, Forest Management Staff, (202) 205–1753, or Lathrop Smith, Forest Management Staff, (202) 205–0858.

SUPPLEMENTARY INFORMATION:

Background

Section 323 of Public Law 108–7, the Consolidated Appropriations Resolution (16 U.S.C. 2104 note), established new authorities for stewardship contracting not addressed in existing Forest Service timber sale contract forms. In general, the new authorities allow the Forest Service to enter into stewardship contracts with public or private entities or persons to perform services to achieve land management goals for National Forest System lands that meet local and rural community needs. By combining components of both service and timber sale contracts into a single integrated resource contract the value of timber or other forest products removed can be used as an offset against the cost of services received. Integrated Resource Contracts FS–2400–13 and FS–2400–13T are for use with stewardship end result contracting when the value of timber exceeds the cost of service work. Except where they deviate to address the new authorities and the limitation of compensation in the event of a sovereign act that would affect a stewardship contract, the FS–2400–13 and FS–2400–13T contracts parallel the recently revised Timber Sale Contracts FS–2400–6 and FS–2400–6T which became effective upon notice in the **Federal Register** on May 6, 2004 (69 FR 25367). The revisions were the first substantive changes to the standard timber sale contract provisions in over 30 years. A notice with request for comment on the proposed FS–2400–6 and FS–2400–6T contract revisions was published in the **Federal Register** on December 19, 2003 (68 FR 70758). The Forest Service made appropriate changes to the contracts in response to the public comments and those are incorporated in the FS–2400–13 and FS–2400–13T contracts as well. Timber Sale Contracts FS–2400–6 and FS–2400–6T are available on the World Wide Web/Internet site at: *http://www.fs.fed.us/forestmanagement/infocenter/newcontracts/index.shtml.*

Description of Interim Integrated Resource Contracts FS–2400–13 and FS–2400–13T

Integrated Resource Contracts FS–2400–13 and FS–2400–13T were patterned after the FS–2400–6 and FS–2400–6T contracts respectively. However, in order to address new authorities in section 323 of Public Law 108–7, the Consolidated Appropriations Resolution (16 U.S.C. 2104 note), the following conditions and provisions were added to the Integrated Resource Contracts:

1. *E/ET2.2 Stewardship Credits.* These are credits that the contractor will establish for performing stewardship work. These may be used to pay for included timber value subject to certain limits set in the contract.

2. *E/ET.2.2.1 Progress Estimate.* This requires the Forest Service to make timely estimates of a contractor's progress on stewardship projects.

3. *E/ET.2.2.2 Excess Stewardship Credits.* In the event that stewardship credits exceed the value of timber, the Forest Service may either add more timber, or make a cash payment to the contractor for unused stewardship credits.

4. *E/ET.2.2.3 Excess Timber Value.* In the event that the value of included timber exceeds the value of mandatory stewardship projects, the Forest Service may authorize additional optional projects if any were identified and/or require a cash payment from the contractor for excess timber value.

5. *E/ET.2.2.4 Cash Payment for Stewardship Projects.* In lieu of providing timber for established stewardship credits, Forest Service may elect to provide the contractor a cash payment.

6. *G/GT.3.1.1 Technical Proposal.* This replaces B/BT6.311 Plan of Operations in the FS–2400–6 and FS–2400–6T timber sale contracts. Bidders will be required to submit a technical proposal detailing how they will perform the contract work. This provision makes the technical proposal from the accepted bidder a binding part of the contract.

7. *G/GT.9 Stewardship Projects.* This provision requires the contractor to perform all mandatory stewardship projects listed in the specific conditions section of the contract and addresses procedures for identifying optional projects to include.

8. *G/GT.9.1 Refund of Unused Stewardship Credits.* This provision provides for making a refund to the contractor for any unused stewardship credits in event that the Contracting Officer requests that the contractor

interrupt or delay operations for more than 60 days.

In addition to the changes listed above, the Integrated Resources Contract provisions differ from the timber sale contracts in the following areas:

1. Integrated resource contract provision I/IT2.3-Contract Term Extension, combines timber sale contract provisions B/BT8.23-Contract Term Extension, and B/BT8.231, Conditions for Contract Term Extension.

2. Integrated resource contract provisions J/JT.4-Damages for Failure to Complete Contract or Termination for Breach, expands timber sale contract provision B/BT6.31 to address stewardship projects.

3. The timber sale contracts under provision B/BT6.9 required the purchaser to provide access to records to enable the Forest Service to develop and evaluate appraisal data. The Integrated Resource Contracts do not contain a comparable requirement because the services components of these contracts would skew operating costs rendering the data unreliable for comparative purposes.

Conclusion

Comments will be considered when the Forest Service prepares the final Integrated Resource Contracts, FS–2400–13 and FS–2400–13T. When the Integrated Resource Contracts are finalized, a subsequent notice will be published in the **Federal Register**.

Dated: September 22. 2004.

Dale N. Bosworth,

Chief.

[FR Doc. 04–22338 Filed 10–4–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Supplemental Watershed Plan No. 1 East Fork of the Grand River Watershed and Environmental Assessment for East Fork of the Grand River Watershed Plan and Environmental Impact Statement (Approved 1996), Ringgold and Union Counties, IA, and Harrison and Worth Counties, MO

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c)of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice than an environmental impact statement is not being prepared for the Supplemental Watershed Plan No. 1 for East Fork of the Grand River Watershed Plan and Environmental Impact Statement (Approved 1996), Ringgold and Union Counties, Iowa, and Harrison and Worth Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Richard Van Klaveren, State Conservationist, Natural Resources Conservation Service, 210 Walnut Street, 693 Federal Building, Des Moines, IA 50309–2180.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant impacts on the environment. As a result of these findings, Richard Van Klaveren, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This document sets forth a supplement to the East Fork of the Grand Watershed Plan–EIS that slightly relocates and enlarges multipurpose structure GB–3 from a permanent pool of 350 acres to 565 acres. The 565 acre site will be renamed Gooseberry Lake. The increase in size is to meet additional other agricultural water management and recreation needs.

Gooseberry Lake and its 6210 acre watershed are northeast of Mount Ayr and are located entirely in Ringgold County, Iowa.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies. A limited number of copies of the FONSI are available to fill single copy requests at the above address. The FONSI is also available at the Iowa NRCS Web site at *http://www.ia.nrcs.usda.gov*. A copy of the Supplemental Watershed Plan–Environmental Assessment may be obtained by contacting Richard Van Klaveren.

No administrative action will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: September 28, 2004.

Richard Van Klaveren,

State Conservationist.

Finding of No Significant Impact for the Supplemental Watershed Plan No. 1 East Fork of the Grand River Watershed and Environmental Assessment Ringgold County, Iowa

Introduction

The Supplemental Watershed Plan No. 1 East Fork of the Grand River Watershed and Environmental Assessment (EA) describes the recommended alternative which is a modification of the GB–3 multipurpose site that was part of the East Fork of the Grand River Watershed Plan and Environmental Impact Statement (EIS). The Supplemental Watershed Plan No. 1–EA compares the effects that will arise from the installation of Gooseberry Lake to those that would have occurred from the installation of the original GB–3 structure.

This modification of the GB–3 site is necessary to meet the Sponsors' request to increase the water supply and recreation resources from those originally planned for GB–3 lake site in order to satisfy increased demands for these resources from the public.

The East Fork of the Grand River Watershed Plan and EIS was approved in 1996 under the authority of the Watershed Protection and Flood Prevention Act of 1954 (Public Law No. 566, 83rd Congress).

This supplemental plan–EA is being planned and will be implemented under the same authority. It is being planned and is in compliance with all National Environmental Policy Act (NEPA) and the National Historic Preservation Act of 1966 as amended (NHPA) provisions. The policies and procedures of the Watershed Protection and Flood Prevention Act, Public Law 83–566 as amended (16 U.S.C. 1001 *et seq.*) are being utilized for the planning and implementation of this project.

An environmental evaluation was undertaken by the Natural Resources Conservation Service (NRCS) in conjunction with the development of this supplemental plan–EA. This evaluation was undertaken in consultation with local, State and Federal agencies as well as interested organizations and individuals. Copies of the supplemental plan–EA are available for public review from the following location: Natural Resources Conservation Service, 210 Walnut Street, 693 Federal Building, Des Moines, IA 50309–2180.

Recommended Action

Site GB–3 will be moved downstream and increased in size. This relocated structure site is renamed Gooseberry Lake. The Gooseberry Lake Association will acquire the 2,365 acres needed for Gooseberry Lake and surrounding area for public use as a fish and wildlife area. The Gooseberry Lake will have a permanent pool of 565 acres, 1,393 acres managed as wildlife habitat, and 182 acre county park. The dam and floodwater storage pool comprise the balance of the 2,365 project acres.

Access roads, parking areas, boat ramps, wildlife plantings in the adjacent lands, fishing jetties, in-lake facilities, underwater fish structures, etc., will be installed by the Iowa Department of Natural Resources (IDNR) with their own funds. The Ringgold County Conservation Board (RCCB) will install the recreation facilities such as roads, campgrounds, cabins, restrooms, picnic areas, beach, parking lots, etc.

Effects of the Recommended Actions

There are no cultural resources in the area of potential effect. Construction of recreation facilities (*i.e.* access roads, cabins, boat ramps, etc.) will need further cultural resources survey. Construction discoveries will be handled in accordance with NRCS General Manual, Section 420, Part 401.

Construction of the dam and multipurpose pool inundates 24,000 feet (8 acres) of low quality ephemeral and intermittent warm water stream channel habitat. This conversion creates 565 acres of high quality warm water lacustrine habitat.

No jurisdictional wetlands were identified in either the planned multipurpose pool, flood pool, or at the structure site.

Ringgold County is within the summer range of the Indiana Bat (*myotis sodalis*). However, since less than five percent of the project area is in woodland, suitable habitat for this species does not occur at the project site. No other Federal or state listed T&E species are known to occur in the Gooseberry Lake project area, nor are there any areas of suitable habitat for those species listed for Ringgold County in this project area.

While 110.1 acres woody wildlife habitat with a value of 73.6 Habitat Units will be lost to the structure and pool, the installation of planned measures will produce 248 additional acres of woody wildlife habitat worth 110.8 Habitat Units. This will produce a net project gain of 147.9 acres and 37.8 habitat units.

Grassland wildlife habitat on 425 acres with a value of 117.7 Habitat Units will be lost due to the project. The installation of planned measures will produce 650 acres additional acres of grassland wildlife habitat worth 299 Habitat Units. This will produce a net project gain of 225 acres and 181.3 habitat units.

Installation of the project will convert 2,365 acres of cropland, hayland, and pasture to non-agricultural land uses. This includes 725 acres of prime farmland.

Alternative Actions

The only alternative action to the proposed action considered in the supplemental plan–EA would be to construct Site GB–3 approved in the original watershed plan–EIS. That alternative action was rejected by the Sponsors. The supplemental plan is the only alternative that meets the local Sponsors objectives and is acceptable to local residents. The plan is the National Economic Development (NED) plan.

Consultation and Public Participation

The Gooseberry Lake Agency has held more than 40 meetings beginning in 2000. All have been conducted in accordance with the Iowa Open Meetings Law. This means that the public has been notified of each meeting and allowed to attend and participate in each meeting. Typically, 10–25 members of the public attend these regular meetings; two to five request time on the agenda to speak. One or more members of the NRCS staff were at each of those meetings in order to answer questions and receive comments.

Ongoing public participation identified the need to include detailed information on recreation benefits and other direct costs related to lost farm income. This was done and was discussed in the supplemental plan–EA.

NRCS hosted a week long open house at Mount Ayr, Iowa in February 2004. Numerous displays and information related to the East Fork of the Grand Watershed and the proposed 565 acre Gooseberry Lake were available during the open house. NRCS staff answered questions from the over 80 public participants.

Seven Indian tribal contacts and one local historical society were notified of this intended action in accordance with 36CFR800. They were consulted about their knowledge of historical properties in the project area. No response was received from the tribes or the local historical society.

The draft supplemental plan was provided to local, state, and federal agencies and non-governmental organizations for a 45 day long interagency review beginning in March, 2004. Any private citizens who requested the document were also mailed copies and requested to comment during the interagency review comment period. Seventy-eight copies of the supplemental plan–EA were distributed to the above agencies and private citizens during the interagency comment period. The NRCS also posted the draft supplemental plan on its Iowa Web site, at *http://www.ia.nrcs.usda.gov*. News releases were issued to state and local media announcing its availability on the Web site and that hard copies could be obtained by contacting the NRCS–Iowa state office. Requests for review and input into the document were part of the news releases.

Significant comments were received from five private citizens, four government agencies, and one non-governmental organization. These comments were addressed in the final supplemental plan–EA.

Conclusion

The Environmental Assessment summarized above indicates that this Federal action will not cause significant impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the Supplemental Watershed Plan No. 1 East Fork of the Grand River Watershed is not required.

Dated: September 28, 2004.

Richard Van Klaveren,
State Conservationist.

[FR Doc. 04–22300 Filed 10–4–04; 8:45 am]
BILLING CODE 3410–16–P

ANTITRUST MODERNIZATION COMMISSION

Public Meeting

AGENCY: Antitrust Modernization Commission.

ACTION: Notice of public meeting.

SUMMARY: The Antitrust Modernization Commission will hold a public meeting on October 20, 2004. The purpose of the meeting will be to (1) discuss the criteria and processes upon which the Commission will employ in selecting issues for further study and (2) discuss the nature of the report the Commission will issue.

DATES: October 20, 2004, 10 a.m. until 1 p.m., unless earlier adjourned. All interested members of the public may attend. Registration is not required.

ADDRESSES: Federal Trade Commission, Conference Center Rooms A & B, 601 New Jersey Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew J. Heimert, Executive Director & General Counsel, Antitrust Modernization Commission: telephone: (202) 326–2487; e-mail: *info@amc.gov*. Mr. Heimert is also the Designated Federal Officer (DFO) for the Antitrust Modernization Commission.

SUPPLEMENTARY INFORMATION: The Antitrust Modernization Commission

was established to "examine whether the need exists to modernize the antitrust laws and to identify and study related issues." Antitrust Modernization Commission Act of 2002, Pub. L. 107–273, § 11053, 116 Stat. 1856.

The AMC has called this meeting pursuant to its authorizing statute and the Federal Advisory Committee Act. Antitrust Modernization Commission Act of 2002, Pub. L. 107–273, § 11058(f), 116 Stat. 1758, 1857; Federal Advisory Committee Act, 5 U.S.C. App. 10(a)(2); 41 CFR 102–3.150 (2003).

Dated: September 27, 2004.

By direction of Deborah A. Garza, Chair of the Antitrust Modernization Commission.

Approved by Designated Federal Officer:

Andrew J. Heimert,

Executive Director & General Counsel, Antitrust Modernization Commission.

[FR Doc. 04–22307 Filed 10–4–04; 8:45 am]

BILLING CODE 6820–YM–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092904D]

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Public Hearing on Draft Environmental Impact Statement

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

ACTION: Notice of public hearing.

SUMMARY: The Pacific Islands Regional Office of NMFS, in coordination with the Western Pacific Fishery Management Council, will hold a public hearing in Honolulu, HI, to receive comments on a draft environmental impact statement (DEIS) for management measures being considered for the domestic pelagic fisheries in the Pacific Ocean. The DEIS describes and assesses the likely environmental impacts of a range of alternatives for two fishery management actions. The first action is aimed at cost-effectively reducing the potentially harmful effects of fishing by Hawaii-based longline vessels on seabirds. The second is aimed at establishing an effective management framework for pelagic squid fisheries in the Pacific, including fishing activities within the exclusive economic zone of the U.S. and on the high seas. The first action would be taken through the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP), under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The second action would be taken both through the FMP and under the authority of the High Seas Fishing Compliance Act.

DATES: Public hearings will be held as follows: Wednesday, October 6, 2004, from 5 to 7 p.m., on Hawaii Island in Hilo, HI; Thursday, October 7, 2004, from 6 to 8 p.m., on Oahu Island in Honolulu, HI; and Friday, October 8, 2004, on Kauai Island in Lihue, HI. All times are Hawaii Standard Time.

ADDRESSES: The public hearings will be held at the following locations: On Hawaii Island at the University of Hawaii at Hilo, Campus Center, Room 301, 200 W. Kawili St., Hilo, HI; On Oahu Island at the office of the Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI; On Kauai Island, at Kamakahelei Middle School, Room E–101, 4431 Nuhou St., Lihue, HI.

FOR FURTHER INFORMATION CONTACT: Tom Graham, NMFS, 808–973–2937.

SUPPLEMENTARY INFORMATION: The DEIS was made available to the public on August 27, 2004, as described in a Notice of Availability published in the **Federal Register** by the Environmental Protection Agency on that date. The public comment period for the DEIS ends October 12, 2004.

To obtain a copy of the DEIS or for additional information, contact NMFS (see **FOR FURTHER INFORMATION CONTACT**). The DEIS is also available on the Internet at http://swr.nmfs.noaa.gov/pir/ .

Special Accommodations

This hearing is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tom Graham, 808–973–2937 (voice) or 808–973–2941 (fax), by October 6, 2004.

Authority: 16 U.S.C. 1801 *et seq.*, and 16 U.S.C. 5501 *et seq.*

Dated: September 30, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–22343 Filed 10–4–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

AGENCY: United States Patent and Trademark Office (USPTO).

The United States Patent and Trademark Office (USPTO) 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).

Title: Trademark Processing (proposed addition of seven new TEAS Forms).

Form Number(s): PTO Forms 2194, 2195, 2196, 2197, 2200, 2201, and 2202. These forms will be added to those that are currently approved for this collection: PTO Form 4.8, 4.9, 4.16, 1478, 1478(a), 1553, 1581, 1583, 1963, 2000, and PTO/TM/4.16 and 1583.

Agency Approval Number: 0651–0009.

Type of Request: Revision of a currently approved collection.

Burden: 154,483 hours.

Number of Respondents: 762,701 responses.

Avg. Hours Per Response: Approximately 3 to 12 minutes, depending on the form. The USPTO estimates that it takes approximately 3 minutes (0.05 hours) to complete the requests for deletion of the § 1(b) basis from an intent to use application, the change of owner's address form, and the express abandonment of the application and submit them electronically through the Trademark Electronic Application System (TEAS). The USPTO estimates that it takes approximately 5 minutes (0.08 hours) to complete the petitions to revive and the revocation and appointment of attorneys, and 12 minutes (0.20 hours) to complete the withdrawals as the attorney of record and submit them electronically through TEAS. The USPTO estimates that it takes 6 minutes (0.10 hours) to complete the revocation and appointment of attorney, and 12 minutes (0.20 hours) to complete the petitions to revive and mail them to the USPTO. This includes the time to gather the necessary information, prepare the petitions, requests, and other associated forms, and submit them to the USPTO.

Needs and Uses: The USPTO is developing seven forms that will allow applicants to submit certain petitions, requests, revocations, and change of address forms electronically through TEAS. When the USPTO deploys these forms, applicants will be able to petition the USPTO to revive an abandoned application; to appoint or revoke a power of attorney; to request that the USPTO delete a § 1(b) filing basis from an intent to use application; to request permission to withdraw as the attorney of record; and to request the withdrawal of an application. Applicants and

registrants will also be able to change their address. The USPTO uses the information submitted electronically through these forms to revive abandoned applications, to process appointments, revocations, and withdrawals of attorneys and applications, to amend the filing basis for an intent to use application, and to change owners' addresses at their request. Use of these forms ensures that the USPTO receives all of the information needed to process the trademark applications electronically through TEAS. These forms will be added to those currently approved under OMB Control Number 0651–0009 Trademark Processing.

Affected Public: Business or other for-profit, individuals or households, not-for-profit institutions, farms, Federal Government, and State, local, or tribal government.

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 any of the following methods:

• *E-mail: Susan.Brown@uspto.gov.* Include "0651–0009 Trademark Processing (Addition of Seven New TEAS Forms) copy request" in the subject line of the message.

• *Fax:* 703–308–7407, marked to the attention of Susan Brown.

• *Mail:* Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before November 4, 2004 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

Dated: September 29, 2004.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 04–22345 Filed 10–4–04; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0095, Rules Relating to Security Futures Products

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on rules relating to Security Futures Products.

DATES: Comments must be submitted on or before December 6, 2004.

ADDRESSES: Comments may be mailed to David Van Wagner, Division of Market Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: David Van Wagner (202) 418–5481; FAX: (202) 418–5527; e-mail: *dvanwagner@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

• Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

• The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

• Ways to minimize the burden of 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.

Rules Relating to Security Futures Products, OMB Control Number 3038–0059—Extension

The Commission's Part 41 rules establish the regulatory framework governing the offer and sale of security futures. Section 5f of the Commodity Exchange Act mandates that the Commission set forth procedures that permits certain entities—specifically, national securities exchanges, national securities associations, and alternative trading systems—that would otherwise be regulated by the SEC, to become designated contract markets for the limited purpose of trading security futures products.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR section	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
17 CFR 41	144	On occasion	2,739	0.05	1,620

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number of requests for such designations submitted in the last three years. Although the burden varies with the type, size, and complexity of the request submitted, such request might involve analytical work and analysis, as well as the work of drafting the request itself.

Dated: September 29, 2004.

Jean A. Webb,

Secretary of Commission.

[FR Doc. 04–22299 Filed 10–4–04; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of the forthcoming meeting of the 2004 Science and Technology Quality Review Panel. The purpose of the meeting is to allow the Air Force Scientific Advisory Board to assess the quality and long-term relevance of Air Force Research Laboratory Directed Energy research. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: 25–29 October 2004.

ADDRESSES: Kirtland Air Force Base, NM.

FOR FURTHER INFORMATION CONTACT: Major Kyle Gresham, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4808.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–22346 Filed 10–4–04; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 6, 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 Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Office of the Undersecretary

Type of Review: Extension.

Title: National Evaluation of Upward Bound and Upward Bound Math Science.

Frequency: On Occasion.

Affected Public:

Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 2,100. *Burden Hours:* 888.

Abstract: This request is for continuation of the fifth follow-up survey and transcript collection regular Upward Bound and Upward Bound Math Science studies. These data collections are part of the National Evaluation of Upward Bound that has been on-going since 1992. The studies are following a sample of 4,728 participants and control group students through high school and into young adulthood.

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 2620. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMS@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Dated: September 29, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Services, Office of the Chief Information Officer.

[FR Doc. E4–2492 Filed 10–4–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 4, 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 Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: September 30, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension.

Title: Federal Direct Loan Program and Federal Family Education Loan Program Teacher Loan Forgiveness Forms.

Frequency: Annually.

Affected Public:

Businesses or other for-profit; Individuals or household, Not-for-profit institutions, Federal Government, State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 8,700.

Burden Hours: 2,780.

Abstract: Borrowers who received loans from the William D. Ford Federal Direct Loan Program and/or the Federal Family Education Loan Program and who teach in low-income areas for five complete consecutive years, and who meet other requirements will use this application to receive up to $5,000 of their subsidized Federal Stafford Loans, unsubsidized Federal Stafford Loans, Direct Subsidize Loans, and/or Direct Unsubsidized loans forgiven. The information on the forbearance form will be used to determine whether borrowers with low balances are eligible for forbearance while they are performing qualifying teaching service.

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 2589. 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. E4–2493 Filed 10–4–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 4, 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 Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Federal Student Aid

Type of Review: Revision.

Title: William D. Ford Federal Direct Loan Program Repayment Plan Selection Form.

Frequency: Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 971,000.

Burden Hours: 320,430.

Abstract: Borrowers who receive loans through the William D. Ford Federal Direct Loan Program will use this form to select a repayment plan for their loans.

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 2598. 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.

Angela C. Arrington,

Leader, Regulatory Information Management Services, Office of the Chief Information Officer.

[FR Doc. E4–2494 Filed 10–4–04; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Information Collection Activity; Proposed Collection; Comment Request

AGENCY: Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, EAC announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. 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 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 through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received on or before Wednesday, October 14, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Election Assistance Commission, 1225 New York Avenue, NW., Washington, DC 20005, ATTN: Mr. Brian Hancock or may be submitted by facsimile transmission at (202) 566–3127.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Mr. Brian Hancock or Ms. Juliet Thompson at (202) 566–3100.

Title and OMB Number: Election Day Data Survey; OMB Number Pending.

Needs and Uses: The information collection requirement is necessary to meet a requirement of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301). Section 241 of HAVA requires the EAC to study and report on election activities, practices, policies and procedures, including the mechanisms of voting in the states, overvotes and undervotes, methods of conducting provisional voting, methods of recruiting, training and improving the performance of poll workers, matters particularly relevant to voting administration and election in rural and urban areas, and such other matters as the Commission deems appropriate. In order to fulfill those requirements and to provide a complete report to Congress, EAC is seeking information relating to November 2, 2004 election.

Affected Public: State or local Government.

Annual Burden Hours:

Number of Respondents: 55.

Responses per Respondent: 1.

Average Burden per Response: 200 hours.

Frequency: Bi-Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

HAVA created the Election Assistance commission and enacted numerous provisions aimed at improving the administration of federal elections. This survey seeks information relating to the November 2, 2004 election that will assist the EAC in studying the administration of that federal election, will provide insight into issues or problems that may require additional study and consideration, and will assist the EAC in providing a complete report to Congress on the successes and challenges related to the November 2, 2004 election. The following categories of information are requested on a county/local election jurisdiction and/or state-wide level:

Voter Registration

Number of registered voters (active and inactive) who were eligible to vote on November 2, 2004.

Election Results

(a) Number of ballots counted, (b) number of ballots cast on election day, (c) number of requested absentee ballots, (d) number of returned absentee ballots, (e) number of counted absentee ballots, (f) number of early voting ballots counted, (g) number of provisional ballots cast, (h) number of provisional ballots counted, (i) number of undervotes in each federal contest (i.e., presidential, senatorial, and congressional races/contests), (j) number of overvotes in each federal contest, and (k) total number of ballots casts in each federal contest.

Voting Equipment

(a) Type, manufacture and number of units of voting equipment used in each county, and (b) the location and number of voting machine malfunctions, including power failure, broken counters, computer failure, printer failure, screen failure, damage or destruction of the voting machine, modem failure, scanner failure, ballot encoder/activator failure, or other forms of malfunctions.

Voting Jurisdictions

(a) Number of precincts in each county/local election jurisdiction, and (b) number of polling places in each county/local election jurisdiction.

Sources of Information

(a) Number of local election jurisdictions that responded and provided information for the survey, (b) name and contact information for persons who provided information for the survey, and (c) any other sources of information used to report in the survey.

Ray Martinez III,

Commissioner, U.S. Election Assistance Commission.

[FR Doc. 04–22521 Filed 10–4–04; 8:45 am]

BILLING CODE 6820–YN–M

DEPARTMENT OF ENERGY

Computer Software Available for License

AGENCY: Office of General Counsel, Department of Energy.

ACTION: Notice of computer software available for license.

SUMMARY: The U.S. Department of Energy announces that the following computer software is available for license: "MASTER" (Mathematical Software for Teaching, Education, and Research).

FOR FURTHER INFORMATION CONTACT: John T. Lucas, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585; Telephone (202) 586–2802.

SUPPLEMENTARY INFORMATION: The above-captioned computer software was developed under the International Science and Technology Center (ISTC) project # 1478.2. The software is used to solve physical problems by means of computer simulation. It is capable of simulating the following non-stationary processes in one-dimensional approximation: gas, fluid, and solid matter movement under gradients of

pressure, temperature, or energy release; propagation of shock, detonation, and sound waves in continuous and porous substances; destruction and spallation; heat transfer; and magneto hydrodynamics. The software is meant for undergraduates, post graduates, teachers, and researchers. It can be a supplement to courses on continuum mechanics and condensed matter physics. It can exhibit examples of classical problems, illustrate features of physical process, conduct qualitative and quantitative assessments of a phenomenon under study, and solve applied tasks.

The software currently may be in need of revision, and the Department is looking for one or more private-sector parties who will revise and maintain the software at their own expense. The private sector party or parties will have the right to market the software to non-Government parties. The Government will retain an unlimited, royalty free, non-exclusive license in the original version of the software for Govern mental purposes.

Parties will be given 45 calendar days from the date of this Notice to contact the Department. After the period for response has elapsed, respondents will be sent a series of questions on their plans for revising, maintaining, and commercializing the software and under what terms they would make it available to the Government. DOE will then decide which party or parties to select.

Issued in Washington, DC, on September 29, 2004.

Paul A. Gottlieb,

Assistant General Counsel for Technology Transfer and Intellectual Property.

[FR Doc. 04–22357 Filed 10–4–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Computer Software Available for License

AGENCY: Office of General Counsel, Department of Energy.

ACTION: Notice of computer software available for license.

SUMMARY: The U.S. Department of Energy announces that the following computer software is available for license: "Thermal Safety Software" or TSS.

FOR FURTHER INFORMATION CONTACT: John T. Lucas, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585; Telephone (202) 586–2802.

SUPPLEMENTARY INFORMATION: The above-captioned computer software was developed under the International Science and Technology Center (ISTC) project #1498. The system, called "Thermal Safety Software" or TSS, is designed to address the complex problems associated with performing reactive hazard assessment (RHA) of chemical processes. This is achieved by extensive use of mathematical models and computational methods implemented in the software set. TSS application can significantly improve reliability of results, speed up the design, research, and development work and reduce its cost. TSS has the following general features: (1) Sequential simulation as the approach to reactive hazard assessment; (2) combination of powerful numerical methods and researcher's skills; (3) up-to-date numerical methods and web-based technologies; (4) integration of the software suite in one system; (5) a unified user-friendly interface; (6) advanced graphics; and (7) an advanced training system.

The software currently may be in need of revision, and the Department is looking for one or more private-sector parties who will revise and maintain the software at their own expense. The private sector party or parties will have the right to market the software to non-Government parties. The Government will retain an unlimited, royalty free, non-exclusive license in the original version of the software for Governmental purposes.

Parties will be given 45 calendar days from the date of this Notice to contact the Department. After the period for response has elapsed, respondents will be sent a series of questions on their plans for revising, maintaining and commercializing the software, and under what terms they would make it available to the Government. DOE will then decide which party or parties to select.

Issued in Washington, DC, on September 29, 2004.

Paul A. Gottlieb,

Assistant General Counsel for Technology, Transfer and Intellectual Property.

[FR Doc. 04–22358 Filed 10–4–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–413–000, CP04–414–000, and CP04–415–000]

Entrega Gas Pipeline Inc.; Notice of Application

September 28, 2004.

Take notice that on September 17, 2004, Entrega Gas Pipeline, Inc. (Entrega); 950 17th Street, Suite 2600, Denver, Colorado, 80202, filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and parts 157 and 284 of the Commission's regulations, for: (i) A certificate of public convenience and necessity authorizing the construction, ownership, and operation of new interstate natural gas pipeline facilities; (ii) a blanket certificate of public convenience and necessity authorizing Entrega to provide open-access transportation services, with pre-granted abandonment approval; and (iii) a blanket certificate of public convenience and necessity to construct, operate, and/or abandon certain eligible facilities, and services related thereto. Entrega is also requesting authorization for its proposed recourse rates for transportation service and approval of its Pro Forma Tariff. This application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Specifically, Entrega proposes to construct and operate 327 miles of 36-inch diameter and 42-inch diameter pipeline from the Meeker Hub in Rio Blanco County, Colorado and extending through Moffat County, Colorado and Sweetwater, Carbon, Albany, and Laramie Counties in Wyoming, and terminating at the Cheyenne Hub in Weld County, Colorado. Entrega also proposes to construct compressor stations at three locations in Moffat County, Colorado (24,000 horsepower), Sweetwater County, Wyoming (15,500 horsepower), and Carbon County, Wyoming (15,500 horsepower). In addition, Entrega proposes to construct 7 receipt/delivery points along the pipeline. Entrega estimates that the proposed facilities will cost $644,025,000. Entrega states that the

pipeline will be able to transport up to 1,500,000 Dth per day of natural gas.

Any questions about this application should be directed to Larry Drader, President, Entrega Gas Pipeline, Inc., 950 17th Suite 2600, Denver, Colorado, at (303) 389–5069 or fax (720) 956–3610; or to Keith M. Sappenfield, II, Regulatory Lead, Entrega Gas Pipeline, Inc., 1616 South Voss Road, Suite 750, Houston, Texas 77057, at (832) 204–1247 or fax (713) 952–3617.

On March 19, 2004 the Commission staff granted Entrega's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF04–7–000 to staff activities involving Entrega. Now, as of the filing of Entrega's application on September 17, 2004, the NEPA Pre-Filing Process for Entrega's project is closed. From this time forward, Entrega's proceeding will be conducted in Docket Nos. CP04–413–000, *et. al.*

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 listed below, 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 this filing and all subsequent filings made with the Commission and must mail a copy of all filing 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, other persons do 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 this project provide copies of their protests only to the party or parties directly involved in the protest.

Persons may also wish to comment further only on the environmental review of this project. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents issued by the Commission, and will be notified of meetings associated with the Commission's environmental review process. Those persons, organizations, and agencies who submitted comments during the NEPA Pre-Filing Process in Docket No. PF04–7–000 are already on the Commission staff's environmental mailing list for the proceeding in the above dockets and may file additional comments on or before the below listed comment date. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, environmental commenters are also not parties to the proceeding and will not receive copies of all documents filed by other parties or non-environmental documents issued by the Commission. Further, they will not have the right to seek court review of any final order by Commission in this proceeding.

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: October 19, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2483 Filed 10–4–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–420–000]

Trunkline Gas Company, LLC; Notice of Application

September 28, 2004.

Take notice that on September 24, 2004, Trunkline Gas Company, LLC, P.O. Box 4967, Houston, Texas 77210–4967, filed in Docket No. CP04–420–000 an application pursuant to section 7(b) and 7(c) of the Natural Gas Act (NGA) and the Commission's Regulations, for authorization to abandon a 6350 horsepower (hp) compressor installed in 1954 and replace it with a new 1675 hp compressor at its existing Edna Compressor Station located in Jackson County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also 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, please contact FERCOnline Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to William W. Grygar, Vice President, Rates and Regulatory Affairs at (713) 989–7000, Trunkline Gas Company, LLC, 5444 Westheimer Road, Houston, Texas 77056.

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 stated below, 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 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: October 19, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2481 Filed 10–4–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–137–000]

Cabazon Wind Partners, LLC, Complainants v. Southern California Edison Company, Respondents; Notice of Complaint

September 28, 2004.

Take notice that on September 27, 2004, Cabazon Wind Partners, LLC (Cabazon) filed a formal complaint against Southern California Edison Company (SCE) pursuant to section 206 of the Federal Power Act. Cabazon states that the complaint alleges that (1) the failure of the Interconnection Facilities Agreement (IFA) between Cabazon and Edison to provide Cabazon credit for its upfront payments for network upgrades, misclassified as distribution facilities, causes Southern California Edison's transmission rates to be unjust and unreasonable; and (2) the IFA is unjust and unreasonable separately because it requires Cabazon to pay a tax gross-up associated with the misclassified network upgrades.

Cabazon states that copies of the complaint were served on the contacts for (SCE) as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on October 18, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–2485 Filed 10–4–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–160–000, et al.]

LG&E Roanoke Valley, L.P., et al.; Electric Rate and Corporate Filings

September 27, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. LG&E Roanoke Valley L.P., Westmoreland-Roanoke Valley, L.P., Westmoreland-LG&E Partners

[Docket Nos. EC04–160–000 and ER93–734–001]

Take notice that on September 21, 2004, LG&E Roanoke Valley L.P. (LRV) and Westmoreland-Roanoke Valley, L.P. (WVR, together with LRV, Applicants) on behalf of themselves and on behalf of Westmoreland-LG&E Partners (Partnership) submitted an application pursuant to section 203 of the Federal Power Act for authorization of disposition of jurisdictional facilities whereby an affiliate of WVR will purchase LVR's 50 percent general partnership interest in the Partnership. The Partnership filed a notice of change in status. Partnership states that it owns the remaining 50 percent general partnership interest in the Partnership. Partnership also states that it owns two pulverized coal-fired cogeneration facilities with a combined generating capacity of approximately 210 MW in Weldon Township, near Roanoke Valley, North Carolina.

Comment Date: 5 p.m. eastern time on October 12, 2004.

2. Union Electric Company d/b/a AmerenUE

[Docket No. EC04–161–000]

Take notice that on September 22, 2004, Union Electric Company d/b/a AmerenUE (AmerenUE) filed with the Commission an application pursuant to section 203 of the Federal Power Act for authorization and approval of the sale of certain portions of its electric transmission facilities and related equipment to Citizens Electric Cooperative. AmerenUE states that it is a combination electric and gas public utility subject to the jurisdiction of the Commission. AmerenUE also states that it provides electric service within parts of the states of Missouri and Illinois and is subject to the jurisdictions of the utility regulatory commissions in both states. AmerenUE further states that it is a subsidiary of Ameren Corporation, a registered public utility holding company under the Public Utility Holding Company Act of 1935, as amended (PUHCA).

Comment Date: 5 p.m. eastern time on October 13, 2004.

3. Entergy Corporation, et al.

[Docket No. EC04–162–000]

Take notice that on September 23, 2004, Entergy Corporation, (Entergy) on behalf of itself, Entergy Asset Management, Inc. (EAM), Entergy Power Generation Corporation, Entergy Power Gas Operations Corporation, Entergy

Power Development Corporation, EP Edegel, Inc., Entergy UK Enterprises Limited, Entergy Global Investments, Inc., Entergy International Holdings Ltd LLC, EK Holding I, LLC and Entergy Power International Holdings Corporation (collectively, the Applicants) submitted an application requesting all necessary authorizations under section 203 of the Federal Power Act for the Applicants to engage in a corporate reorganization that will alter the upstream ownership of certain facilities subject to the Commission's jurisdiction and for a third-party investor to acquire indirect interests in jurisdictional facilities through acquisition of interests in EAM.

Entergy states that copies of this filing have been served on the Arkansas Public Service Commission, the Louisiana Public Service Commission, the City Council of New Orleans, the Mississippi Public Service Commission, and the Texas Public Utility Commission.

Comment Date: 5 p.m. eastern time on October 14, 2004.

4. Entergy Services, Inc.

[Docket Nos. ER04–699–000 and ER03–1272–002]

Take notice that on September 23, 2004, Entergy Services, Inc. (Entergy), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., filed a response to the Post Technical Conference Data Request issued on August 17, 2004 in the above-captioned proceedings.

Comment Date: 5 p.m. eastern time on October 14, 2004.

5. Dynegy Power Marketing, Inc.

[Docket No. ER04–1223–001]

Take notice that on September 22, 2004, Dynegy Power Marketing, Inc. (Dynegy) pursuant to section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d, and part 35 of the Commission's regulations, 18 CFR part 35, submitted for filing amended rate schedules implementing provisions for sales of market-based ancillary services (Market-Based Ancillary Services Tariff). Dynegy states that this amended Rate Schedule was originally submitted September 10, 2004, in compliance with the Commission's order issued July 29, 2004, in *Ameren Corporation*, 108 FERC ¶ 61,094. Dynegy submitted for filing revisions to its tariff implementing the Market Behavior Rules, *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003) (Market Behavior Rules Tariff). Dynegy also states that this filing does not reflect further substantive changes, but is ministerial in nature, reflecting both the requested tariff change and a subsequently filed tariff change. Dynegy requests an effective date of January 1, 2005, for the Market-Based Ancillary Services Tariffs, and December 17, 2003, for the Market Behavior Rules Tariffs.

Comment Date: 5 p.m. eastern time on October 13, 2004.

6. Florida Power & Light Company

[Docket No. ER04–1237–000]

Take notice that on September 23, 2004, Florida Power & Light Company (FPL) submitted a Macedonia Temporary Tap Connection Agreement between Florida Power & Light Company and Georgia Transmission Corporation designated as FPL Rate Schedule No. 302. FPL states that the Macedonia Temporary Tap Connection Agreement provides Georgia Transmission Corporation with an alternative temporary connection capability, which will permit Georgia Transmission Corporation time to plan and construct additional facilities to enable it to directly serve two distribution substations, Macedonia and St. George, in the event that the current radial connection is out of service for any reason. FPL further states that the Agreement provides a temporary connection at the Macedonia substation on an as-needed and as-available basis until Georgia Transmission Corporation plans and constructs permanent facilities.

FPL states that copies of the filing were served upon the Georgia Transmission Corporation.

Comment Date: 5 p.m. eastern time on October 14, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2484 Filed 10–4–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2586–024]

Alabama Electric Cooperative, Inc.; Application and Applicant-Prepared EA Accepted for Filing, Soliciting Motions To Intervene and Protests, and Soliciting Comments, and Final Recommendations, Terms and Conditions, and Prescriptions

September 28, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. Type of Application: New major license.

b. Project No.: 2586–024.

c. Date Filed: April 29, 2003.

d. Applicant: Alabama Electric Cooperative, Inc.

e. Name of Project: Conecuh River Project.

f. Location: The Conecuh River Project is located on the Conecuh River in Andalusia, AL. The project does not affect Federal lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Scott Wright (Engineering contact) or Mike Noel (Environmental contact), Alabama Electric Cooperative, Inc., 2027 East Three Notch Street, P.O. Box 550, Andalusia, AL 36420–0550.

i. FERC Contact: Sean Murphy at (202) 502–6145 or sean.murphy@ferc.gov.

j. Deadline for filing motions to intervene and protests, comments, and final recommendations, terms and conditions, and prescriptions: 60 days from the issuance of this notice

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application and environmental assessment has been accepted, and is ready for environmental analysis at this time.

l. The 8.25-megawatt (MW) project consists of two developments the Gant Dam Development and the Point A Development

The Point "A" Development consists of the following existing facilities: (1) A 2,800-foot-long earthen dam comprised of a gated concrete spillway section; (2) a 700-acre reservoir at a normal water surface elevation of 170 feet msl; (3) a powerhouse, integral with the dam, containing three generating units with a total installed capacity of 5,200 kW, (4) a 0.39-mile-long, 46-kV transmission line; and (5) other appurtenances.

The Gantt Development consists of the following existing facilities: (1) A 1,562-foot-long earthen dam comprised of a gated concrete spillway section; (2) a 2,767-acre reservoir at a normal water surface elevation of 198 feet msl; (3) a powerhouse, integral with the dam, containing two generating units with a total installed capacity of 3,050 kW, and (4) other appurtenances.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at http://www.ferc.gov using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at: *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. The tentative schedule for processing the application follows:

Milestone	Date
Deadline for Agency Recommendations.	November 1, 2004
Deadline for Reply Comments.	December 1, 2004
Issuance of EA	January 2005
Public Comments on EA due.	February 2005
Ready for Commission Decision on the Application.	March 2005

Final amendments to the application must be filed with the Commission no later than 45 days from the issuance date of this notice.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2482 Filed 10–4–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–276–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Informal Settlement Conference

September 28, 2004.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10 a.m. (e.s.t.) on Wednesday, October 6, 2004, at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Bob Keegan at (202) 502–8158, *James.Keegan@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2480 Filed 10–4–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2004–0004, FRL–7823–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Collection Request Update for the 40 CFR Part 64 Compliance Assurance Monitoring Program, EPA ICR Number 1663.03, OMB Control Number 2060–0376

AGENCY: Environmental Protection Agency.

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 collection. This ICR is scheduled to expire on November 30, 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 December 6, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OEI–2004–0004, to EPA online using EDOCKET (our preferred method), by e-mail: *A-and-R-Docket@epamail.epa.gov*, or by mail to: U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket and Information Center, MC 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, *A-and-R-Docket@epamail.epa.gov*.

FOR FURTHER INFORMATION CONTACT: Peter R. Westlin, Environmental Protection Agency, Office of Air Quality Planning and Standards (mail code D243–02), Research Triangle Park, North Carolina 27711; telephone number: (919) 541–1058; fax number: (919) 541–1039; e-mail address: *westlin.peter@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OEI–2004–0004, which is available for public viewing at the Air and Radiation Docket and Information Center 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 and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

You should submit any comments related to this ICR to EPA within 60 days of this notice. EPA's policy is the Agency will make available public comments, whether submitted electronically or in paper, 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*.

Affected entities: Entities potentially affected by this action are owners and operators of major sources as defined by any title of the Clean Air Act and required to apply for and obtain an operating permit under title V of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (the Act).

Title: Information Collection Request Update for the 40 CFR Part 64 Compliance Assurance Monitoring Program, OMB control number 2060–0376, ICR number 1663.02, expiring November 30, 2004.

Abstract: The Act contains several provisions directing us to require source owners to conduct monitoring to support certification as to their status of compliance with applicable requirements. These provisions are set forth title V (operating permits provisions) and title VII (enforcement provisions) of the Act. Title V directs us to implement monitoring and certification requirements through the operating permits program. Section 504(b) of the Act allows us to prescribe by rule methods and procedures for determining compliance recognizing that continuous emissions monitoring systems need not be required if other procedures or methods provide sufficiently reliable and timely information for determining compliance. Under section 504(c), each operating permit must "set forth inspection, entry, monitoring, compliance, certification, and reporting requirements to assure compliance with the permit terms and conditions." Section 114(a)(3) requires us to promulgate rules for enhanced monitoring and compliance certifications. Section 114(a)(1) of the Act provides additional authority concerning monitoring, reporting, and record keeping requirements. This section provides the Administrator with the authority to require any owner or operator of a source to install and operate monitoring systems and to record the resulting monitoring data. We promulgated the Compliance Assurance Monitoring rule, part 64, on October 22, 1997 (62 FR 54900) to implement these authorities.

In accordance with these provisions, the monitoring information source owners must submit must also be available to the public, except as entitled top protection from disclosure as allowed in section 114(c) of the Act. 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.

We are soliciting 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: Based on the Agency's knowledge of the number of title V permits issued since 1997 and the implementation of part 64 through permit renewals, the expected impact of the 40 CFR part 64 Compliance Assurance Monitoring (CAM) Program for the 3 years from October 1, 2004 until September 30, 2007 is 52,000 hours. The CAM rule will incur an average annual cost of $2.5 million in 2004 dollars. This includes an annualized capital and operation and maintenance cost of $70,000.

The CAM program burden for source owners or operators means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide monitoring 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. We have also included annualized capital and operational and maintenance costs for monitoring programs in the cost burden calculation. The CAM program over the years 2004 through 2007 potentially affects 240 large pollutant-specific emissions units plus 2440 other pollutant-specific emissions units nationwide. The annual burden for source owners or operators is 5,550 hours for large pollutant-specific emissions units and 46,650 hours for other pollutant-specific emissions units.

During the period, permitting authorities will review CAM submittals from source owners or operators whose permits have already been issued and are renewing those permits as the 5-year permit terms expire. Permitting authorities will also be interacting with the source owners or operators in addressing the CAM in semi-annual monitoring reports and reporting CAM data as necessary. We estimate the annual CAM burden to permitting authorities to be 21,500 hours and about $1.5 million. 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.

Dated: September 22, 2004.

William Lamason,

Acting Director, Emissions Monitoring and Analysis Division.

[FR Doc. 04–22361 Filed 10–4–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7824–4]

Proposed Fourth Administrative Cashout Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act; in Re: Beede Waste Oil Superfund Site, Plaistow, NH

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed fourth administrative settlement and request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9622(i), notice is hereby given of a proposed fourth administrative settlement for recovery of past and projected future response costs concerning the Beede Waste Oil Superfund Site in Plaistow, New Hampshire with the settling parties listed in the Supplementary Information portion of this notice. The U.S. Environmental Protection Agency—Region I ("EPA") is proposing to enter into a fourth de minimis settlement agreement to address claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9601 *et seq.* Notice is being published to inform the public of the proposed fourth settlement and of the opportunity to comment. This fourth settlement, embodied in a CERCLA section 122(g) Administrative Order on Consent ("AOC"), is designed to resolve each settling party's liability at the Site for past work, past response costs and specified future work and response costs through covenants under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, as well as to resolve each such settling party's liability at the Site for past response costs and estimated future response costs by the State of New Hampshire, through its Department of Environmental Services. The proposed AOC requires the settling parties listed in the Supplementary Information section below to pay an aggregate total of approximately $10,736,723.91. For thirty (30) days following the date of publication of this notice, the EPA will receive written comments relating to the settlement. The EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The EPA's response to any comments received will be available for public inspection at the EPA Records Center, 1 Congress Street, Boston, MA 02114–2023 (Telephone Number: 617–918–1440) and at the Plaistow Public Library, 85 Main Street, Plaistow, NH (Telephone Number: 603–382–6011).

DATES: Comments must be submitted on or before November 4, 2004.

ADDRESSES: The proposed fourth settlement is available for public inspection at the EPA Records Center, 1 Congress Street, Boston, MA 02114–2023 and at the Plaistow Public Library, 85 Main Street, Plaistow, NH (Telephone Number: 603–382–6011). Please call 617–918–1440 to schedule an appointment. A copy of the proposed fourth settlement may be obtained from Kristin Balzano, U.S. Environmental Protection Agency, Region I, 1 Congress Street, Suite 1100 (SES), Boston, MA 02114–2023 (Telephone Number: 617–918–1772). Comments should reference the Beede Waste Oil Superfund Site in Plaistow, New Hampshire and EPA Docket No. CERCLA–01–2004–0012 and should be addressed to Kristin Balzano, U.S. Environmental Protection Agency, Region I, 1 Congress Street, Suite 1100 (SES), Boston, MA 02114–2023.

FOR FURTHER INFORMATION CONTACT: Cindy Lewis, U.S. Environmental Protection Agency, Region I, 1 Congress Street, Suite 1100 (SES), Boston, MA 02114–2023 (Telephone Number: 617–918–1889).

SUPPLEMENTARY INFORMATION: This section contains a list of the approximately 276 settling parties. Each party name is listed as it appears on the current EPA list of potentially responsible parties (PRPs) and many of the names are followed by a parenthetical which refers to the name of the party listed on the AOC signature page. The following is a list of the settling parties, including settling federal agencies, to the proposed fourth settlement: 67 Smith Place Corporation, A & C Tire Company, Inc., A & O Service Center, Inc., A. Neal Perley d/b/a Perley's Marina, Acton Tire Inc., Advisory Realty Corporation, Agri-Mark, Inc., Alcatel (Alcatel Vacuum Products), Alvin Hollis and Company, Inc., American Eagle Tours, Inc., American Medical Response of Massachusetts, Inc., Amesbury Coach Inc., Amesbury Group Inc., AMI Leasing (Trucklease Corporation d/b/a AMI Leasing), Antoine's Auto Repair, Inc., Aquacultural Research Corporation, Ashland Motors, Inc., Atamian Volkswagen Inc. d/b/a Atamian Honda, Atlantic Waste Systems North (Wood Recycling, Inc.), Auto Service & Tire, Inc., Auto West, Automotive Consultants, Inc., Ayotte Plumbing Heating and Air Conditioning, B & B Auto Clinic, Inc., Bailey Distributing Corporation (Yeliab Corporation, Successor), Ballard Motor Sales Inc. (Ballard Mack Sales & Service Inc.), Bancroft Tire Center (H. Glick & Son's, Inc.), Bennett Service Station, Inc., Bert Libon Inc., BMW Gallery, Bob Innis and Son, Inc., Bob's Auto Repair Inc. (Bob's Auto Repair LLC), Bob's Auto Service, Boott Mills Hydro (Boott Hydropower, Inc.), Boston Harbor Cruises, Inc. (Harbor Cruises, LLC d/b/a Boston Harbor Cruises), Boston Public Health Commission, Boston Sand & Gravel Company, Bourne Bridge Auto Sales Inc. d/b/a Hyannis Saab, Bridge Marina, Inc., Bridgestone/Firestone North

American Tire, LLC, Brownie's Swan Street Garage, Browning-Ferris Industries (BFI Waste Services of Massachusetts, LLC), Burlington Dodge, Inc., Bursaw Oil Corporation, C W Equipment Company Inc., C. N. Wood Company, Inc., CDST Corporation d/b/a Quality Lube & Wash, Champy's Service Tire & Supply Inc., Chets Auto Repair, Chrysler Plymouth of Medford, Inc. (n/k/a Grava of Medford, Inc.), Chuckran Auto Parts Inc., Cinderella Carriage Company, Inc., City of Lawrence, Massachusetts, City of Lynn, Massachusetts, City of Methuen, Massachusetts, City of Newburyport, Massachusetts, City of Newton, Massachusetts, CJ 3A Service & Repair Inc. (d/b/a CJ Auto Repair), Clark & Reid Company, Inc., Coast Pontiac-Cadillac, Inc., Computron Metal Products, Inc., Connolly Buick Company, Inc. (500 Enterprises, Inc. d/b/a Herb Connolly Acura of Framingham), Consumer Auto Parts, Inc., Copeland's Automotive, Coppola Inc., Cote & Sons Automotive Center, Inc., Cox Fuel Company, Inc., Coyne International Enterprises Corporation (d/b/a Coyne Textile Services), Cyndan Inc. d/b/a Speedway Lube & Tube, D.N. Kelley & Son, Inc., Daley & Wanzer, Inc., Daniels LeSaffre Motors, Inc., Dave's Enterprises, Inc., Davidson Chevrolet Company, Inc. (d/b/a Davidson Chevrolet-Oldsmobile), DeLucca Fence Company, Inc., Denison Pharmaceuticals, Inc., Derry Cooperative School District, Dick Industrial Inc., Dobles Chevrolet (Dobles Chevrolet Buick, Inc.), Donald J. Michaud d/b/a Auto Care, Donna Lou Enterprises, Inc. (d/b/a Dobbins Auto Repair), Downeast Dispatch, Inc., Dreher-Holloway, Inc., Drum Hill Ford Inc., Dunk's Automotive Service, Eagle-Tribune Publishing Company, Eastern Lumber Company, Inc., Eastern Transmission Service, Edward T. Neal (d/b/a Neal's Automotive Repair), Edwards Buick (Edward Buick-GMC Truck, Inc.), Erickson Fuel Company, Inc., Ernest Service Center, Excel Auto Unlimited Inc., Federal Express Corporation (Flying Tiger Line, Inc.), Fitchburg Gas & Electric Light Company, Foreign Auto Doctor, Foreign Cars of Belmont Inc. d/b/a Belmont Volkswagen, Framingham Auto Sales Inc. (Framingham Ford d/b/a Framingham Auto Sales, Inc.), Fred's Auto Service, Friction Materials, Inc., Gallo Construction Company, Inc., Gary W. Blake, Inc., Gaston Andre Associates, Inc. (d/b/a Charles River Saab), General Cable Industries, Inc. (Carol Cable Company, Inc.), Genuity (GLT Liquidating Trust, successor to Genuity Inc., Genuity Solutions, Inc., & Genuity Telecom Inc. et al), George Luddy Chevrolet, Inc., George R. Cairns & Sons, Inc., Georgetown Service Station, Inc. d/b/a Georgetown Citgo, Global Petroleum Corporation, Greater Lawrence Regional Vocational Technical High School District, Greater Lowell Regional Vocational Technical School District, Grove Products, Inc., Gullwing Service Company, Inc. d/b/a Paul Russell & Company, Gurney's Service Station, Inc., H. Wright's Service, Inc., Hamilton-Wenham Regional School District, Harry's Auto Repair, Henry's Sunoco Inc., Holden Oil Inc., Honda Village, Inc., Hydramatic Sales & Service Corporation, Hyster New England Inc. (f/k/a Lewis & Boyle Company), Ideal Transportation Company, Inc., Interstate Electrical Services Corporation, Ipswich Ford Inc., Ipswich Shellfish Company, Inc., Irwin Motors Inc., J.G. MacLellan Concrete Company Inc., James W. Flett Company, Inc., Jannell Motors Inc., Jerry's Auto Service Inc., JF White Contractor, Jim's American, JLJ Enterprises, Inc., John C. Bell, Inc. d/b/a New Meadows Auto Repair, Joseph A. Noujaim d/b/a Byblos Mercedes Clinic, Kelley's Service Station, Kelly's Tire Mart Inc., Ken's Auto Repair Inc., Ken's Haus, Inc., Kriswood, Inc., L & R Services Inc., Lawrence Boys & Girls Club, Lawrence HydroElectric (Lawrence Hydroelectric Associates), Lily Transportation Corporation (f/k/a Lily Truck Leasing Corporation and LTL Inc.), Lindberg Heat Treating Company (n/k/a Bodycote Thermal Processing, Inc.), Longhorn Inc. of Lawrence, Louis Pasqualucci & Son, Inc., Lynn Screw Corporation, M H R Auto Body Inc. (d/b/a River Street Auto Body & Collision), Mabardy's Gulf Service, Maestranzi Bros Inc., Manchester Mack Sales Inc. (McDevitt Trucks, Inc.), Marshall E. Merrill Jr., Martel Automotive Service, Massachusetts Bay Transportation Authority, Massachusetts Department of Correction, Massachusetts Institute of Technology, McDevitt Machinery, Inc. (McDevitt Trucks, Inc.), McLaughlin Chevrolet Inc., Medway Auto Sales Inc., Menard & Holmberg, Inc., Merrimack Valley Tire Inc., Metcalf & Eddy Services Inc., Michael's Motor Sales Inc., Michaud's Garage, Midas International Corporation/Cape Auto Systems (Cosmic Enterprises, Inc.; Cape Auto Systems, Inc.), Midway Garage Inc. d/b/a Midway Auto Imports Inc., Mihold, Inc. d/b/a Raynham Midas Muffler and Brake Shop, Mirra Company Inc., MKK Enterprises Inc. d/b/a Mike's Quicklube & Quality Car Care, Montachusett Regional Transit Authority, Moody St. Mobil, Inc., Mutual Oil Company, Inc., Nashua Industrial Machine (Ultima Nashua Industrial Machine Corporation), New England Frozen Foods, Inc., (f/k/a Hendrie's Frozen Foods, Inc.), New England Tank Company, New Hampshire Department of Environmental Services, North Andover Texaco Inc., Norwood Automobile Company d/b/a Cadillac of Norwood, Nuri Asmar d/b/a Chandler Value, O.F. Welker, Inc. d/b/a Welker's 16 Acres Mobil, Oakland Avenue Garage, Old Colony Motors Inc., Olson's Greenhouses Inc., Owens-Illinois Inc., Palmer Automotive (Palmer's Automotive Service), Park Avenue Citgo, Parkway Texaco (Parkway Automotive), Pearl Street Motors, Inc., Perkins School for the Blind, Peters Auto Sales Inc., Petroleum Heat & Power Company, Inc., Pica's Automotive Services, Inc., Plymouth County Sheriffs Department, Porter Chevrolet Inc., Portside Marine Service Inc., Praxair, Inc., Precision Auto Repair, Inc., Precision Wire Shapes, Public Service of New Hampshire, Quality Controls Inc., R Zambino & Sons Inc. (Rocco Zambino & Sons, Inc.), R.L. Buzzell, Inc., Raymers Express, Inc., Reimel's Automotive Specialist, Rockingham Toyota Dodge Nissan, Inc., Rods Auto Care, Rolling Green Service Center, Inc., Romie's Auto Repair, Inc., Route 114 Mobil Inc. (Rte 114 Mobil), S J McNeilly Oldsmobile Inc., Saint-Gobain Corporation (Bird, Inc. predecessor of Saint-Gobain Corporation), Salter Transportation, Inc., Sam's Service Inc., Sanders & Lockheed Martin Company (BAE SYSTEMS Information and Electronic Systems Integration Inc.), Scooby's Truck Sales, Seabrook Tire & Auto Inc., SEMASS Partnership LP, Sentry Lincoln Mercury Sales, Inc., Sloban Auto Body Inc., Southworth-Milton, Inc., Stoneham Motor Company, Inc., Streeter Plumbing & Heating Inc., Stutz Motor Car Company Inc., Subaru of Milford, Inc., Subaru of Wakefield, Inc., Sunnyside Motor Company Inc., Sunoco, Inc. (R & M), Suns Total Systems, Inc., Supervalu Holdings, Inc. (Supervalu Inc. and its wholly owned subsidiary Supervalu Holdings, Inc.), Talarico Chevrolet-Geo-Pontiac, Inc., Terzakis Brothers, Inc., The Bracken Company, Inc., The Federal Corporation, The Goodyear Tire and Rubber Company, The Lane Construction Corporation, The Middlesex Corporation and Middlesex Paving Corporation, Thompson Oil Company Inc., Three-C Electrical Company Inc., Tichon Lincoln Mercury Corporation, Tom's Auto Service, Inc., Toupin Rigging Company, Inc., Town of Amesbury, Massachusetts, Town of

Barnstable, Massachusetts, Town of Carlisle, Massachusetts, Town of Chelmsford, Massachusetts, Town of Danvers, Massachusetts, Town of Dennis, Massachusetts, Town of East Bridgewater, Massachusetts, Town of Harvard, Massachusetts, Town of Hingham, Massachusetts, Town of Lynnfield, Massachusetts, Town of Needham, Massachusetts, Town of Norfolk, Massachusetts, Town of North Andover, Massachusetts, Town of Pepperell, Massachusetts, Town of Wellesley, Massachusetts, Transgas Inc., Tremont Nail Company, Trombly Brothers Inc., Trustees of Boston College, Unisorb, Inc., United States Army Corps of Engineers, United States Coast Guard, United States General Services Administration—New England Region, Valley Design Corporation, Vendetti Motors Inc., Weber Auto and Truck Parts, Inc., Wentworth Motor Company, Inc., Wesson's Mobil, West Lynn Creamery, Inc. (Dean Northeast, LLC, successor by merger to West Lynn Creamery, Inc.), Weymouth Motor Sales Inc., White Equipment Leasing Corporation, Whittier Regional Vocational Technical High School, and William Phillips Automotive (Phillips Automotive).

In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*, notice is hereby given of a proposed fourth *de minimis* settlement agreement under section 122(g) of CERCLA concerning the Beede Waste Oil Superfund Site in Plaistow, NH. The fourth settlement was approved by EPA Region I, subject to review by the public pursuant to this Notice.

The proposed fourth settlement has been approved by the United States Department of Justice and, for the State portion of the settlement, by the State of New Hampshire. EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice.

Dated: September 27, 2004.

Susan Studlien,

Director, Office of Site Remediation and Restoration, EPA—Region I.

[FR Doc. 04–22362 Filed 10–4–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

September 29, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 4, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all comments to Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov*, and Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via Internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Commission has requested approval of these six information collections under the emergency processing provisions of the PRA by September 30, 2004.

OMB Control Number: 3060–XXXX.

Title: Digital Channel Election for Television Broadcast Station: Pre-Election Certification Form, FCC Form 381.

Form Number: FCC 381.

Type of Review: New collection

Respondents: Business and other for-profit entities; and not-for-profit institutions.

Number of Respondents: 1,700.

Estimated Time per Response: 2 hours.

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 3,400 hours.

Total Annual Costs: $1,190,000.00.

Privacy Impact Assessment: No impact(s).

Needs and Uses: FCC Form 381 is to be used by television broadcast licensees and permittees to provide and certify the technical information that will be used to evaluate DTV channel elections during the channel election process. The form must be filed by all full-power television broadcast licensees and permittees. On September 7, 2004, the FCC released the *Report and Order* (''*Order*''), In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 03–15, FCC 04–192. This *Order* implements several steps necessary for the continued progress of the conversion of the nation's television system from analog to digital (DTV) technology, including a multi-step channel election process through which broadcast stations will select their channel for use after the digital transition. FCC Form 381 is one of six forms to be used by stations in this channel election process.

OMB Control Number: 3060–XXXX.

Title: Digital Channel Election Form: First Round Election, FCC Form 382.

Form Number: FCC 382.

Type of Review: New collection.

Respondents: Business or other for-profit entities; and not-for-profit institutions.

Number of Respondents: 1,666.

Estimated Time per Response: 2–5 hours.

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 3,383 hours.

Total Annual Costs: $1,686,400.00.

Privacy Impact Assessment: No impact(s).

Needs and Uses: FCC Form 382 is to be used by television broadcast licensees and permittees currently assigned at least one in-core channel (*i.e.*, channels 2–51) to make a channel election in Round One of the DTV channel election process for their final

DTV operation. On September 7, 2004, the FCC released the *Report and Order* (*"Order"*), In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 03–15, FCC 04–192. This *Order* implements several steps necessary for the continued progress of the conversion of the nation's television system from analog to digital (DTV) technology, including a multi-step channel election process through which broadcast stations will select their channel for use after the digital transition. FCC Form 382 is one of six forms to be used by stations in this channel election process.

OMB Control Number: 3060–XXXX.

Title: Digital Channel Election Form: First Round Conflict Decision, FCC Form 383.

Form Number: FCC 383.

Type of Review: New collection.

Respondents: Business or other for-profit entities; and not-for-profit institutions.

Number of Respondents: 413.

Estimated Time per Response: 5 hours.

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 2,065 hours.

Total Annual Costs: $702,100.00.

Privacy Impact Assessment: No impact(s).

Needs and Uses: FCC Form 383 is to be used by television broadcast licensees and permittees that participated in Round One of the DTV channel election process and were notified by the Commission that their channel election results in an interference conflict to make a decision concerning their interference conflict. On September 7, 2004, the FCC released the *Report and Order* (*"Order"*), In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 03–15, FCC 04–192. This *Order* implements several steps necessary for the continued progress of the conversion of the nation's television system from analog to digital (DTV) technology, including a multi-step channel election process through which broadcast stations will select their channel for use after the digital transition. FCC Form 383 is one of six forms to be used by stations in this channel election process.

OMB Control Number: 3060–XXXX.

Title: Digital Channel Election Form: Second Round Election, FCC Form 384.

Form Number: FCC 384.

Type of Review: New collection.

Respondents: Business or other for-profit entities; and not-for-profit institutions.

Number of Respondents: 100.

Estimated Time per Response: 2–5 hours.

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 203 hours.

Total Annual Costs: $101,200.00.

Privacy Impact Assessment: No impact(s).

Needs and Uses: FCC Form 384 is to be used by television broadcast licensees and permittees without a currently assigned in-core channel (*i.e.*, channels 2–51) and licensees that released their only assigned in-core channel(s) in Round One of the DTV channel election process to make a channel election for their final DTV operation. On September 7, 2004, the FCC released the *Report and Order* (*"Order"*), In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 03–15, FCC 04–192. This *Order* implements several steps necessary for the continued progress of the conversion of the nation's television system from analog to digital (DTV) technology, including a multi-step channel election process through which broadcast stations will select their channel for use after the digital transition. FCC Form 384 is one of six forms to be used by stations in this channel election process.

OMB Control Number: 3060–XXXX.

Title: Digital Channel Election Form: Second Round Conflict Decision, FCC Form 385.

Form Number: FCC 385

Type of Review: New collection

Respondents: Business or other for-profit entities; and not-for-profit institutions.

Number of Respondents: 25.

Estimated Time per Response: 5 hours.

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 125 hours.

Total Annual Costs: $43,000.00.

Privacy Impact Assessment: No impact(s).

Needs and Uses: FCC Form 385 is to be used by television broadcast licensees and permittees that have not received a tentative channel designation by this stage in the DTV channel election process, as well as certain other television broadcast licensees and permittees seeking an alternate tentative channel designation, to make a channel election for their final DTV operation. On September 7, 2004, the FCC released the *Report and Order* (*"Order"*), In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 03–15, FCC 04–192. This *Order* implements several steps necessary for the continued progress of the conversion of the nation's television system from analog to digital (DTV) technology, including a multi-step channel election process through which broadcast stations will select their channel for use after the digital transition. FCC Form 385 is one of six forms to be used by stations in this channel election process.

OMB Control Number: 3060–XXXX.

Title: Digital Channel Election Form: Third Round Election, FCC Form 386.

Form Number: FCC 386.

Type of Review: New collection.

Respondents: Business or other for-profit entities; and not-for-profit institutions

Number of Respondents: 85.

Estimated Time per Response: 2–5 hours.

Frequency of Response: One-time reporting requirements.

Total Annual Burden: 173 hours.

Total Annual Costs: $86,200.00.

Privacy Impact Assessment: No impact(s).

Needs and Uses: FCC Form 386 is to be used by television broadcast licensees and permittees that have not received a tentative channel designation by this stage in the DTV channel election process, as well as certain other television broadcast licensees and permittees seeking an alternate tentative channel designation, to make a channel election for their final DTV operation. On September 7, 2004, the FCC released the *Report and Order* (*"Order"*), In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 03–15, FCC 04–192. This Order implements several steps necessary for the continued progress of the conversion of the nation's television system from analog to digital (DTV) technology, including a multi-step channel election process through which broadcast stations will select their channel for use after the digital transition. FCC Form 386 is one of six forms to be used by stations in this channel election process.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–22370 Filed 10–4–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Unleashing the Educational Power of Broadband Symposium

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: This notice advises interested persons that the Federal Communications Commission is holding a symposium exploring the educational power of broadband. A news release announcing the event was released on September 8, 2004 and an expanded release with an agenda was released on September 29, 2004, both of which were posted on the Commission's website.

DATES: Wednesday, October 6, 2004, 9 a.m., to 4 p.m.

ADDRESSES: Interested persons may join the meeting at the Federal Communications Commission, Commission Meeting Room, Room TW–A402 and TW–A442, 445 12th St. SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sarah Whitesell, 202–418–1941, *Sarah.Whitesell@fcc.gov*. Press Contact, Meribeth McCarrick, (202) 418–0654, *Meribeth.McCarrick@fcc.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to explore ways to use broadband to facilitate learning in schools, libraries and the home. Among the presenters will be participants in the Schools and Libraries Universal Service program, also called "e-rate," which was established as part of the Telecommunications Act of 1996 to provide affordable telecommunications services for all eligible schools and libraries, especially those in rural and economically disadvantaged areas. Speakers will also include teachers and librarians with first-hand experience using digital resources and assessing their impact on learning. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. A live RealAudio feed will be available over the Internet; information on how to tune in can be found at the Commission's Web site *http://www.fcc.gov*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–22475 Filed 10–4–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 04–54; FCC 04–208]

Availability of Advanced Telecommunications Capability in the United States

AGENCY: Federal Communications Commission.

ACTION: Notice; report to congress.

SUMMARY: This Report concludes the Commission's fourth inquiry under section 706 of the Telecommunications Act of 1996. This Report finds that the overall goal of section 706 is being met, and that advanced telecommunications capability is being deployed on a reasonable and timely basis to all Americans.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fourth Report to Congress* in GN Docket No. 04–54 released on September 9, 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. Section 706 of the 1996 Telecommunications Act directs both the Commission and the states to encourage deployment of advanced telecommunications capability to all Americans on a reasonable and timely basis. In conjunction with this objective, Congress directed the Commission to conduct regular inquiries concerning whether advanced telecommunications capability is being deployed to all Americans on a reasonable and timely basis and, based on our findings, to take action to accelerate deployment, if necessary.

2. This *Fourth Report to Congress* (Fourth Report) concludes the Commission's fourth inquiry into the availability of advanced telecommunications capability in the United States. Like the previous three reports, this *Fourth Report* finds that the overall goal of section 706 is being met, and that advanced telecommunications capability is being deployed on a reasonable and timely basis to all Americans.

3. In the *Fourth Report*, we use the terms "advanced telecommunications capability" and "advanced services" to mean services and facilities with an upstream (customer-to-provider) and downstream (provider-to-customer) transmission speed of 200 kbps or greater. Such facilities and services are referred to as "broadband" throughout this report, and, as the report details, they include both wireline (telephone company and cable) as well as a growing list of wireless facilities, both licensed and unlicensed. This *Fourth Report* focuses on services and facilities that provide 200 kbps upstream and downstream transmission speeds. In contrast, we use the term "high-speed" to describe services with more than 200 kbps capability in at least one direction.

4. Our existing definitions are not static. The success of first-generation broadband—at speeds of approximately 200 kbps—has prompted demand for ever-faster broadband networks and connections, and today most broadband providers are offering service well in excess of the minimum 200 kbps speed. The Commission currently has under consideration rule changes that will enable us to gather more information about these "next-generation" broadband networks and services for purposes of future reports.

5. This *Fourth Report* documents the significant development of new Internet-based services, and new access technologies that has taken place since the issuance of our last report in 2002. The best-known of these new Internet-based services is the commercial deployment of voice communications over the Internet Protocol network. The remarkable growth in Internet access is highlighted by the expansion of Wi-Fi Internet access and the explosive growth of both commercial and noncommercial hotspots. Wi-Fi joins an increasingly lengthy list of other wired and wireless methods of accessing the Internet, a list that also includes WiMax, personal area networks, satellite technologies, fiber-to-the-home, and broadband over power lines, in addition to more familiar cable modem and digital subscriber line (DSL) services.

6. The *Fourth Report* also documents that subscribership to these networks and services has increased significantly since the issuance of our last report. Specifically, subscribership to high-speed lines almost tripled from 9.6 million in June 2001 to 28.2 million in December 2003, and subscribership to advanced services more than tripled in this same period, from 5.9 million lines to 20.3 million lines. In addition, the number of residential and small business subscribers to high-speed services has more than tripled during the same period, from 7.8 million lines

in June 2001 to 26 million lines in December 2003.

7. Further, the *Fourth Report* documents the continuation of a positive trend that first emerged in our last report: namely, the increasing availability of advanced telecommunications capability to certain groups of consumers—those in rural areas, those with low incomes, and those with disabilities—who stand in particular need of advanced services. Consumers in these groups are of special concern to the Commission in that they are the doubly vulnerable: that is, although they are most in need of access to advanced telecommunications capability to overcome economic, educational, and other limitations, they are also the most likely to lack access precisely because of these limitations. The *Fourth Report* demonstrates that we are making substantial progress in closing the gaps in access that these groups traditionally have experienced.

8. Broadband-based Internet services have also become a critical communications tool for the deaf and hard-of-hearing, through the use of Internet Protocol Relay (IP Relay) and Video Relay Service (VRS), two forms of telecommunications relay services (TRS) that rely on the Internet. This report shows that there has been more than a 640 percent increase in IP Relay usage and more than a 2,000 percent increase in VRS in the past two years.

9. In addition, more than 95 percent of public libraries and 92 percent of public school classrooms have Internet access. Use of broadband connections in schools with high minority enrollment increased from 81 percent to 95 percent between 2000 and 2002. During this same period, schools with the highest poverty concentration using broadband connections to access the Internet increased from 75 percent to 95 percent.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–22369 Filed 10–4–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collections; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following collections of information titled: (1) Interagency Charter and Federal Deposit Insurance Application, and (2) Notice of Branch Closure.

DATES: Comments must be submitted on or before December 6, 2004.

ADDRESSES: Interested parties are invited to submit written comments to Steven F. Hanft (202–898–3907), Paperwork Clearance Officer, Room MB–3064, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to the OMB control number. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898–3838].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Mark Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Steven F. Hanft, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collections of information:

1. *Title:* Interagency Charter and Federal Deposit Insurance Application.

OMB Number: 3064–0001.

Frequency of Response: On occasion.

Affected Public: Banks or savings associations wishing to become FDIC-insured depository institutions.

Estimated Number of Respondents: 200.

Estimated Time per Response: 125 hours.

Total Annual Burden: 25,000 hours.

General Description of Collection: The Interagency Charter and Federal Deposit Insurance Application is used by the FDIC as a deposit insurance application, and by the OCC and OTS as a charter application. Applications for deposit insurance must provide sufficient information to permit the FDIC to consider certain factors which are listsed in Section 6 of the FDI Act. These factors include: the financial history and condition of the depository institution, the adequacy of its capital structure, its future earnings prospects, the general character and fitness of its management, the risk it presents to the relevant insurance fund, the convenience and needs of the community to be served, and the consistency of its corporate powers. All depository institutions seeking insurance must follow the same procedures.

2. *Title:* Notice of Branch Closure.

OMB Number: 3064–0109.

Frequency of Response: On occasion.

Affected Public: Insured depository institutions.

Estimated Number of Respondents: 1,364.

Estimated Time per Response: 2.4 hours.

Total Annual Burden: 3,028 hours.

General Description of Collection: An institution proposing to close a branch must notify its primary regulator no later than 90 days prior to the closing. Each FDIC-insured institution must adopt policies for branch closings. This collection covers the requirements for notice, and for policy adoption.

Request for Comment

Comments are invited on: (a) Whether these two collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodologies and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collections should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, DC, this 30th day of September 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 04–22367 Filed 10–4–04; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2004–N–12]

Submission for OMB Review; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) has submitted the information collection entitled "Federal Home Loan Bank Directors" to the Office of Management and Budget (OMB) for review and approval of a three-year extension of the OMB control number, which is due to expire on October 31, 2004.

DATES: Interested persons may submit comments on or before November 4, 2004.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Board, Washington, DC 20503.

FOR FURTHER INFORMATION OR COPIES OF THE COLLECTION CONTACT: Patricia L. Sweeney, Program Analyst, Office of Supervision, by telephone at 202/408–2872, by electronic mail at *sweeneyp@fhfb.gov*, or by regular mail to the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of Information Collection

Section 7 of the Federal Home Loan Bank Act (Bank Act) and the Finance Board's implementing regulation establish the eligibility requirements and the procedures for electing and appointing Federal Home Loan Bank (FHLBank) directors. *See* 12 U.S.C. 1427; 12 CFR part 915. Under part 915, the FHLBanks determine the eligibility of elected directors and director nominees and run the director election process. The Finance Board determines the eligibility of and selects all appointed FHLBank directors. To determine eligibility, the FHLBanks use the Elected Director Eligibility Certification Form and the Finance Board uses the Appointed Director Eligibility Certification Form. The Finance Board regulation also requires incumbent directors to certify annually that they continue to meet the director eligibility requirements.

The Finance Board uses the information contained in the Appointed Director Eligibility Certification Form and part 915 to determine whether prospective and incumbent appointed FHLBank directors satisfy the statutory and regulatory eligibility requirements. The FHLBanks, and where appropriate, the Finance Board, use the information in the Elected Director Eligibility Certification Form and part 915 to determine whether elected FHLBank directors and director nominees satisfy the statutory and regulatory eligibility requirements. Only individuals meeting these requirements may serve as FHLBank directors. *See* 12 U.S.C. 1427.

The likely respondents include FHLBanks, FHLBank members, and prospective and incumbent FHLBank directors.

The OMB number for the information collection is 3069–0002. The OMB clearance for the information collection expires on October 31, 2004.

B. Burden Estimate

The Finance Board estimates that total number of respondents is 5010, which includes 12 FHLBanks, 4600 FHLBank members, and 398 prospective and incumbent FHLBank directors. As explained below, the Finance Board estimates that the total annual hour burden for all respondents is 4210 hours.

The Finance Board estimates the total annual average hour burden for each FHLBank to run the election of directors and process prospective and incumbent Elected Director Eligibility Certification Forms is approximately 234 hours. The estimate for the average hour burden for all FHLBanks is 2809 hours (12 FHLBanks × approximately 234 hours).

The Finance Board estimates the total annual average hour burden for all FHLBank members to participate in the director election process is 1150 hours. This includes 150 hours for FHLBank members to process director nomination forms (600 FHLBank members processing nomination forms × 0.25 hours) and 1000 hours for FHLBank members to vote in the director election (4000 FHLBank voting members × 0.25 hours).

The Finance Board estimates the total annual average hour burden for all FHLBank directors is 251 hours. This includes 155 hours for prospective FHLBank directors to complete and return Director Eligibility Certification Forms (206 prospective directors × 1 response per individual × 0.75 hours). It also includes 96 hours for incumbent FHLBank directors to complete and return Director Eligibility Certification Forms or updates, as appropriate (192 incumbent FHLBank directors × 1 response per individual × 0.5 hours).

C. Comment Request

In accordance with the requirements of 5 CFR 1320.8(d), the Finance Board published a request for public comments regarding this information collection in the **Federal Register** on July 30, 2004. See 69 FR 45715 (July 30, 2004). The 60-day comment period closed on September 28, 2004. The Finance Board received no public comments.

Written comments are requested on: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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 should be submitted to OMB in writing at the address listed above.

Dated: September 29, 2004.

By the Federal Housing Finance Board.

Mark J. Tenhundfeld,

General Counsel.

[FR Doc. 04–22286 Filed 10–4–04; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the

proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 29, 2004.

A. Federal Reserve Bank of Cleveland (Cindy C. West, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Fifth Third Bancorp, and Fifth Third Financial Company, both of Cincinnati, Ohio; to acquire 100 percent of the voting shares of, and thereby merge with First National Bankshares of Florida, Inc., Naples, Florida, and thereby indirectly acquire voting shares of First National Bank of Florida, Naples, Florida.

2. Peoples Community Bancorp, Inc., West Chester, Ohio; to become a bank holding company by acquiring 38 percent of the voting shares of Columbia Bancorp, Inc., and thereby indirectly acquire voting shares of The Columbia Savings Bank, both of Cincinnati, Ohio.

In connection with this application, Applicant also has applied to retain Peoples Community Bank, West Chester, Ohio, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1.Centennial Bank Holdings, Inc., Fort Collins, Colorado; and its wholly owned subsidiary Newco Front Range, Inc., Fort Collins, Colorado, to acquire 100 percent of the voting shares of Guaranty Corporation, Denver, Colorado, and thereby indirectly acquire Guaranty Bank and Trust Company, Denver, Colorado, Collegiate Peaks Bank, Buena Vista, Colorado, and First National Bank of Strasburg, Strasburg, Colorado.

In connection with this application, Applicant also has applied to acquire voting shares of Guaranty Corporation, Denver, Colorado, and thereby indirectly acquire AMG Guaranty Trust, N.A., Greenwood Village, Colorado, and thereby engage in trust activities, pursuant to section 225.28(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, September 30, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–22378 Filed 10–4–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Consumer Advisory Council

ACTION: Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, October 28, 2004. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, D.C., in Dining Room E on the Terrace level of the Martin Building. Anyone planning to attend the meeting should, for security purposes, register no later than Tuesday, October 26, by completing the form found on–line at: https://www.federalreserve.gov/secure/forms/cacregistration.cfm.

Additionally, attendees must present photo identification to enter the building.

The meeting will begin at 9:00 a.m. and is expected to conclude at 1:00 p.m. The Martin Building is located on C Street, NW, between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under various consumer financial services laws and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Community Reinvestment Act Proposed Rules: Discussion of the impact of the recent CRA proposals on community reinvestment and the process of interagency oversight and supervision.

Courtesy Overdraft Protection: Discussion of issues relative to coverage of courtesy overdraft protection under the Truth in Savings Act or the Truth in Lending Act.

Anti–Predatory Lending Laws: Discussion of federal and state legislation to protect consumers from abusive lending practices.

Electronic Fund Transfer Act: Discussion of issues in connection with the proposed changes to Regulation E, which implements the Electronic Fund Transfer Act.

Committee Reports: Council committees will report on their work.

Other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Ann Bistay, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Information about this meeting may be obtained from Ms. Bistay, 202–452–6470.

Board of Governors of the Federal Reserve System, September 29, 2004.

Jennifer J. Johnson

Secretary of the Board

[FR Doc. 04–22332 Filed 10–4–04; 8:45 am]

BILLING CODE: 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Tuesday, October 12, 2004.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, October 1, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–22522 Filed 10–1–04; 3:59 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation; Medicare Program; Meeting of the Technical Advisory Panel on Medicare Trustee Reports

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Technical Advisory Panel on Medicare Trustee Reports (Panel). Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). The Panel will discuss the long-term rate of change in health spending and may make recommendations to the Medicare Trustees on how the Trustees might more accurately estimate health spending in the long run. The Panel's discussion is expected to be very technical in nature and will focus on the actuarial and economic methods by which Trustees might more accurately measure health spending. Although panelists are not limited in the topics they may discuss, the Panel is not expected to discuss or recommend changes in current or future Medicare provider payment rates or coverage policy.

DATES: October 15, 2004, 8 a.m.–4 p.m. e.d.t.

ADDRESSES: The meeting will be held at HHS headquarters at 200 Independence Ave., SW., 20201, Room 705A.

Comments: The meeting will allocate time on the agenda to hear public comments. In lieu of oral comments, formal written comments may be submitted for the record to Jacob Kaplan, OASPE, 200 Independence Ave., SW., 20201, Room 447D. Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Jacob Kaplan at (202) 401–6119, *jacob.kaplan@hhs.gov*. *Note:* Although the meeting is open to the public, procedures governing security procedures and the entrance to Federal buildings may change without notice. Those wishing to attend the meeting should call or e-mail Mr. Kaplan by October 11, 2004, so their name may be put on a list of expected attendees and forwarded to the security officers at HHS Headquarters.

SUPPLEMENTARY INFORMATION: On April 22, 2004, we published a notice announcing the establishment and requesting nominations for individuals to serve on the Panel. The panel members are: Mark Pauly, Edwin Hustead, Alice Rosenblatt, Michael Chernew, David Meltzer, John Bertko, and William Scanlon.

Topics of the Meeting: The Panel is specifically charged with discussing and possibly making recommendations to the Medicare Trustees on how the Trustees might more accurately estimate the long term rate of health spending in the United States. The discussion is expected to focus on highly technical aspects of estimation involving economics and actuarial science. Panelists are not restricted, however, in the topics they choose to discuss.

Procedure and Agenda: This meeting is open to the public. Interested persons may observe the deliberations and discussions, but the Panel will not hear public comments until the end of Panel deliberations. The Commission will also allow an open public session for any attendee to address issues specific to the topic.

Authority: 42 U.S.C. 217a; Section 222 of the Public Health Services Act, as amended. The panel is governed by provisions of Public Law 92–463, as amended (5 USC Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: September 29, 2004.

Michael J. O'Grady,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 04–22323 Filed 10–4–04; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–04–04HH]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210 or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Active Surveillance of Ciguatera in Culebra, Puerto Rico—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Ciguatera fish poisoning (CFP) is a serious health threat to people in Puerto Rico. Many finfish that live in the island's coral reefs carry ciguatoxin. When people consume these finfish, they can get CFP, a condition that causes gastrointestinal and neurological symptoms. To quantify the health burden caused by CFP, the local department of health tallies the number of cases of CFP reported by health care providers on the island. A recent evaluation of this passive surveillance system determined that the majority of CFP cases that occur on the island are missed. To accurately quantify the health threat of CFP to the population in Puerto Rico, the National Center for Environmental Health, Centers for Disease Control and Prevention, in conjunction with the Puerto Rico Department of Health, will conduct active surveillance for CFP for twelve (12) months in Puerto Rico.

This active surveillance system will quantify the public health burden of CFP by determining the incidence, risk factors, and economic effect of CFP in Culebra, Puerto Rico. Household questionnaire, Part B will be administered to each household in Culebra every four (4) months for one (1) year. This questionnaire elicits information on household fish consumption and identifies individuals who have developed symptoms of CFP. A second questionnaire will be administered once individuals having symptoms compatible with CFP are identified. This second questionnaire explores personal risk factors, medical management, and costs incurred while the individuals were ill with CFP. To confirm the presence of ciguatoxin in affected areas, fish will be collected from local reefs, fish vendors, and any appropriate leftover fish from people with CFP. The fish will be analyzed by the U.S. Food and Drug Administration.

Ultimately, the information provided by this study will aid the Puerto Rico Department of Health in controlling the health threat of CFP. Quantifying the incidence, risk factors, and economic burden of CFP will guide the development of preventive strategies. The annualized burden to respondents is estimated to be 250 hours.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Recruitment and consent	512	1	2/60
Household Part A	360	1	7/60
Household Part B	720	3	5/60
Individuals	45	1	15/60

Dated: September 29, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–22348 Filed 10–4–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services, has been renewed for a 2-year period, through September 18, 2006.

FOR FURTHER INFORMATION CONTACT: Joseph E. Salter, Committee Management Officer, CDC, 37 Executive Park Drive, Atlanta, Georgia 30329, telephone (404) 498–0090.

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 the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 28, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–22350 Filed 10–4–04; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Nominations of Candidates To Serve on the Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention, Department of Health and Human Services

The Centers for Disease Control and Prevention (CDC) is soliciting nominations for possible membership on the Advisory Committee on Immunization Practices (ACIP). This committee provides advice and guidance to the Secretary of the Department of Health and Human Services, and the Director of the Centers for Disease Control and Prevention, regarding the most appropriate application of antigens and related agents for effective communicable disease control in the civilian population. The committee reviews and reports regularly on immunization practices and recommends improvements in the national immunization efforts.

The committee also establishes, reviews, and as appropriate, revises the list of vaccines for administration to children eligible to receive vaccines through the Vaccines for Children (VFC) Program.

Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the committee's objectives. Nominees will be selected based upon expertise in the field of immunization practices; multidisciplinary expertise in public health; expertise in the use of vaccines and immunologic agents in both clinical and preventive medicine; knowledge of vaccine development, evaluation, and vaccine delivery; or knowledge about consumer perspectives and/or social and community aspects of immunization programs. Federal employees will not be considered for membership. Members may be invited to serve up to four-year terms.

Consideration is given to representation from diverse geographic areas, both genders, ethnic and minority groups, and the disabled. Nominees must be U.S. citizens.

The following information must be submitted for each candidate: Name, affiliation, address, telephone number, and a current curriculum vitae. E-mail addresses are requested if available.

Nominations should be sent in writing and postmarked by November 19, 2004 to: Demetria Gardner, National Immunization Program, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Mailstop E–61, Atlanta, Georgia 30333. Telephone and facsimile submissions cannot be accepted.

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: September 23, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–22349 Filed 10–4–04; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health, Safety and Occupational Health Study Section

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 committee meeting.

Name: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Times and Dates:

8 a.m.–5 p.m., October 19, 2004

8 a.m.–5 p.m., October 20, 2004

Place: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, Virginia,

22314, telephone 703/684–5900, fax 703/684–1403.

Status:

Open 8 a.m.–8:30 a.m., October 19, 2004

Closed 8:30 a.m.–5 p.m., October 19, 2004

Closed 8 a.m.–5 p.m., October 20, 2004

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health, and allied areas.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals. This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services, and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters to be Discussed: The meeting will convene in open session from 8–8:30 a.m. on October 19, 2004, to address matters related to the conduct of Study Section business. The remainder of the meeting will proceed in closed session. The purpose of the closed sessions is for the study section to consider safety and occupational health-related grant applications. These 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, Centers for Disease Control and Prevention, pursuant to Section 10(d) Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Price Connor, Ph.D., NIOSH Health Scientist, 1600 Clifton Road, NE, Mailstop E–20, Atlanta, Georgia 30333, telephone 404/498–2511, fax 404/498–2569.

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: September 20, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–22347 Filed 10–4–04; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

National Indian Health Board

AGENCY: Indian Health Services, HHS.

ACTION: Notice to supplement the single-source cooperative agreement with the National Indian Health Board.

SUMMARY: The Indian Health Service (IHS) announces a supplement to the single-source cooperative agreement award to the National Indian Health Board (NIHB) for costs in providing advice and technical assistance to federally recognized Tribes in the area of health care policy analysis and program development. Under the original cooperative agreement published in the **Federal Register**, 69 FR 11447, on March 10, 2004, the NIHB provides advice, consultation, and health care advocacy to the IHS based on Tribal input through a broad-based consumer network involving the Area Health Boards or Health Board representatives from each of the 12 IHS Areas. In addition, the NIHB communicates with Tribes and Tribal organizations concerning health issues, disseminates health care information, improves and expands access for American Indians and Alaska Native (AI/AN) Tribal Governments to all available programs in the Department of Health and Human services (HHS), and coordinates the Tribal consultation activities associated with formulating the IHS annual budget request. The program supplement to the single-source cooperative agreement is for $622,730 of one time funding for use during the current budget period in effect from 03/15/2004 to 12/31/2004. The annual funding levels of this single-source cooperative agreement is approximately $230,000, subject to the availability of appropriations.

Justification for Program Expansion Supplement

The program expansion supplement is issued under the authority of the Public Health Service Act, Section 301(a), and is included under the *Catalog of Federal Domestic Assistance* number 93.933. This supplemental funding is related to the original goals of the cooperative agreement and does represent an expansion of activities within the present scope of work. The **Federal Register** notice for the sole-source cooperative agreement award can be found in 69 FR 11447, published on March 10, 2004. The specific objectives and justifications for this program supplement are as follows:

1. Assistance to States, Tribal Governments, and the HHS Policy Academy to address the needs of young AI/AN adults with disabilities.

Assistance on this joint initiative of the Office of Disability, HHS and the IHS will result in the development of an action plan to address the needs of young AI/AN adults with disabilities who are between 16–30 years of age. It is necessary that the HHS Office of Disabilities and the States have access to the expertise and experience of the NIHB in order to meet the culturally diverse needs if AI/AN youth with disabilities. The involvement of NIHB in the Policy Academy will ensure that the HHS Office of Disabilities and the States are kept informed of the AI/AN consumer perspective throughout all activities. This task is consistent with the NIHB goal of improving access for AI/AN people to the programs of HHS.

2. Assistance to the Centers for Medicare and Medicaid Services (CMS) for outreach and education within the AI/AN community.

Funding has been transferred through an Intra-Agency agreement between CMS and the IHS to supplement the NIHB cooperative agreement. The NIHB will be tasked with implementing outreach and education activities specific to AI/AN beneficiaries regarding the Medicare-approved drug discount card and the transitional assistance program, both of which are authorized under the provisions of the Medicare Modernization Act. The CMS support for this initiative is in recognition of NIHB's capability to systematically disseminate pertinent and timely health care information to AI/AN Tribal Governments and Health Boards. The NIHB's dissemination activity is funded within the organization's present scope of work. This effort is also consistent with the NIHB goal of expanding access by AI/ANs to other programs of the HHS.

3. Assistance to the CMS in the development of a strategic plan for AI/ANs.

In recognition of the NIHB's status as the only national Indian organization that is representative of Tribal Governments and has expertise in AI/AN health issues, the CMS has transferred funds through a second Intra-Agency Agreement between CMS

and the IHS. The purpose of the agreement is to support NIHB assistance to the Agency in developing a strategic plan to improve CMS' services to eligible AI/AN beneficiaries. This is consistent with goals in the scope of work in which NIHB seeks to establish relationships with Federal agencies to service as a health advocate for AI/AN people and expand services to them from other HHS agencies.

4. Assistance in the implementation of the IHS Director's Health Promotion/Disease Prevention (HP/DP) Initiative.

The Director, IHS, has announced this initiative in conjunction with President Bush's "Healthier U.S. Initiative" and HHS Secretary Thompson's "Steps to a Healthier U.S." to reduce health disparities among AI/AN people. This initiative is a strategic approach to strengthening prevention efforts to improve the health and wellness of AI/AN families through expanded collaboration with Federal and non-Federal partners. The IHS will support this prevention effort, in part, through a partnership with NIHB in promoting physical activity in AI/AN communities under a program called "Just Move it." The NIHB will assist the IHS in managing this particular HP/DP Initiative by hosting a Web site for Tribal communities to become "Just Move It" partners, marketing this effort to Tribes, etc. These activities are consistent with the NIHB goals of systematically disseminating pertinent and timely health care information to AI/AN communities and establishing relationships with other organizations to serve as advocates for improved Indian health.

5. Assistance to the IHS in the evaluation of the current relationships between schools of public health and AI/AN communities.

In order to determine the current relationships between schools of public health and AI/AN communities, the NIHB will assist the IHS in developing a baseline report of research activities and existing partnerships. The NIHB will serve in an advisory capacity to the IHS and the Association of Schools of Public Health on this initiative. The organization has the expertise and experience to provide technical assistance on issues related to working in Indian Country such as infrastructure, Tribal Government protocols, cultural and legal aspects of sovereignty, and the appropriateness of products and deliverables. The objective of this effort will result in recommendations on improving the public health infrastructure in AI/AN communities. The purpose of this report is consistent with the NIHB goals of developing relationships with other organizations and professional groups in order to serve as an advocate for improved AI/AN health care.

Justification for Single Source

This project has been awarded on a non-competitive, single-source basis. The NIHB is the only national AI/AN organization with health expertise that represents the interest of all federally recognized Tribes.

Use of Cooperative Agreement

The program supplement to the original cooperative agreement has been awarded because of anticipated substantial programmatic involvement by IHS staff in the project. The substantial programmatic involvement includes the following:

(1) The IHS staff will have approval over the hiring of key personnel as defined by regulation or provision in the cooperative agreement.

(2) The IHS will provide technical assistance to the NIHB as requested and attend and participate in all NIHB board meetings.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Black, Director, Office of Tribal Programs, Office of the Director, Indian Health Service, 801 Thompson Avenue, Reyes Building, Suite 220 Rockville, Maryland 20852, (301) 443–1104. For grants information, contact Ms. Sylvia Ryan, Grants Management Specialist, Division of Grants Policy, 12300 Twinbrook Parkway, Suite 100, Rockville, Maryland 20852, (301) 443–5204.

Dated: September 28, 2004.

Charles W. Grim,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. 04–22333 Filed 10–4–04; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PBC 01Q: Pathobiochemistry: Quorum.

Date: October 15, 2004.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points By Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Zakir Bengali, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742, *bengaliz@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Drug Discovery and Molecular Pharmacology Study Section.

Date. October 20–22, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Arlington, 1325 Wilson Boulevard, Arlington, VA 22209.

Contact Person: Morris I. Kelsey, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–1718, *kelseym@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Cellular Aspects of Diabetes and Obesity Study Section.

Date: October 21–22, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ann A. Jerkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, 301–435–4514, *jerkinsa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Basic Mechanisms of Cancer Therapeutics.

Date: October 21–22, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Suzanne L. Forry-Schaudies, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 6192, MSC 7804, Bethesda, MD 20892, (301) 451–0131, *forryscs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 MGA (01) Q: Molecular Genetics A: Quorum.

Date: October 21–22, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael M. Sveda, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, 301–435–3565, *svedam@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Oral, Dental and Craniofacial Sciences Study Section.

Date: October 26–27, 2004.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: J. Terrell, Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, 301–435–1781, *hoffeldt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 EMNR–A 02: Member Conflict.

Date: October 28, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed M. Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7892, Bethesda, MD 20892, (301) 435–1043, *amirs@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Biostatistical Methods and Research Design Study Section.

Date: October 29, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *hardyan@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Social Science and Population Studies R03s, R15s, and R21s.

Date: October 29, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Valerie Durrant, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 435–3554, *durrantv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Stem Cell Therapy and Ion Channels in the Heart.

Date: October 29, 2004.

Time: 10:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Microcirculation and Hypertension.

Date: October 29, 2004.

Time: 1:15 p.m. to 2:15 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195, *sur@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 28, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22310 Filed 10–4–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Asthma Exacerbations: Biology and Disease Progression.

Date: October 27, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: Arthur N. Freed, PhD, Review Branch, Room 7186, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892, (301) 435–0280.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of Institutional National Research Service Award (T32) and Research Scientist Development Awards (K01s).

Date: November 3, 2004.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Zoe Huang, MD, Health Scientist Administrator, Review Branch, Room 7190, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924, 301–435–0314.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart, and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 28, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22312 Filed 10–4–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Member Conflict Meeting.

Date: November 17, 2004.

Time: 5 p.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Mark Swieter, PhD., Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401, (301) 435–1389.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards, 93.278, Drug Abuse National Research Service Awards for Research Training, 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: September 28, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22311 Filed 10–4–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) published in the **Federal Register** on April 11, 1988 (53 FR 11970), and revised in the **Federal Register** on June 9, 1994 (59 FR 29908) and on September 30, 1997 (62 FR 51118). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1035, 1 Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards that laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification, a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines, the following laboratories meet the minimum standards set forth in the Mandatory Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 / 800–877–7016, (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770 / 888–290–1150.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400.

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917.

Diagnostic Services Inc., dba DSI, 12700 Westlinks Dr., Fort Myers, FL 33913, 239–561–8200 / 800–735–5416.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281.

DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2661 / 800–898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310.

Dynacare Kasper Medical Laboratories*, 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702 / 800–661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609.

Express Analytical Labs, 3405 7th Ave., Suite 106, Marion, IA 52302, 319–377–0500.

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989 / 800–433–3823, (Formerly: Laboratory Specialists, Inc.).

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927 / 800–873–8845, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.).

LabOne, Inc., d/b/a Northwest Toxicology, 1141 E. 3900 S., Salt Lake City, UT 84124, 801–293–2300 / 800–322–3361, (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.; Northwest Drug Testing, a division of NWT Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Rd., Houston, TX 77040, 713–856–8288 / 800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400 / 800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Dr., Research Triangle Park, NC 27709, 919–572–6900 / 800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche

CompuChem Laboratories, Inc., A Member of the Roche Group).
Laboratory Corporation of America Holdings, 10788 Roselle St., San Diego, CA 92121, 800–882–7272, (Formerly: Poisonlab, Inc.).
Laboratory Corporation of America Holdings, 1120 Stateline Rd. West, Southaven, MS 38671, 866–827–8042 / 800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734 / 800–331–3734.
MAXXAM Analytics Inc.*, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700, (Formerly: NOVAMANN (Ontario) Inc.).
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466 / 800–832–3244.
MetroLab-Legacy Laboratory Services, 1225 NE. 2nd Ave., Portland, OR 97232, 503–413–5295 / 800–950–5295.
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Dr., Minneapolis, MN 55417, 612–725–2088.
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250 / 800–350–3515.
One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134.
Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).
Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991 / 800–541–7897x7.
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372 / 800–821–3627.
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 / 800–729–6432 (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–824–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750 (Formerly: Associated Pathologists Laboratories, Inc.)
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600 / 877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995 / 847–885–2010 (Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories)
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520 / 800–877–2520 (Formerly: SmithKline Beecham Clinical Laboratories)
Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Sciteck Clinical Laboratories, Inc., 317 Rutledge Rd., Fletcher, NC 28732, 828–650–0409
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300 / 800–999–5227
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276
Southwest Laboratories, 4645 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507 / 800–279–0027
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–364–7400 (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on June 9, 1994 (59 FR 29908) and on September 30, 1997 (62 FR 51118). After receiving DOT certification, the laboratory will be included in the monthly list of HHS certified laboratories and participate in the NLCP certification maintenance program.

The following laboratory is withdrawing from the NLCP on October 8, 2004: PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, 817–605–5300 (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory).

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 04–22351 Filed 10–4–04; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request: Canadian Border Boat Landing Permit

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Canadian Border Boat Landing Permit. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 6, 2004 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the agency's estimates of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (5) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Canadian Border Boat Landing Permit.

OMB Number: 1651–0108.

Form Number: Form I–68.

Abstract: This collection involves information from individuals who desire to enter the United States from Canada in a small pleasure craft.

Current Actions: This is an extension of a currently approved information collection.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 68,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 11,288.

Dated: September 29, 2004.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 04–22335 Filed 10–4–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1545–DR]

Florida; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1545–DR), dated September 4, 2004, and related determinations.

EFFECTIVE DATE: September 27, 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 Florida 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 September 4, 2004:

Gadsden, Hamilton, Leon, Madison, and Wakulla Counties for [Categories C–G] under the Public Assistance program (already designated for debris removal and emergency protective measures (Categories A and B) under the Public Assistance Program and direct Federal assistance at 100 percent Federal funding of the total eligible costs for the first 72 hours.)

Glades, Hendry, and Union Counties for [Categories C–G] under the Public Assistance program (already designated for Individual Assistance and debris removal and emergency protective measures (Categories A and B) under the Public Assistance Program and direct Federal assistance at 100 percent Federal funding of the total eligible costs for the first 72 hours.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22315 Filed 10–4–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1561–DR]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–1561–DR), dated September 26, 2004, and related determinations.

EFFECTIVE DATE: September 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, in a letter dated September 26, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Florida resulting from Hurricane Jeanne beginning on September 24, 2004, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas; Hazard Mitigation throughout the State; and any other forms of assistance under the Stafford Act you may deem appropriate

subject to completion of Preliminary Damage Assessments. Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. For a period of up to 72 hours, you are authorized to fund assistance for debris removal and emergency protective measures, including direct Federal assistance, at 100 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, William L. Carwile, III, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster:

The counties of Brevard, Hardee, Hernando, Highlands, Hillsborough, Indian River, Lake, Martin, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Seminole, St. Lucie, Sumter, and Volusia for Individual Assistance.

The counties of Brevard, Citrus, DeSoto, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Levy, Manatee, Marion, Martin, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Seminole, St. Lucie, Sumter, and Volusia for Public Assistance (Categories A and B), including direct Federal assistance, at 100 percent of the total eligible costs for a period of up to 72 hours.

All counties within the State of Florida are 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. 04–22321 Filed 10–4–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1561–DR]

Florida; 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 declaration for the State of Florida (FEMA–1561–DR), dated September 26, 2004, and related determinations.

EFFECTIVE DATE: September 27, 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 Florida 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 September 26, 2004:

Marion County for Individual Assistance (already designated for Public Assistance Categories A and B, including direct Federal assistance, at 100 percent of the total eligible costs for a period of up to 72 hours.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22322 Filed 10–4–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1560–DR]

Georgia; 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 declaration for the State of Georgia (FEMA–1560–DR), dated September 24, 2004, and related determinations.

EFFECTIVE DATE: September 27, 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 Georgia 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 September 24, 2004:

The counties of Baker, Bleckley, Calhoun, Camden, Dougherty, Emanuel, Grady, Hancock, Harris, Hart, Jeff Davis, Lanier, Long, McIntosh, Pike, Taliaferro, Toombs, Treutlen, Ware, Wayne, Webster, Wilcox, and Worth 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, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance

Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22320 Filed 10–4–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1550–DR]

Mississippi; 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 Mississippi (FEMA–1550–DR), dated September 15, 2004, and related determinations.

EFFECTIVE DATE: September 27, 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 Mississippi 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 September 15, 2004:

Clay, Monroe, Oktibbeha, and Winston Counties for Public Assistance.

Clarke, Forrest, George, Greene, Hancock, Harrison, Jackson, Jasper, Jones, Kemper, Lamar, Lauderdale, Lowndes, Neshoba, Newton, Noxubee, Perry, Stone, and Wayne Counties for Public Assistance [Categories C through G](already designated for Public Assistance Categories A and B, including direct Federal Assistance, at 100 percent of the total eligible costs for a period of up to 72 hours.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22317 Filed 10–4–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1546–DR]

North Carolina; 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 North Carolina (FEMA–1546–DR), dated September 10, 2004, and related determinations.

EFFECTIVE DATE: September 27, 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 North Carolina 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 September 10, 2004:

Alleghany and Wilkes Counties for Individual Assistance.

Ashe County for Individual Assistance (already designated 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, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22316 Filed 10–4–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1553–DR]

North Carolina; 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 State of North Carolina (FEMA–1553-DR), dated September 18, 2004, and related determinations.

EFFECTIVE DATE: September 27, 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 North Carolina 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 September 18, 2004:

Alamance, Alleghany, Ashe, Caswell, Davidson, Forsyth, Graham, Guilford, Randolph, Rockingham, Stokes, Swain, and Wilkes 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, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public

Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22318 Filed 10–4–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1558–DR]

West 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 for the State of West Virginia (FEMA–1558–DR), dated September 20, 2004, and related determinations.

EFFECTIVE DATE: September 27, 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 September 27, 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, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22319 Filed 10–4–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

RIN 1660–ZA04

Privacy Act of 1974; Updating the Student Application and Registration System of Records

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response (EP and R) Directorate, Department of Homeland Security (DHS).

ACTION: Notice of proposed revision to an existing Privacy Act system of records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), FEMA proposes to upgrade the system of records currently entitled "Student Application and Registration Records, FEMA/NETC/–017," by amending the method of collecting the information from hard copy only to hard copy and electronic. FEMA is also modifying this system of records to reflect its transfer to DHS. Subsections 552a(e)(4) and (11) of Title 5, United States Code, provide that the public be given a 30-day period in which to comment on routine uses. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to review the proposed systems.

DATES: The proposed system of records will be effective November 15, 2004, unless comments are received that result in a contrary determination. The public, OMB and Congress are invited to comment on the proposed system of records.

ADDRESSES: We invite your comments on this system of records. Please address them to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, room 840, 500 C Street, SW., Washington, DC 20472, (telefax) (202) 646–4536, or (email) *FEMA–RULES@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rena Y. Kim, Privacy Act Officer, room 840, 500 C Street, SW., Washington, DC 20472; (telephone) (202) 646–3949.

SUPPLEMENTARY INFORMATION: Prior to March 1, 2003, FEMA was an independent agency within the Federal government. While operating as an independent agency, FEMA established this Privacy Act system of records. *See* 55 FR 37182, Sept. 7, 1990; 52 FR 324, Jan. 5, 1987; 49 FR 45257, Nov. 15, 1984; 48 FR 12132, Mar. 23, 1982; 47 FR 53483, Nov. 26, 1982; 46 FR 49726, Oct. 7, 1981; 45 FR 67830, Oct. 14, 1980; and 45 FR 51431, Aug. 1, 1980. As of March 1, 2003, FEMA became a component of EP and R, which is a Directorate of DHS. The previous notice is, therefore, being updated in part to reflect the transfer of FEMA's functions to the EP and R Directorate within DHS and in part to reflect a conversion in the type of records being maintained in this system.

This system of records contains information provided by individuals applying for courses offered by the National Fire Academy (NFA) and the Emergency Management Institute (EMI) on-campus and off-campus, by State and local training agencies, through selected colleges and universities, and through independent self-study. Information collected includes citizenship (city and country of birth for non-U.S. citizens), social security number or an alternate number that has been assigned in lieu of the social security number, name, mailing address, work phone number, alternate phone number, fax number, e-mail address, course code and title, course location, dates requested, course pre-requisite as described in the course catalog, special assistance request, name and address of the organization being represented, fire department identification number, current position and years in that position, category of the position, jurisdiction type, type of work for the organization, organization type, employment status, number of staff in the organization, size of population served by the organization, brief description of the activities or responsibilities as they relate to the course for which they are applying, primary responsibility and type of experience, number of years of experience, date of birth, sex, ethnicity and race. Information such as age, sex, and ancestral heritage are used for statistical purposes only and are provided on a voluntary basis. The social security number is necessary because of the large number of individuals who may have identical names and birth dates and whose identities can only be distinguished by their social security number. Disclosure of an individual's social security number is voluntary. However, if an applicant does not provide a social security number, a unique identification number will be substituted, which will affect the ability to retrieve complete training information on an applicant. The information is contained in the National Emergency Training Center (NETC) Admissions System. It will consist of computerized files and paper records retrieved by name or social security number.

Dated: September 29, 2004.

David A. Trissell,

General Counsel, Emergency Preparedness and Response, Department of Homeland Security.

Accordingly, we add DHS/EP and R/FEMA/NETC/017, of the FEMA Privacy Act systems of records to read as follows:

SYSTEM NAME:

Student Application and Registration Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

NETC, 16825 South Seton Avenue, Emmitsburg, Maryland 21727–8998.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system covers those individuals who apply for or take courses offered by FEMA's NFA or EMI. Courses are offered on-campus and off-campus, by State and local training agencies, through selected colleges and universities, and through independent self-study. Information can be obtained by individuals completing a general admissions application or by applying for a course electronically. Information may also be provided by a State or local training agency when the course has been taken through that agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files include application forms and other information submitted either in hard copy or electronically by the applicant. Information collected includes, but is not limited to, U.S. citizenship (city and country of birth is also included for non-U.S. citizens), social security number or an alternate number that has been assigned in lieu of the social security number, name, mailing address, work phone number, alternate phone number, fax number, email address, course code and title, course location, dates requested, course pre-requisite as described in the course catalog, an indication if they require special assistance, name and address of the organization being represented, fire department identification number, current position and years in that position, category of the position, jurisdiction type, type of work for the organization, organization type, employment status, number of staff in the organization, size of population served by the organization, brief description of the activities or responsibilities as they relate to the course for which they are applying, primary responsibility and type of experience, number of years of experience, date of birth, sex, ethnicity and race. Information such as age, sex, and ancestral heritage are used for statistical purposes only. Personal information is provided on a voluntary basis. Failure to provide certain information being requested, however, may result in a delay in processing an application because the information provided may be insufficient to determine eligibility for the course. The social security number is necessary because of the large number of individuals who may have identical names and birth dates and whose identities can only be distinguished by their social security number. The social security number is used for record-keeping purposes, *i.e.*, to ensure that academic records are maintained accurately. Disclosure of an individual's social security number is voluntary. However, if an applicant does not provide a social security number, a unique identification number will be substituted, which will affect the ability to retrieve complete training information on an applicant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 93–498, Federal Fire Prevention and Control Act of 1974, as amended; Pub. L. 93–288, Robert T. Stafford Disaster Relief and Emergency Assistance Act; Pub. L. 93–579, 44 U.S.C. 3101; Privacy Act of 1974; E.O. 12127; E.O. 12148; and Reorganization Plan No. 3 of 1978; 5 U.S.C. 301; Presidential Memorandum, "Electronic Government's Role in Implementing the President's Management Agenda," July 10, 2002; 15 U.S.C. 2206, 44 U.S.C. 3101; 50 U.S.C. App. 2253 and 2281; E.O. 12127, 12148 and 9397; Title VI of the Civil Rights Act of 1964; and Section 504 of the Rehabilitation Act of 1973. Executive Order 9397 authorizes the collection of the social security number.

PURPOSE(S):

For the purpose of determining eligibility and effectiveness of NFA and EMI courses; to reimburse students under the Student Stipend Program, and to provide housing to students and other official guests of the NETC. Information such as age, sex, and ancestral heritage are used for statistical purposes only.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system may be disclosed as a routine use as follows:

1. *Audits and Oversight:* To an agency, organization, or individual for the purposes of performing authorized audit or oversight operations.

2. *Congressional Inquiries:* To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

3. *Contractors, et al:* To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government, when necessary to accomplish an agency function related to this system of records.

4. *Investigations:* Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil or regulatory—the relevant records may be referred to an appropriate Federal, State, territorial, tribal, local, international, or foreign agency law enforcement authority or other appropriate agency charged with investigating or prosecuting such a violation or enforcing or implementing such law.

5. *Litigation:* To the Department of Justice (DOJ) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when: (a) DHS, or (b) any employee of DHS in his/her official capacity, or (c) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee, or (d) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation and when the records are determined by the DHS to be arguably relevant to the proceeding

6. *Privacy Act Verification and Amendment:* To a federal, State, territorial, tribal, local, international, or foreign agency or entity for the purpose of consulting with that agency or entity (a) to assist in making a determination regarding access to or amendment of information, or (b) for the purpose of verifying the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment of information.

7. *Privacy/Act FOIA Access and Amendment:* To the submitter or subject of a record or information to assist DHS in making a determination as to access or amendment.

8. *Records Management:* To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. sections 2904 and 2906.

9. Requesting Information: To a Federal, State, local, tribal, territorial, foreign, or international agency, if necessary to obtain information relevant to a DHS 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.

10. Requested Information: To a Federal, State, local, tribal, territorial, foreign, or international agency, in response to its request, in connection with 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 by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

11. Medical Assistance: To a physician(s) in order to provide information from the application for students who become ill or are injured during courses and are unable to provide the information.

12. Boards of Visitors: To members of the NFA and EMI Boards of Visitors Federal advisory committees for the purpose of evaluating NFA's and EMI's programmatic statistics.

13. Sponsors: To sponsoring States, local officials, or state agencies to update/evaluate statistics on NFA and EMI educational program participation.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system do not qualify for the purpose of disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Copies of paper applications as well as information maintained electronically are stored in a work area that is locked when it is not staffed. The doors to the work area are kept closed and signs stating that access is limited to authorized personnel are posted on the doors. There is limited access given to persons who have a need to have access to the information to perform their official duties. Computerized records are stored in a database server in a secured file server room. Electronic records are stored on a file server in another building and backed up nightly. The backup tapes are stored in a separate area from the file server for seven days. After that they are placed in a safe in another building and retained for one year.

RETRIEVABILITY:

Records can be retrieved by an individual's last name or social security number.

SAFEGUARDS:

The admissions contractor controls access to hardcopy records by keeping them in file cabinets when not being used and in a work area that is locked when it is not occupied by authorized personnel. The System Administrator controls access to the electronic files by use of passwords and the Admissions Specialist assigns rights to modules of the system based on work responsibility. The files are stored in a secure server room at FEMA's Emmitsburg facility. Records are maintained in accordance with Federal computer security standards.

RETENTION AND DISPOSAL:

Hard copy records are maintained for one year and nine months, at which time they are retired to the Federal Records Center. Records are retained for a total of 40 years. Computerized records are stored in a database server in a secured file server room. The same retention schedule that applies to paper records will be followed. This is consistent with the records retention schedule that has been developed for this system.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Admissions Specialist, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727–8998.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any records contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 6 CFR Part 5, subpart B, with specific reference to the verification of identity requirements of 6 CFR 5.21.

Requests for Privacy Act protected information must be made in writing, and clearly marked as a "Privacy Act Request." The name of the requester, the nature of the record sought, and the required verification of identity must be clearly indicated. Requests should be sent to: Privacy Act Officer, DHS/FEMA Office of General Counsel (GL), room 840, 500 C Street, SW., Washington, DC 20472.

Certain public information such as name, organizational address, organizational telephone number, email address, position title, course code and title, and the dates the course was taken are made available. All reports are based on organizational information.

RECORD ACCESS PROCEDURES:

Same as Notification Procedure above.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedure above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

The sources are the individuals themselves, applicants to NFA or EMI courses, Federal employees, and FEMA employees and contractor support processing NFA or EMI course applications as part of their official duties.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–22363 Filed 10–4–04; 8:45 am]
BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Announcement of Performance Review Board Members

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice announces the names of new members of the Emergency Preparedness and Response Directorate Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Shirley Schell, Executive Resources Program Manager, Human Capital Division, 500 C Street, SW., Washington, DC 20742, 202–646–3297.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314 (c)(4) requires agencies to publish notice of Performance Review Board appointees in the **Federal Register** before their service begins. The role of the Performance Review Board is to review and make recommendations to the appointing authority on performance management issues such as appraisals, pay adjustments, bonuses, and Presidential Rank Awards for members of the Senior Executive Service. Under Secretary Michael D. Brown has named the following members of the Emergency Preparedness and Response Directorate Performance Review Board:

Patricia Stahlschmidt, Director, Strategic Planning and Evaluation.
Thomas McQuillan, Program Advisor, Facilities Management Division.
Edward Kernan, Chief Information Policy and Resources Management.
David Trissell, Associate General Counsel.
Michael Hall, Acting Director, Human Capital Division.
Charlie Dickerson, Deputy Administrator, U.S. Fire Administration.
David Maurstad, Regional Director, Region VIII, Denver, CO.
Reynold Hoover, Director Office of National Security Coordination.

Dated: September 30, 2004.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22364 Filed 10–4–04; 8:45 am]

BILLING CODE 9110–49–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–78]

Notice of Submission of Proposed Information Collection to OMB; Rehabilitation Mortgage Insurance Underwriting Program Section 203 (K)

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.

Request for reinstatement of an information collection for the application, qualification, and certification processes for participants in the Rehabilitation Mortgage Insurance program.

DATES: *Comments Due Date:* November 4, 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 (2502–0527) 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* and Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins 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: Rehabilitation Mortgage Insurance Underwriting Program Section 203 (K).

OMB Approval Number: 2502–0527.

Form Numbers: HUD–92700, HUD–92700–A, HUD–9746–A.

Description of the Need for the Information and its Proposed Use: Request for reinstatement of an information collection for the application, qualification, and certification processes for participants in the Rehabilitation Mortgage Insurance program.

Frequency of Submission: On occasion, quarterly.

Reporting burden:	Number of respondents	Annual responses	x	Hours per	=	Burden hours
	3,030	1.7		44	....	231,000

Total Estimated Burden Hours: 231,000.

Status: Reinstatement without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 29, 2004.

Wayne Eddins,

Departmental Reports Management Office, Office of the Chief Information Officer.

[FR Doc. E4–2495 Filed 10–4–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Central Utah Project Completion Act

AGENCY: Office of the Assistant Secretary for Water and Science, Department of the Interior.

ACTION: Notice of intent to negotiate a contract between the Central Utah Water Conservancy District and Department of the Interior for prepayment of costs allocated to municipal and industrial water from the Bonneville Unit of the Central Utah Project, Utah County, Utah.

SUMMARY: Public Law 102–575, Central Utah Project Completion Act, Section 210, as amended through Public Law 104–286 and Public Law 107–366, stipulates that: AThe Secretary shall allow for prepayment of the repayment contract between the United States and the Central Utah Water Conservancy District dated December 28, 1965, and supplemented on November 26, 1985, or any additional or supplemental repayment contract providing for repayment of municipal and industrial water delivery facilities of the Central Utah Project for which repayment is provided pursuant to such contract, under terms and conditions similar to those contained in the supplemental

contract that provided for the prepayment of the Jordan Aqueduct dated October 28, 1993. The prepayment may be provided in several installments to reflect substantial completion of the delivery facilities being prepaid and may not be adjusted on the basis of the type of prepayment financing utilized by the District. Nothing in this section authorizes or terminates the authority to use tax exempt bond financing for this prepayment.@ In accordance with the above referenced legislation, the Central Utah Water Conservancy District (CUWCD) intends to prepay the costs obligated under repayment contract No. 14–06–400–4286, as supplemented. This contract will provide for the fifth installment in a series of prepayments. The terms of the prepayment are to be publicly negotiated between CUWCD and the Department of the Interior.

DATES: Dates for public negotiation sessions will be announced in local newspapers.

FOR FURTHER INFORMATION CONTACT: Additional information on matters related to this Federal Register notice can be obtained by contacting Mr. Wayne Pullan, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo UT 84606–6154, (801) 379–1194, *wpullan@uc.usbr.gov.*

Dated: September 29, 2004.

Ronald Johnston,

Program Director, Department of the Interior.

[FR Doc. 04–22336 Filed 10–4–04; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Central Utah Project Completion Act

AGENCIES: Department of the Interior, Office of the Assistant Secretary—Water and Science, (Interior); Utah Reclamation Mitigation and Conservation Commission, (Mitigation Commission); Central Utah Water Conservancy District, (CUWCD).

ACTION: Notice of availability of the Utah Lake Drainage Basin Water Delivery System, Final Environmental Impact Statement for the facilities and measures authorized in Sections 202(a)(1), 202(c), 207, and 302 of the Central Utah Project Completion Act (CUPCA), which is part of the Bonneville Unit of the Central Utah Project.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, Interior, CUWCD, and the Mitigation Commission (Joint-Lead Agencies), have issued a Final Environmental Impact Statement (FEIS) for the Utah Lake Drainage Basin Water Delivery System (Utah Lake System), Bonneville Unit, Central Utah Project. The FEIS addresses potential impacts related to construction and operation of the features proposed for the Utah Lake System. The FEIS is intended to satisfy disclosure requirements of the National Environmental Policy Act (NEPA) and will serve as the NEPA compliance document for contracts, agreements and permits that would be required for construction and operation of the Utah Lake System. The Joint-Lead Agencies intend to seek Clean Water Act compliance through Section 404(r) provisions by including a 404(b)(1) analysis within the FEIS and therefore an exemption from the requirements to obtain a Section 404 permit for construction. In addition to this notification, notices will be published in local newspapers.

FOR FURTHER INFORMATION CONTACT: Additional information on matters related to this notice can be obtained from Mr. Reed Murray at (801) 379–1237, or *rmurray@uc.usbr.gov.*

Additional copies of the FEIS, and copies of the resource technical reports can be obtained from Ms. Laurie Barnett, Central Utah Water Conservancy District, 355 West University Parkway, Orem, Utah, 84058.

Copies are also available for inspection at:

Central Utah Water Conservancy District, 355 West University Parkway, Orem, Utah 84058;

Utah Reclamation Mitigation and Conservation Commission, 102 West 500 South, Suite 315, Salt Lake City UT 84101;

Department of the Interior, Natural Resource Library, Serials Branch, 18th C Streets, NW., Washington, DC 20240;

Department of the Interior, Central Utah Project Completion Act Office, 302 East 1860 South, Provo, Utah 84606.

and on the Central Utah Water Conservancy District Web site at: *http://www.cuwcd.com/cupca/projects/uls/index.htm.*

SUPPLEMENTARY INFORMATION:

Background—The Utah Lake System is one of the systems of the Bonneville Unit of the Central Utah Project that would develop central Utah's water resources for municipal and industrial supply, fish and wildlife, and recreation. Initiation of planning for the Utah Lake System was announced in the **Federal Register** on October 14, 1998 (FR Doc. 98–27484). Notice of intent to initiate scoping and prepare a Draft Environmental Impact Statement (DEIS) was announced in the **Federal Register** on August 23, 2000 (FR Doc. 00–21458). Scoping was accomplished in two stages: informal scoping was conducted through public meetings in September 2000 and October 2001; and formal scoping was conducted through mailings and public meetings during February 2002. The DEIS was issued by the Joint-Lead Agencies on March 25, 2004. Notice of availability of the DEIS was published in the **Federal Register** on March 30, 2004, (FR Doc. 04–7034). Comments received during the public comment period from March 25, 2004, until June 11, 2004, were considered during preparation of the FEIS. Public hearings were held April 28 and 29, 2004, for the purpose of receiving comments on the DEIS. Publication of the Record of Decision will occur no sooner than 30 days from the date of this notice.

Proposed Action Alternative—The Utah Lake System Proposed Action Alternative would provide an average transbasin diversion of 101,900 acre-feet which consists of 30,000 acre-feet of Municipal and Industrial (M&I) secondary water to southern Utah County and 30,000 acre-feet of M&I water to Salt Lake County water treatment plants; and 40,310 acre-feet of M&I water to Utah Lake for exchange to Jordanelle Reservoir. It would conserve water in a Mapleton-Springville Lateral Pipeline, conserve water in the Provo River basin and deliver it along with acquired water to assist June sucker spawning and rearing in the lower Provo River, convey water to support year-round instream flows in Provo River and seasonal instream flows in Hobble Creek to assist in the recovery of the June sucker, and develop hydropower. This alternative would involve construction of five new pipelines for delivery of water and 2 new hydropower plants and associated transmission lines. Under this alternative, Interior would acquire 57,000 acre-feet of the District's secondary water rights in Utah Lake to provide a firm annual yield of 60,000 acre-feet of ULS M&I water.

Bonneville Unit Water Alternative—The Bonneville Unit Water Alternative would have an average transbasin diversion of 101,900 acre-feet consisting of: 15,800 acre-feet of M&I water to southern Utah County to be used in secondary water systems; and 84,510 acre-feet of M&I water delivered to Utah Lake for exchange to Jordanelle Reservoir. It would conserve water in a Mapleton-Springville Lateral Pipeline, conserve water in the Provo River basin and deliver it along with acquired water

to assist June sucker spawning and rearing in the lower Provo River, convey water to support instream flows in Hobble Creek to assist recovery of the June sucker, and develop hydropower. It would involve construction of three new pipelines and two new hydropower plants with associated transmission lines. Under this alternative, Interior would acquire 15,000 acre-feet of the District's secondary water rights in Utah Lake to provide a firm annual yield of 15,800 acre-feet of M&I water.

No Action Alternative—No new water conveyance features would be constructed under the No Action Alternative. It would provide the delivery of 86,100 acre-feet of water from Strawberry Reservoir to Utah Lake for the Bonneville Unit M&I exchange water. The 15,800 acre-feet of Bonneville Unit water would remain in Strawberry Reservoir to provide a firm supply for the Bonneville Unit M&I exchange. Some of the Bonneville Unit M&I exchange water would be routed through the Strawberry Tunnel to meet instream flow needs in Sixth Water and Diamond Fork creeks. The remaining Bonneville Unit M&I exchange water would be conveyed through the Diamond Fork System and discharged into Diamond Fork Creek at the outlet near Monks Hollow or discharged from the Diamond Fork Pipeline into the Spanish Fork River at the mouth of Diamond Fork Canyon. The irrigation diversions on lower Spanish Fork River would be modified to bypass and measure the 86,100 acre-feet into Utah Lake, and to allow fish passage as previously agreed by the Interior and District in the 1999 Diamond Fork FS–FEIS and ROD. Interior would not purchase any of the District's secondary water rights in Utah Lake and no water would be conveyed to Hobble Creek for June sucker recovery. The No Action Alternative would be the same as the Interim Proposed Action in the Diamond Fork FS–FEIS.

Dated: September 30, 2004.

Ronald Johnston,

Program Director, Department of the Interior.

Dated: September 30, 2004.

Michael C. Weland,

Executive Director, Utah Reclamation Mitigation and Conservation Commission.

[FR Doc. 04–22337 Filed 10–4–04; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–1020–XX–028H; HAG 04–0291]

Council Meeting Notice

AGENCY: Bureau of Land Management (BLM), Vale District.

ACTION: Conference call for the John Day/Snake Resource Advisory Council.

SUMMARY: The John Day/Snake Resource Advisory Council will have a conference call on November 8, 2004 at 7 p.m. Pacific Time.

The conference call participants will discuss the Draft Forest Service Vegetation Treatment Environmental Impact Statement (EIS).

The entire conference call is open to the public. To participate in the conference call, please submit a written request to the Vale District Office 10 days prior to the call.

FOR FURTHER INFORMATION CONTACT: Peggy Diegan, Management Assistant/Webmaster, Vale District Office, 100 Oregon Street, Vale, OR 97918 (541) 473–3144, or e-mail *Peggy_Diegan@or.blm.gov.*

Dated: September 29, 2004.

Tom Dabbs,

Acting District Manager.

[FR Doc. 04–22352 Filed 10–4–04; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–PH; GP4–0292]

Notice of Cancellation of October 7, 2004 Meeting, Eastern Washington Resource Advisory Council Meeting and Notice To Reschedule Meeting for November 8, 2004

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting cancellation and rescheduling.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Washington Resource Advisory Council (RAC), will meet as indicated below.

DATES: The Eastern Washington Resource Advisory Council (EWRAC) meeting for October 7, 2004, at the Spokane District Office, Bureau of Land Management, 1103 North Fancher Road, Spokane, Washington, 99212–1275 is cancelled and rescheduled for November 8, 2004.

SUPPLEMENTARY INFORMATION: The rescheduled meeting on November 8, 2004 will start at 9 a.m. and adjourn about 4 p.m. Topics on the meeting agenda include:

- Fiscal Year 2004 Accomplishments.
- Fiscal Year 2005 Work Plan.

The RAC meeting is open to the public, and there will be an opportunity for public comments at 10:30 a.m.. Information to be distributed to Council members for their review is requested in written format 10 days prior to the Council meeting date.

FOR FURTHER INFORMATION CONTACT: Sandra Gourdin or Kathy Helm, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212, or call (509) 536–1200.

Dated: September 29, 2004.

Joseph K. Buesing,

District Manager.

[FR Doc. 04–22353 Filed 10–4–04; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–09–1060–00–24 1A]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The Advisory Board will meet Monday, November 8, 2004, from 8 a.m., to 5 p.m., local time. This will be a one day meeting.

ADDRESSES: The Advisory Board will meet at the Reno Hilton, 2500 E. Second Street, Reno, Nevada 89595 (775) 789–2000.

Written comments pertaining to the Advisory Board meeting should be sent to: Bureau of Land Management, National Wild Horse and Burro Program, WO–260, Attention: Ramona Delorme, 1340 Financial Boulevard, Reno, Nevada, 89502–7147. Submit written comments pertaining to the Advisory Board meeting no later than close of business November 3, 2004. *See* **SUPPLEMENTARY INFORMATION** section for electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: Janet Neal, Wild Horse and Burro Public Outreach Specialist, 775–861–6583. Individuals who use a telecommunications device for the deaf (TDD) may reach *Ms. Neal* at any time by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief of Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

Monday, November 8, 2004 (8 a.m.–5 p.m.)

8 a.m. Call to Order & Introductions:
8:15 a.m. Old Business:
  Approval of August 2004 Minutes
  2005 Nominations Update
  FY 04–FY 05 Updates
8:45 a.m. Program Updates:
  Gathers
  Adoptions
  Facilities
  New Long Term Holding Contracts
Break (9:30 a.m.–9:45 a.m.)
9:45 a.m.–Program Updates (continued):
  National Adoption Plan
  Forest Service Update
  Fertility Control
Lunch (11:30 p.m.–1 p.m.)
1 p.m.–New Business:
  Response to Advisory Board Recommendation
Break (2:30 p.m.–2:45 p.m.)
2:45 p.m. Board Recommendations
4 p.m. Public Comments
4:45 p.m. Recap/Summary/Next Meeting/Date/Site
5–6 p.m. Adjourn: Roundtable Discussion to Follow

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal Advisory Committee Management Regulations (41 CFR 101–6.1015(b)), require BLM to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

II. Public Comment Procedures

Members of the public may make oral statements to the Advisory Board on November 8, 2004, at the appropriate point in the agenda. This opportunity is anticipated to occur at 4 p.m., local time. Persons wishing to make statements should register with the BLM by noon on November 8, 2004, at the meeting location. Depending on the number of speakers, the Advisory Board may limit the length of presentations. At previous meetings, presentations have been limited to three minutes in length. Speakers should address the specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, speakers should submit two copies of their written comments where feasible. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, the BLM will make them available in their entirety, including your name and address. However, if you do not want the BLM to release your name and address in response to a FOIA request, you must state this prominently at the beginning of your comment. The BLM will honor your request to the extent allowed by law. The BLM will release all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, in their entirety, including names and addresses.

Electronic Access and Filing Address

Speakers may transmit comments electronically via the Internet to: *Janet_Neal@blm.gov*. Please include the identifier "WH&B" in the subject of your message and your name and address in the body of your message.

Dated: September 30, 2004.

Thomas H. Dyer,

Assistant Director, Renewable Resources and Planning.

[FR Doc. 04–22388 Filed 10–4–04; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Accreditation Association for Ambulatory Health Care, Inc.

Notice is hereby given that, on August 26, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Accreditation Association for Ambulatory Health Care, Inc. (AAAHC) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is Accreditation Association for Ambulatory Health Care, Inc., ("AAAHC") Wilmette, IL 60091. The nature and scope of AAAHC's standard development activities are: AAAHC develops and maintains standards of encourage the voluntary attainment of high-quality care in organizations providing health care services in ambulatory settings. The standards describe characteristics that AAAHC determines as indicative of an accreditable organization. The accreditation process involves self-assessment by a health care organizations, as well as a thorough review by AAAHC's expert surveyors to determine compliance with AAAHC standards. AAAHC updates its standards on a year basis, with input from many health care organizations and the public. The standards and survey procedures are contained in the

AAAHC Accreditation Handbook for Ambulatory Health Care.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–22296 Filed 10–4–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Accredited Standards Committee X9, Inc.

Notice is hereby given that, on August 23, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Accredited Standards Committee X9, Inc. ("ASC X9") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: Accredited Standards Committee X9, Inc. ("ASC X9"), Annapolis, MD. The nature and scope of ASC X9's standards development activities are to develop and promote standards for the financial services industry in order to facilitate services and products. ASC X9's objectives are to support (maintain, enhance and promote use of) existing standards; facilitate development of new, open standards based upon consensus; incorporate nonproprietary items developed by other organizations where appropriate; provide a common source for all standards affecting the financial services industry; focus on concurrent and future standards needs of the financial services industry standards; and participate in and promote the development of international standards.

Additional information concerning ASC X9 may be obtained from Cynthia L. Fuller, Executive Director, Accredited Standards Committee X9, Inc., P.O. box 4035, Annapolis, MD 21403, Tel. (410) 267–7707.

Dorothy B. Fountain,

Deputy Director of Operations Antitrust Division.

[FR Doc. 04–22294 Filed 10–4–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Optometric Association Commission on Ophthalmic Standards

Notice is hereby given that, on August 5, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), American Optometric Association Commission on Ophthalmic Standards ("AOA CmOS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(a) of the Act, the name and principal place of business of the standards development organization is: American Optometric Association Commission on Ophthalmic Standards, St. Louis, MO. The nature and scope of AOA CmOS's standards development activities are: The AOA CmOS provides for voluntary, impartial ophthalmic product evaluation resulting in the issuance of a seal of acceptance for those ophthalmic products that meet published standards specifications developed by the AOA CmOS, including biological, laboratory, and/or clinical evolutions, or the issuance of a seal of certification for those ophthalmic products that meet standards already approved by accepted standards organizations and which are designated for use by the AOA CmOS. The AOA CmOS selects the categories of products to be evaluated and develops evaluation specifications/standards for those ophthalmic products using the American National Standard Institute's Third Party Certification Program principles (ANSI Z34. 1–1993). Product categories for which the AOA CmOS currently has approved standards are: (1) Glare reduction filters for video display terminals: (2) non-prescription sunglasses; (3) privacy filters for video display terminals; (4) anti-reflection interference coatings for video display terminals; (5) storage cases used by wearers of contact lenses; (6) suction cup devices used to remove rigid contact lenses from the human eye; and (7) ultraviolet absorbers and blockers. Additional categories are always under review. The AOA CmOS is a nine-member commission that abides by a strict Code of Conduct for reviewing any applications for seals of acceptance of certification and for developing approved evaluation specifications/standards.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–22295 Filed 10–4–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Waste Equipment Technology Association

Notice is hereby given that on August 17, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the Waste Equipment Technology Association (WASTEC) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The name and principal place of business of the standards development organization; and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: Waste Equipment Technology Association, Washington, DC. The nature and scope of WASTEC's standards development activities are that WASTEC serves as the Secretariat for the American National Standards Institute (ANSI) Accredited Standards Committee Z245 on Equipment Technology and Operations for Wastes and Recyclable Materials. WASTEC facilitates the development of ANSI safety standards for solid waste equipment manufacturers and users.

For further information concerning WASTEC's standards development activities, please contact WASTEC's Executive Vice President, Gary Satterfield at (202) 244–4700.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–22293 Filed 10–4–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 28, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or email: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Logging Operations (29 CFR 1910.266).

OMB Number: 1218–0198.

Frequency: On occasion and initially.

Type of Response: Recordkeeping.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal Government; and State, Local, or Tribal Government.

Number of Respondents: 12,098.

Number of Annual Responses: 118,962.

Estimated Time Per Response: Varies from 1 minute to maintain a record to 3 hours to conduct initial training.

Total Burden Hours: 30,751.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: 29 CFR 1910.266 requires employers to ensure that operating and maintenance instructions are available for machinery and vehicles used in logging operations; to provide training to employees and supervisors and to document this training. These information collection requirements are necessary to ensure the occupational safety of workers in logging operations.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–22326 Filed 10–4–04; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 27, 2004.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or email: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Ionizing Radiation 29 CFR 1910.1096.

OMB Number: 1218–0103.

Frequency: On occasion; monthly; quarterly; and annually.

Type of Response: Recordkeeping; Reporting; and Third party disclosure.

Affected Public: Business or other for-profit; Federal Government; and State, Local, or Tribal Government.

Number of Respondents: 12,719.

Number of Annual Responses: 198,579.

Estimated Time Per Response: Varies from 5 minutes to maintain records to 30 minutes for training-related tasks.

Total Burden Hours: 34,617.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $2,022,648.

Description: The purpose of 29 CFR 1910.1096 and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to ionizing radiation.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Cranes and Derricks Standard for Construction (29 CFR 1926.550(a)(6)).

OMB Number: 1218–0113.

Frequency: Annually.

Type of Response: Recordkeeping.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal Government; and State, Local, or Tribal Government.

Number of Respondents: 2,073.

Number of Annual Responses: 4,146.

Estimated Time Per Response: Varies from 4 hours to 5 hours and 30 minutes depending on establishment size.

Total Burden Hours: 9,329.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The purpose of the information collection requirements contained in 29 CFR 1926.550(a)(6) is to promote workplace safety by assuring that employees who operate powered platforms in the construction industry receive uniform and comprehensive instruction and information in the operation, safe use, and inspection of this equipment.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Powered Platforms for Building Maintenance (29 CFR 1910.66).

OMB Number: 1218–0121.

Frequency: On occasion; initially; monthly; and annually.

Type of Response: Recordkeeping and third party disclosure.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal Government; and State, Local, or Tribal Government.

Number of Respondents: 900.

Number of Annual Responses: 182,848.

Estimated Time Per Response: Varies from 2 minutes to disclose a record to 10 hours to conduct the necessary inspection and prepare a certification record.

Total Burden Hours: 135,656.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The purpose of the information collection requirements contained in 29 CFR 1910.66 is to promote workplace safety by assuring that employees who operate powered platforms for building maintenance receive uniform and comprehensive instruction and information in the operation, safe use, and inspection of this equipment.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Standard on Manlifts (29 CFR 1910.68(e)).

OMB Number: 1218–0226.

Frequency: Monthly.

Type of Response: Recordkeeping.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal Government; and State, Local, or Tribal Government.

Number of Respondents: 3,000.

Number of Annual Responses: 36,042.

Estimated Time Per Response: Varies from 2 minutes to disclose an inspection certification record to 1 hour to inspect a manlift.

Total Burden Hours: 37,801.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The purpose of the inspection and certification requirements of 29 CFR 1910.68(e) is to ensure that employers take the necessary preventive actions to protect the safety of workers using such equipment. The certification record is used by employers and OSHA compliance officers for determining the cumulative maintenance status of a manlift.

Dated:

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–22327 Filed 10–4–04; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 24, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or E-Mail: *mills.ira@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension of a currently approved collection.

Title: Petition for Classifying Labor Surplus Areas.

OMB Number: 1205–0207.

Frequency: Other; as needed.

Affected Public: Federal Government.

Number of Respondents: 1.

Number of Annual Responses: 1.

Total Burden Hours: 3.

Estimated Time Per Response: 3 Hours.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: DOL issues an annual list of labor surplus areas (LSA) to be used by Federal and state entities in a number of actions such as procurement and property transfer. The annual LSA list is updated during the year based upon petitions submitted to DOL by State Workforce Agencies requesting additional areas for LSA certification.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–22328 Filed 10–4–04; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: (1) Comparability of Current Work to Coal Mine Employment; (2) Coal Mine Employment Affidavit; (3) Affidavit of Deceased Miner's Condition. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before December 6, 2004.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Black Lung Benefits Act of 1977, as amended, 30 U.S.C. 901 *et seq.*, provides for the payment of benefits to coal miners who have contracted black lung disease as a result of coal mine employment, and their dependents and survivors. Once a miner has been identified as having performed non-coal mine work subsequent to coal mine employment, the miner or the miner's survivor is asked to complete a CM–913 to compare coal mine work to non-coal mine work. This employment information along with medical information is used to establish whether the miner is totally disabled due to black lung disease caused by coal mine employment. The CM–918 is an affidavit used to gather coal mine employment evidence only when primary evidence, such as pay stubs, W–2 forms, employer and union records, and Social Security records are unavailable or incomplete. The CM–1093 is an affidavit form for recording lay medical evidence, used in survivors' claims in which there is no medical evidence that addresses the miner's pulmonary or respiratory condition. This information collection is currently approved for use through April 30, 2005.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval of the extension of this information collection in order to carry out its responsibility to determine eligibility for black lung benefits.

Type of Review: Extension.

Agency: Employment Standards Administration.

Titles: (1) Comparability of Current Work to Coal Mine Employment; (2) Coal Mine Employment Affidavit; (3) Affidavit of Deceased Miner's Condition.

OMB Number: 1215–0056.

Agency Numbers: CM–913, CM–918, CM–1093.

Affected Public: Individuals or households.

Forms	Total responses	Time per response (in minutes)	Burden hours
CM–913	1,350	30	675
CM–918	75	10	13
CM–1093	75	20	25
Total	1,500		713

Total Respondents: 1,500.
Total Annual responses: 1,500.
Estimated Total Burden Hours: 713.
Frequency: On occasion.
Total Burden Cost (Capital/Startup): $0.
Total Burden Cost (Operating/Maintenance): $600.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 28, 2004.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 04–22329 Filed 10–4–04; 8:45 am]

BILLING CODE 4510–CN–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–1]

General Electric Company, Morris Operation; Notice of Docketing of the Materials License SNM–2500 Amendment Application for the Morris Operation Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment.

FOR FURTHER INFORMATION CONTACT: Christopher M. Regan, Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–1179; fax number: (301) 415–1179; e-mail: *cmr1@nrc.gov.*

SUPPLEMENTARY INFORMATION: By letter dated July 30, 2004, as supplemented August 13, 2004, General Electric Company submitted an application to the U.S. Nuclear Regulatory Commission (NRC or the Commission), in accordance with 10 CFR part 72, requesting the amendment of the General Electric—Morris Operation (GEMO) independent spent fuel storage installation (ISFSI) Materials License SNM–2500 and the associated Technical Specifications (TS) for the GEMO ISFSI located in Grundy County, Illinois. The amendment application requests changes to the GEMO Consolidated Safety Analysis Report to reflect the current condition of the fuel stored and only that equipment necessary for its safe storage. The major changes proposed include revisions to information regarding the spent fuel inventory, deletion of the requirement for ventilation exhaust vacuum, deletion of the requirement to have certain instrumentation operative for equipment that is no longer in service, a change in the methods to verify pool water quality, revision to the description of the company organization, and removal of "receipt" from the license which effectively will not permit the GEMO facility to accept shipment of any additional spent fuel. Commensurate changes to the Technical Specifications to reflect these revisions are also proposed. This application supersedes in its entirety, General Electric's amendment 10 application dated April 30, 1998, and amendment 11 application dated August 13, 2001. Amendment requests 10 and 11 were withdrawn by GEMO by letter dated March 1, 2004. This application was docketed under 10 CFR part 72; the GEMO ISFSI Docket No. 72–1. The amendment of an ISFSI license is subject to the Commission's approval. The Director, Office of Nuclear Material Safety and Safeguards, or his designee, will determine if the amendment presents a genuine issue as to whether public health and safety will be significantly affected and may issue either a notice of a hearing or a notice of proposed action and opportunity for a hearing in accordance with 10 CFR 72.46(b)(1) or take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2).

In accordance with 10 CFR 2.390 of NRC's "Rules of Practice," final NRC records and documents regarding this proposed action, including the application for license amendment dated July 30, 2004, as supplemented August 13, 2004, and supporting documentation, are publically available in the records component of NRC's Agencywide Documents Access and Management System (ADAMS). These documents may be inspected at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* under Accession Nos. ML042180412 and ML042250233. These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 28 day of September 2004.

For the Nuclear Regulatory Commission.

Christopher M. Regan,

Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–22313 Filed 10–4–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Procedures for Meetings

Background

This notice describes procedures to be followed with respect to meetings conducted by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Reactor Safeguards (ACRS) pursuant to the Federal Advisory Committee Act (FACA). These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACRS is a statutory group established by Congress to review and report on nuclear safety matters and applications for the licensing of nuclear facilities. The Committee's reports become a part of the public record.

The ACRS meetings are conducted in accordance with FACA; they are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering process. ACRS reviews do not normally encompass matters pertaining to environmental impacts other than those related to radiological safety.

The ACRS meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process.

General Rules Regarding ACRS Full Committee Meetings

An agenda will be published in the **Federal Register** for each full Committee meeting. There may be a need to make changes to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his/her judgment, will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day on another meeting day. Persons planning to attend the meeting may contact the Designated Federal Official (DFO) specified in the **Federal Register** Notice prior to the meeting to be advised of any changes to the agenda that may have occurred.

The following requirements shall apply to public participation in ACRS full Committee meetings:

(a) Persons who plan to make oral statements and/or submit written comments at the meeting should provide 35 copies to the DFO at the beginning of the meeting. Persons who cannot attend the meeting but wishing to submit written comments regarding the agenda items may do so by sending a readily reproducible copy addressed to the DFO specified in the **Federal Register** Notice, care of the Advisory Committee on Reactor Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments should be limited to items being considered by the Committee. Comments should be in the possession of the DFO five days prior to the meeting to allow time for reproduction and distribution.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the DFO. If possible, the request should be made five days before the meeting, identifying the topic(s) to be discussed and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at

an appropriate time during the meeting as scheduled by the Chairman.

(c) Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the DFO.

(d) The use of still, motion picture, and television cameras will be permitted at the discretion of the Chairman and subject to the condition that the use of such equipment will not interfere with the conduct of the meeting. The DFO will have to be notified prior to the meeting and will authorize the use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged information that may be in documents, folders, etc., in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(e) A transcript will be kept for certain open portions of the meeting and will be available in the NRC Public Document Room (PDR), One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, MD 20852–2738. A copy of the certified minutes of the meeting will be available at the same location three months following the meeting. Copies may be obtained upon payment of appropriate reproduction charges. ACRS meeting agenda, transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, by calling the PDR at 1–800–394–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

(f) Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician, (301–415–8066) between 7:30 a.m. and 3:45 p.m. Eastern Time at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

ACRS Subcommittee Meetings

In accordance with the revised FACA, the agency is no longer required to apply the FACA requirements to meetings conducted by the Subcommittees of the NRC Advisory Committees, if the Subcommittee's recommendations would be independently reviewed by its parent Committee.

The ACRS, however, chose to conduct its Subcommittee meetings in accordance with the procedures noted above for ACRS full Committee meetings, as appropriate, to facilitate public participation, and to provide a forum for stakeholders to express their views on regulatory matters being considered by the ACRS. When Subcommittee meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 25 additional copies (total of 50 copies) of the materials to be used during the meeting should be provided for distribution at such meetings.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The DFO should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the DFO prior to the beginning of the meeting for admittance to the closed session.

Dated: September 29, 2004.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 04–22314 Filed 10–4–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of October 4, 11, 18, 25, November 1, 8, 2004.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of October 4, 2004

Thursday, October 7, 2004

9.25 a.m. Affirmation Session (public meeting) (tentative).

a. State of Alaska Department of Transportation and Public Facilities (Confirmatory Order Modifying License); appeals of LBP–04–16 by NRC staff and license (tentative).

b. Private Fuel Storage (Independent Spent Fuel Storage Installation) Docket No. 72–22–ISFSI (tentative).

c. USEC, Inc. (tentative).

d. Citizen's Awareness Network's (CAN) motion to dismiss the Yankee Rowe license termination proceeding or to re-notice it (tentative).

e. Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2); Licensing Board's certification of its ruling on "need to know" during discovery (tentative).

f. Final rulemaking to add new Section 10 CFR 50.69. "Risk-Informed Categorization and Treatment of Structures, Systems, and Components for Nuclear Power Reactors" (tentative).

10:30 a.m. Discussion of security issues (Closed—Ex.1).

1 p.m. Discussion of security issues (Closed—Ex. 1).

2:30 p.m. Discussion of security issues (Closed—Ex. 1)

Week of October 11, 2004—Tentative

Wednesday, October 13, 2004.

9:30 a.m. Briefing on decommissioning activities and status (public meeting) (contact: Claudia Craig, 301–415–7276).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

1:30 p.m. Discussion of intragovernmental issues (Closed—Ex. 1& 9).

Week of October 18, 2004—Tentative

There are no meetings scheduled for the Week of October 18, 2004.

Week of October 25, 2004—Tentative

There are no meetings scheduled for the Week of October 25, 2005.

Week of November 1, 2004—Tentative

There are no meetings scheduled for the Week of November 1, 2004.

Week of November 8, 2004—Tentative

Monday, November 8, 2004.

2 p.m. Briefing on plant aging and material degradation issues (public meeting) (Contact: Steve Koenick, 301–415–1239).

The meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Tuesday, November 9, 2004.

9:30 a.m. Briefing on reactor safety and licensing activities (public meeting) (Contact: Steve Koenick, 301–415–1239).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301—415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 2055 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: September 30, 2004.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 04–22398 Filed 10–1–04; 8:45 am]

BILLING CODE 7590–01–M

POSTAL SERVICE

Changes in Domestic Mail Classifications

AGENCY: Postal Service.

ACTION: Notice of implementation of changes to the Domestic Mail Classification Schedule.

SUMMARY: This notice sets forth the changes to the Domestic Mail Classification Schedule to be implemented as a result of the Decision of the Governors of the United States Postal Service on the Opinion and Recommended Decision of the Postal Rate Commission Approving Stipulation and Agreement on Experimental Periodicals Co-palletization Dropship Discounts for High Editorial Publications, Docket No. MC2004–1. The attachment also reflects the changes resulting from the first co-palletization case, Docket No. MC2002–3.

EFFECTIVE DATE: October 3, 2004.

FOR FURTHER INFORMATION CONTACT: Daniel J. Foucheaux, Jr., (202) 268–2989.

SUPPLEMENTARY INFORMATION: On February 25, 2004, the United States Postal Service, in conformance with sections 3622 and 3623 of the Postal Reorganization Act (39 U.S.C. 101 *et seq.*), filed a request for a recommended decision by the Postal Rate Commission (PRC) on the establishment of experimental Periodicals co-palletization dropship discounts for high-editorial, heavy-weight, small-circulation publications. The PRC designated this filing as Docket No. MC2004–1. On July 7, 2004, pursuant to 39 U.S.C. 3624, the PRC issued to the Governors of the Postal Service its Opinion and Recommended Decision Approving Stipulation and Agreement, in Docket No. MC2004–1. The PRC recommended the establishment of the Postal Service proposal for experimental Periodicals co-palletization dropship discounts for high editorial publications.

Pursuant to 39 U.S.C. 3625, the Governors of the United States Postal Service acted on the PRC's recommendations on July 19, 2004. In the Decision of the Governors of the United States Postal Service on the Opinion and Recommended Decision of the Postal Rate Commission Approving Stipulation and Agreement on Experimental Periodicals Co-palletization Dropship Discounts for High Editorial Publications, Docket No. MC2004–1, the Governors of the Postal Service approved the recommended decision. In accordance with Resolution 04–5, the Board of Governors established an implementation date of October 3, 2004, on which the approved classification changes and discounts for the co-palletization experiment take effect. The attachments to the Governors' Decision, setting forth the classification changes ordered into effect by the Governors, are set forth below.

In accordance with the Decision of the Governors and Resolution No. 04–5 of the Board of Governors, the Postal Service hereby gives notice that the classification changes set forth below will become effective at 12:01 a.m. on October 3, 2004.

Attachments to the Decision of the Governors of the United States Postal Service on the Opinion and Recommended Decision of the Postal Rate Commission Approving Stipulation and Agreement on Experimental Periodicals Co-palletization Dropship Discounts for High Editorial Publications, Docket No. MC2004–1

(Additions underlined; deletions in brackets)

BILLING CODE 7710–12–P

Attachment A
CHANGES IN DOMESTIC MAIL CLASSIFICATION SCHEDULE

PERIODICALS CLASSIFICATION SCHEDULE

[Revised Section for Co-palletization Dropship Discounts; additions are underlined and deletions are marked with strikethrough.]

421.50 **Co-palletization Dropship Discounts.** Either a per-piece or a per-pound co-palletization dropship discount (but not both) applies to Outside County subclass nonletter mail qualifying under section 421.49, that is presented on sectional center facility (SCF) or area distribution center (ADC) pallets containing more than one publication, as specified by the Postal Service. The discount is limited to those pieces which could not be prepared on a qualifying pallet under section 421.48 or 421.49, if the mail had been prepared without such combining. The per-pound discounts apply only to editorial pounds, and are also limited to publications that weigh 9 ounces or more, which contain no more than 15 percent advertising matter, and which have a mailed circulation of no more than 75,000 copies per issue. A participating mailer or consolidator must provide pre-consolidation and post-consolidation documentation for all qualifying pieces, as specified by the Postal Service. This section expires the later of:

a. October 3, 2006~~two years after the implementation date [April 20, 2003] for the section specified by the Board of Governors~~, or

b. if, by the expiration date specified in (a), a proposal for a permanent replacement for the co-palletization dropship discounts is pending before the Postal Rate Commission:

i. three months after the Commission takes action on such request under 39 U.S.C. § 3624 or, if applicable,

ii. on the implementation data for a permanent replacement for the co-palletization dropship discounts.

PACKAGE SERVICES CLASSIFICATION SCHEDULE

[Revised Section for Sample Periodical in Package Services; additions are underlined and deletions marked with strikethrough.]

510 DEFINITION

511 General

Any mailable matter may be mailed as Package Services mail except:

a. Matter required to be mailed as First-Class Mail;

b. Regular and Nonprofit Presort category mail entered as Customized Market Mail under section 321.22 and 323.22; and

c. Copies of a publication that is entered as Periodicals class mail, except:

i. copies sent by a printer to a publisher, ~~and except~~

ii. copies that would have traveled at the former second-class transient rate. (The transient rate applied to individual copies of second-class mail (currently Periodicals class mail) forwarded and mailed by the public, as well as to certain sample copies mailed by publishers.); and

iii. sample copies enclosed or attached with merchandise sent at Parcel Post or Bound Printed Matter rates.

Attachment B
CHANGES IN PERIODICALS RATE SCHEDULE
[Additions are underlined; deletions are marked with strikethrough.]

PERIODICALS
RATE SCHEDULE 421

OUTSIDE COUNTY (INCLUDING SCIENCE OF AGRICULTURE)

	Postage Rate Unit	Rate
Outside County		
Advertising		
Destinating delivery unit	Pound	$ 0.158
Destinating SCF	Pound	0.203
Destinating ADC	Pound	0.223
Zones 1 & 2	Pound	0.248
Zone 3	Pound	0.267
Zone 4	Pound	0.315
Zone 5	Pound	0.389
Zone 6	Pound	0.466
Zone 7	Pound	0.559
Zone 8	Pound	0.638
Nonadvertising	Pound	0.193
Science of Agriculture		
Advertising		
Delivery unit	Pound	0.119
SCF	Pound	0.152
DADC	Pound	0.167
Zones 1 & 2	Pound	0.186
Zone 3	Pound	0.267
Zone 4	Pound	0.315
Zone 5	Pound	0.389
Zone 6	Pound	0.466
Zone 7	Pound	0.559
Zone 8	Pound	0.638
Nonadvertising	Pound	0.193
Outside County and Science of Agriculture		
Basic		
Nonautomation	Piece	0.373
Automation letter	Piece	0.281

Automation flat	Piece	0.325
3-Digit		
Nonautomation	Piece	0.324
Automation letter	Piece	0.249
Automation flat	Piece	0.283
5-Digit		
Nonautomation	Piece	0.256
Automation letter	Piece	0.195
Automation flat	Piece	0.226
Carrier Route		
Basic	Piece	0.163
High density	Piece	0.131
Saturation	Piece	0.112
Discounts		
Percentage editorial discount	Piece	0.00074
Worksharing discount DDU	Piece	0.018
Worksharing discount DSCF	Piece	0.008
Worksharing discount DADC	Piece	0.002
Worksharing discount pallets	Piece	0.005
Worksharing dropship pallet discount	Piece	0.010
Experimental Discounts		
Co-palletization discounts DSCF		
	Piece	0.010
Zones 1&2 Avoided	Pound	0.014
Zone 3 Avoided	Pound	0.019
Zone 4 Avoided	Pound	0.034
Zone 5 Avoided	Pound	0.056
Zone 6 Avoided	Pound	0.079
Zone 7 Avoided	Pound	0.107
Zone 8 Avoided	Pound	0.131
Co-palletization discounts DADC		
	Piece	0.007
Zones 1&2 Avoided	Pound	0.008
Zone 3 Avoided	Pound	0.013
Zone 4 Avoided	Pound	0.028
Zone 5 Avoided	Pound	0.050
Zone 6 Avoided	Pound	0.073
Zone 7 Avoided	Pound	0.101
Zone 8 Avoided	Pound	0.125

SCHEDULE 421 NOTES

1. The rates in this schedule also apply to Nonprofit (DMCS Section 422.2) and Classroom rate categories. These categories receive a 5 percent discount on all components of postage except advertising pounds. Moreover, the 5 percent discount does not apply to commingled nonsubscriber, nonrequestor, complimentary, and sample copies in excess of the 10 percent allowance under DMCS sections 412.34 and 413.42, or to Science of Agriculture mail.
2. Rates do not apply to otherwise Outside County mail that qualifies for the Within County rates in Schedule 423.
3. Charges are computed by adding the appropriate per-piece charge to the sum of the nonadvertising pound portion and the advertising pound portion, as applicable.
4. For postage calculations, multiply the proportion of nonadvertising content by this factor and subtract from the applicable piece rate.
5. Advertising pound rate is not applicable to qualifying Nonprofit and Classroom publications containing 10 percent or less advertising content.
6. For a Ride-Along item enclosed with or attached to a periodical, add $0.124 per copy.
7. Experimental discounts expire the later of a) October 3, 2006~~two years after the implementation date for DMCS section 421.50 specified by the Board of Governors~~, or b) if, by the expiration date specified in (a), a proposal for a permanent replacement for the co-palletization dropship discounts is pending before the Postal Rate Commission, then 1) three months after the Commission takes action on such request under 39 U.S.C. § 3624 or, if applicable, 2) on the implementation date for a permanent replacement for the co-palletization dropship discounts.

Stanley F. Mires,
Chief Counsel, Legislative.
[FR Doc. 04–22285 Filed 10–4–04; 8:45 am]
BILLING CODE 7710–12–C

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection: Railroad Service and Compensation Reports; OMB 3220–0008. Under Section 9 of the Railroad Retirement Act (RRA), railroad employers are required to submit reports of their employees' service and compensation. Also, under Section 9 of the RRA and Section 6 of the Railroad Unemployment Insurance Act (RUIA) the Railroad Retirement Board (RRB) maintains, for each railroad employee, a record of the compensation paid by all railroad employers for whom the employee worked after 1936. This record, which is used by the RRB to determine eligibility for, and amount of, benefits due under the laws it administers, is conclusive as to the amount of compensation paid to an employee during such period(s) covered by the report(s) of the compensation by the employee's railroad employer(s), except in cases when an employee files a protest pertaining to his or her reported compensation within the statue of limitations cited in Section 6 of the RUIA and Section 9 of the RRA.

To enable the RRB to establish and maintain the record of compensation, employers are required to file with the RRB, in such manner and form and at such times as the RRB prescribes, reports of compensation of employees. The information reporting requirements are prescribed in 20 CFR 209.6 through 209.9 and 20 CFR 345.110. The RRB utilizes Form BA–3a, Annual Report of Compensation, Form BA–4, Report of Creditable Compensation Adjustments and Form BA–4 (Internet), Report of Creditable Compensation Adjustments, to secure the required information from railroad employers. Form BA–3a provides the RRB with information regarding annual creditable service and compensation for each individual who worked in the railroad industry in a given year. Forms BA–4 and BA–4 (Internet) provide for the adjustment of any previously submitted reports and also the opportunity to provide any service and compensation that had been previously omitted. Form BA–4 (Internet) collects essentially the same information as Form BA–4, but it consists of a series of screens which collects the necessary information and provides for the required notices and certifications. Employers also have the option of submitting the reports on the aforementioned forms, or, in like format by magnetic tape, tape cartridges, PC diskettes and CD–ROM as outlined in the RRB's Reporting Instructions to Employers. Submission of the creditable compensation reports is mandatory. One response is required of each respondent. No changes are proposed to Forms BA–3a, BA–4 and BA–4 (Internet).

Form BA–12, System Access Application, identifies employees who are allowed to use the internet to submit reporting forms to the RRB. This form also determines what degree of access (view only, data entry/modification or approval/submission) is appropriate for that employee. Form BA–12, an OMB approved form (3220–0199), is being incorporated into this information collection at the request of OMB. Completion of Form BA–12 is voluntary and is necessary only if an employer wants to submit data and reports via the internet. Minor editorial changes are being proposed to Form BA–12.

The completion time for Form BA–3a is estimated at between 33.3 hours per response for electronic submissions to 85 hours for manual paper responses. The completion time for Form BA–4 is estimated at 60 minutes per response. The completion time for Form BA–4 (Internet) is 15 minutes per response. The completion time for Form BA–12 is estimated at between 10 and 20 minutes. The RRB estimates that approximately 579 Form BA–3a's, 211 Form BA–4's, 1,000 Form BA–4 (Internet) and 350 Form BA–12's are completed annually.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 04–22297 Filed 10–4–04; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50469; File No. SR–CBOE–2004–61]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Reduction of Customer Transaction Fees for Options on Exchange-Traded Funds and Holding Company Depositary Receipts

September 29, 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 September 23, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On September 28, 2004, CBOE submitted Amendment No. 1 to the proposed rule change.[3] 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 CBOE proposes to amend its Fee Schedule to reduce the fees charged to public customers for transactions in options on exchange-traded funds

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jamie Galvin, Attorney II, Legal Division, CBOE, to Ira Brandriss, Assistant Director, Division of Market Regulation, Commission, dated September 27, 2004 ("Amendment No. 1"). In Amendment No. 1, the CBOE converted the original proposed rule change from a proposal filed pursuant to Section 19(b)(3)(A)(ii) of th eAct and Rule 19b–4(f)(2) thereunder to a "non-controversial" proposal filed pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder, and requested waiver of the 30-day pre-operative period and pre-filing notice requirement for "non-controversial" proposals.

("ETFs") and Holding Company Depositary Receipts ("HOLDRs"). The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE currently assesses public customer transactions in options on ETFs and HOLDRs the customer transaction fees that apply to index options.[4] Specifically, public customer transactions in these products are assessed transaction fees of $.45 if the premium is greater than or equal to $1 and $.25 if the premium is less than $1. The Exchange proposes to reduce the transaction fees charged to public customers for transactions in all options on ETFs and HOLDRs to $.15, regardless of premium, except for options on Dow Jones DIAMONDS (DIA).[5] Options on Dow Jones DIAMONDS will continue to be assessed at current index option customer transaction rates.

The Exchange believes this fee reduction will help the Exchange to compete more effectively for order flow in these products. The Exchange intends to begin assessing the reduced fees on October 1, 2004. The Exchange will reassess the fee reduction as appropriate, and will file any modification to these transaction fees with the Commission pursuant to Section 19(b) of the Act.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(4) of the Act[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

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 solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been designated by the CBOE as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

The foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The CBOE has requested that the Commission waive the 30-day pre-operative period and the five-day pre-filing notice requirement for "non-controversial" proposals and accelerate the operative date of the filing to October 1, 2004, to allow public customers to benefit from the reduced transaction fees in the subject options classes effective on that date. The Commission has determined to waive the five-day notice and the 30-day operative period as requested to permit public customers to benefit from the fee reduction without delay.[10] Consequently, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder, with an operative date of October 1, 2004.[12]

At any time within 60 days of the filing of the 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.

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 No. SR–CBOE–2004–61 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. SR–CBOE–2004–61. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also 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

[4] Except for options on the Nasdaq-100 Index Tracking Stock (QQQ) which are assessed no customer transaction fees.

[5] A $.04 floor brokerage fee will continue to be charged to executing brokers if a broker executes a customer order in these products.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(i)–(ii).

[10] For the purposes only of waiving the 30-day pre-operative period, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File No. SR–CBOE–2004–61 and should be submitted on or before October 26, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2491 Filed 10–4–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50403A; File No. SR–NASD–2004–110]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Divestiture of American Stock Exchange; Correction

September 29, 2004.

In FR Doc. E4–2354, issued on September 23, 2004,[1] the Commission notes that the proposed rule text in subsection (cc) on page 57120, column 3 should state as follows below. Proposed new language is in italics; proposed deletions are in brackets.

"(cc) "Non-Industry Governor" or "Non-Industry committee member" means a Governor (excluding the Chief Executive Officer and any other officer of the NASD, the President of NASD Regulation)[, any Floor Governor, and the Chief Executive Officer of Amex)] or committee member who is: (1) A Public Governor or committee member; (2) an officer or employee of an issuer of securities listed on [Nasdaq or Amex, or] *a market for which NASD provides regulation; (3) an officer or employee of an issuer of unlisted securities that are* traded in the over-the-counter market; or ([3]*4*) any other individual who would not be an Industry Governor or committee member;"

In the corresponding paragraph describing the proposed rule text, appearing on page 57124, beginning in column 1, the first, second and third complete sentences in column 2 should read as follows:

"Under the proposed amendments, the "Industry Governor" definition will include persons with a consulting or employment relationship with "a market for which NASD provides regulation," a term that embraces both markets with which NASD has entered a contract to provide regulatory services, and those in which NASD has an ownership interest. Because NASD has entered into a regulatory services agreement with Amex, and continues both to maintain an ownership interest in and to provide regulatory services to Nasdaq, the amended definition of "Industry Governor" will continue to encompass individuals who have a consulting or employment relationship with Amex or Nasdaq. NASD believes that, given the difficulty and expense involved in amending the NASD By-Laws when regulatory clients are added or deleted, substituting "a market for which NASD provides regulation" is preferable to identifying such clients by name in the By-Laws."

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2487 Filed 10–4–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50468; File No. SR–NASD–2004–144]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Listing and Trading of Theravance, Inc., Common Stock

September 29, 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 September 24, 2004, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to list and trade the common stock ("Common Stock") of Theravance, Inc. ("Theravance"). The Common Stock includes call and put rights.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to list and trade the Common Stock under the NASD rules that generally apply to the listing, designation for the Nasdaq National Market, and trading of the first class of common stock.[3] As described more fully below, the Common Stock currently includes an unusual feature, call and put rights. Nasdaq believes that the call and put rights make it desirable to apply certain additional requirements in connection with the listing of the Common Stock. Pursuant to its authority under NASD Rule 4300, "Qualification Requirements for Nasdaq Stock Market Securities," to apply additional or more stringent criteria for the initial or continued inclusion of particular securities, Nasdaq proposes to apply to the Common Stock certain requirements of NASD Rule 4420(f), "Other Securities," in addition to all of the other requirements normally applicable to common stock. Under NASD Rule 4420(f), Nasdaq may approve for listing and trading innovative securities that cannot be readily categorized under traditional listing guidelines.[4]

Theravance has entered into an agreement with GlaxoSmithKline

[13] 17 CFR 200.30–3(a)(12).

[1] *See* Exchange Act Release No. 50403 (September 16, 2004), 69 FR 57119.

[2] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* the 4300 and 4400 series of the NASD's rules.

[4] *See* Securities Exchange Act Release No. 32988 (September 29, 1993); 58 FR 52124 (October 6, 1993) (File No. SR–NASD–93–15) (order approving listing standards for hybrid securities products) ("1993 Order").

("GSK"), whereby GSK has the right to require Theravance to redeem 50% of the Common Stock held by each holder of Common Stock. Upon notice of such a redemption, each stockholder will automatically be deemed to have submitted for redemption 50% of the Common Stock held by the stockholder at $54.25 per share. This right is referred to as the "call." If GSK does not exercise this right, each holder of Common Stock has the right in August 2007 to require Theravance to redeem up to 50% of the holder's Common Stock at $19.375 per share. This right is referred to as the "put." In either case, GSK is contractually obligated to pay Theravance the funds necessary to redeem the shares of Common Stock from Theravance's stockholders. However, GSK's maximum obligation for the shares of Common Stock subject to the put is $525 million.

As described in the registration statement filed by Theravance,[5] if GSK elects to exercise its call right, it must provide written notice to Theravance between June 1, 2007, and July 1, 2007, and must provide adequate funds in cash to pay the aggregate redemption price of the shares of Common Stock to be called. GSK must specify the date that the call will occur, which must be no later than July 31, 2007. Upon receipt of notice from GSK to effect the call, Theravance must provide notice by mail of the proposed call to holders of record of Common Stock between ten and 30 days prior to the call date specified by GSK.

If GSK does not exercise its call right, each holder of Common Stock may exercise the put right described above during the period beginning on August 1, 2007, and ending on the 30th business day thereafter or as may be required under the Act or under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("Hart-Scott-Rodino Act").[6]

As set forth in the registration statement,[7] prior to the expiration of the put period, the existence of the put right will likely be influential in determining the market price at which the Common Stock will trade. However, the market price of the Common Stock is not guaranteed and may be adversely affected in the event that the ability of Common Stock holders to exercise the put right or to receive proceeds upon exercise of the call right is impaired or diminished. After the expiration of the put period, the market price of the Common Stock, to the extent still outstanding, may decline significantly. Although shareholders are granted the option to exercise their put rights of Common Stock during the period described above, provided that GSK has opted not to exercise its call right, there are no price protections after that period.

After September 1, 2012, GSK will have no restrictions on its ability to sell or transfer the Common Stock in the open market, in privately negotiated transactions or otherwise, and these sales or transfers could create a substantial decline in the price of the outstanding shares of Common Stock or, if these sales or transfers are made to a single buyer or group of buyers, could transfer control of the Common Stock to a third party.

In addition, the existence of the call right may limit the Common Stock from trading much above the call price of $54.25 per share even if Theravance's future growth and/or market conditions were to otherwise warrant a per share valuation in excess of that price. If the call right is exercised, the holders of Common Stock would participate in this increased valuation only to the extent of the $54.25 per share Common Stock redemption price for 50% of their shares.

Upon the occurrence of a triggering event (an insolvency event as described in the registration statement), the right of Theravance's shareholders to exercise the put with respect to 50% of their Common Stock will accelerate and commence immediately and continue for the 65 business days after such event or until a later date as required under the Act or under the Hart-Scott-Rodino Act. In the event the put notification is accelerated due to an insolvency event, GSK remains obligated to provide Theravance the funds necessary to effect the redemption of all shares of the Common Stock that are properly put or elect and arrange to purchase the Common Stock at the expiration of the period in which the put can be exercised, in compliance with applicable law.[8]

In addition to all of the requirements normally applicable under Nasdaq rules to the listing and trading of common stock, the Common Stock initially will be made subject to certain additional listing criteria, which are essentially the listing criteria for "other securities" under NASD Rule 4420(f). Specifically, under NASD Rule 4420(f)(1):

(A) The issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million. In the case of an issuer which is unable to satisfy the income criteria set forth in paragraph (a)(1), Nasdaq generally will require the issuer to have the following: (i) assets in excess of $200 million and stockholders' equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million;

(B) There must be a minimum of 400 holders of the security, provided, however, that if the instrument is traded in $1,000 denominations, there must be a minimum of 100 holders;

(C) For equity securities designated pursuant to this paragraph, there must be a minimum public distribution of 1,000,000 trading units; and

(D) The aggregate market value/principal amount of the security will be at least $4 million.

As envisioned in NASD Rule 4420(f)(3), prior to the commencement of trading of the Common Stock, Nasdaq will distribute a circular to members providing guidance regarding the features of the Common Stock and members' responsibilities, including suitability recommendations, when handling transactions and highlighting the characteristics and risks of the Common Stock. In particular, Nasdaq will inform members that customer confirmations involving the Common Stock should identify the security as a callable and puttable instrument and that a customer may contact the member for more information concerning the security.[9]

Furthermore, given the put and call features of the Common Stock, the circular will indicate that Nasdaq suggests that transactions in the Common Stock be recommended only to investors whose accounts have been approved for options trading. If a customer has not been approved for options trading, or does not wish to open an options account, the member should ascertain whether the Common Stock is suitable for the customer. Pursuant to NASD Rule 2310, "Recommendations to Customers (Suitability)," and IM–2310–2, "Fair Dealing with Customers," members must have reasonable grounds for believing that a recommendation to a customer regarding the purchase, sale or exchange of any security is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs. In addition, members recommending a transaction in the Common Stock must, among other things, have a reasonable basis for believing that the customer can

[5] *See* File No. 333–116384.

[6] 15 U.S.C. 18a.

[7] 7 See note 5, supra.

[8] 8 Nasdaq clarified two minor typographical errors in this sentence. Telephone conversation between Alex Kogan, Associate General Counsel, Nasdaq, and Yvonne Fraticelli, Special Counsel, Office of Market Supervision, Division of Market Regulation, Commission, on September 28, 2004.

[9] 9 *See* IM–2110–6, "Confirmation of Callable Common Stock."

evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

The circular will identify the following specific risks associated with the Common Stock. The circular will note that members should inform their customers that the price at which the Common Stock will trade may be influenced, prior to the expiration of the put period, by the existence of the put right. The circular will also note that the final rate of return on the Common Stock may be less than the market price of the Common Stock, and that after the expiration of the put period the market price of the Common Stock may decline significantly. Furthermore, customers should be aware that after September 1, 2012, GSK will have no restrictions on its ability to sell or transfer the Common Stock in the open market, in privately negotiated transactions or otherwise, and that these sales or transfers could create a substantial decline in the price of the outstanding shares of the Common Stock or, if these sales or transfers were made to a single buyer or group of buyers, could transfer control of the Common Stock to a third party.

The Common Stock will be subject to all of the initial and continued listing requirements otherwise applicable to the first class of common stock designated for the Nasdaq National Market under NASD Rule 4420(a), (b) or (c), including, but not limited to, all otherwise applicable corporate governance requirements.[10] The Common Stock will be subject to all applicable fees set forth in NASD Rule 4310, "Qualification Requirements for Domestic and Canadian Securities."[11] Nasdaq will rely on its current surveillance procedures governing equity securities, and it represents that its surveillance procedures are adequate to properly monitor the trading of the Common Stock.

2. Statutory Basis

Nasdaq believes the proposal is consistent with the provisions of Section 15A of the Act,[12] in general, and with Section 15A(b)(6) of the Act,[13] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Nasdaq believes that the callable and puttable feature of the Common Stock justify the additional listing requirements described in the proposal, and that investors will benefit from the application of the requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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 solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–144 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–NASD–2004–144. 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 NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–144 and should be submitted on or before October 26, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Nasdaq has asked the Commission to approve the proposal on an accelerated basis to enable Nasdaq to accommodate the timetable for listing the Common Stock. In addition, Nasdaq believes that the proposal raises no new or novel issues. In this regard, Nasdaq notes that a national securities exchange previously has listed and traded callable puttable common stock.[14] Nasdaq also states that it previously has listed callable puttable common stock and callable common stock.[15]

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 association and, in particular, with the requirements of Section 15A(b)(6) of the Act[16] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market

[10] Pursuant to Rule 10A–3 under the Act, 17 CFR 240.10A–3, and Section 3 of the Sarbanes-Oxley Act of 2002, Pub. L. No. 107–204, 116 Stat. 745 (2002), Nasdaq will prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements set forth therein.

[11] Because the Common Stock is not being designated under NASD Rule 4420(f), it will not be subject to the fee schedule for "other securities" contained in NASD Rule 4530, "Other Securities."

[12] 15 U.S.C. 78o–3.

[13] 15 U.S.C. 78o–3(b)(6).

[14] According to Nasdaq, Genentech, Inc. callable puttable common stock was listed on the New York Stock Exchange, Inc. ("NYSE") from October 1995 through July 2000.

[15] According to Nasdaq, Dreyer's Grand Ice Cream Holding, Inc. callable puttable common stock was listed on Nasdaq in February 2003; Genomic Solutions callable common stock was listed on Nasdaq in May 2000; Spiros Development Company, Inc. units, consisting of one warrant and one share of callable common stock, were listed on Nasdaq in December 1997; Aramed, Inc. units, consisting of one warrant and one share of callable common stock, were listed on Nasdaq from October 1993 through November 1995; SciGenics, Inc. units, consisting of one warrant and one share of callable common stock, were listed on Nasdaq from September 1991 through December 1995; and Neozyme Corporation units, consisting of one warrant and one share of callable common stock, were listed on Nasdaq from January 1991 through December 1993. In addition, AT&T Canada, Inc. callable Deposit Receipts were listed on Nasdaq in June 1999.

[16] 15 U.S.C. 78o–3(b)(6).

and a national market system and, in general, to protect investors and the public interest.[17]

The Commission notes that the Common Stock has both call and put features. In particular, as described more fully above, GSK has the right to require Theravance to redeem 50% of the Common Stock held by each stockholder at $54.25 per share. If GSK elects to exercise its call right, it must provide written notice of its election to Theravance between June 1, 2007, and July 1, 2007, and the call must occur no later than July 31, 2007. If GSK declines to exercise its call right, each holder of Common Stock has the right to require Theravance to redeem up to 50% of the holder's Common Stock at $19.375 per share. Upon the occurrence of an insolvency event, as described in the registration statement filed by Theravance,[18] the put rights of the holders of Common Stock will accelerate and commence immediately.

The listing and trading of a non-traditional equity security like the Common Stock raises several regulatory issues. For the reasons discussed below, the Commission believes that Nasdaq's proposal adequately addresses the concerns raised by the listing and trading of the Common Stock.

As noted above, in addition to being subject to the Nasdaq rules applicable to the initial and continued listing and trading of common stock, the Common Stock initially also will be subject to certain listing criteria applicable to "other securities" under NASD Rule 4420(f). The Commission notes that the protections of NASD Rule 4420(f) were designed to address the concerns attendant to the trading of innovative securities like the Common Stock.[19] By imposing the listing criteria and compliance requirements described above, as well as heightened suitability for recommendations,[20] the Commission believes that Nasdaq has adequately addressed the potential issues that could arise from the listing and trading of the Common Stock.

The Commission notes that Nasdaq will distribute a circular to its members that provides guidance regarding members' compliance responsibilities and requirements, including heightened suitability recommendations, when handling transactions in callable puttable common stock, and that highlights the special risks and characteristics associated with the Common Stock. Specifically, among other things, the circular will inform members that customer confirmations involving the Common Stock should identify the security as a callable and puttable instrument and that a customer may contact the member for more information concerning the security.

Nasdaq represents that the circular also will indicate that, given the put and call features of the Common Stock, Nasdaq will suggest that transactions in the Common Stock be recommended only to investors whose accounts have been approved for options trading. Nasdaq further represents that, if a customer has not been approved for options trading, or does not wish to open an options account, the member should ascertain whether the Common Stock is suitable for the customer pursuant to NASD Rule 2310 and IM–2310–2. The Commission believes that the distribution of the circular should help to ensure that only customers with an understanding of the risks attendant to the trading of the Common Stock and who are able to bear the financial risks associated with transactions in the Common Stock will acquire and trade the Common Stock.

As noted above, Nasdaq represents that the circular will identify certain specific risks associated with the Common Stock. Specifically, the circular will note that members should inform their customers that the price at which the Common Stock will trade may be influenced by the existence of the put right prior to the expiration of the put period. The circular also will note that the final rate of return on the Common Stock may be less than the market price of the Common Stock, and that after the expiration of the put period the market price of the Common Stock may decline significantly. In addition, customers should be aware that after September 1, 2012, GSK will have no restrictions on its ability to sell or transfer the Common Stock in the open market, in privately negotiated transactions or otherwise, and that these sales or transfers could create a substantial decline in the price of the outstanding shares of the Common Stock or, if these sales or transfers are made to a single buyer or group of buyers, could transfer control of the Common Stock to a third party.

The Commission believes that, to some extent, the financial risks associated with the Common Stock could be minimized by the proposed listing criteria. In this regard, the Commission notes that in addition to satisfying the initial and continued listing requirements for the first class of common stock designated for the Nasdaq National Market under NASD Rule 4420(a), (b), or (c), including all otherwise applicable corporate governance requirements, the Common Stock also must meet the additional initial asset, equity, and distribution requirements described above.

The Commission notes that Nasdaq intends to rely on its current surveillance procedures governing equity securities to monitor trading in the Common Stock. Nasdaq represents that its surveillance procedures are adequate to properly monitor the trading of the Common Stock.

The Commission finds good cause for approving the proposal prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that approving the proposal on an accelerated basis will accommodate the proposed timetable for listing the Common Stock. In addition, as described more fully above, the Commission notes that common stock with put and call features has been listed and traded on the NYSE and Nasdaq, and that the compliance and suitability requirements for the Common Stock are similar to those that Nasdaq adopted previously for a common stock with put and call features.[21] Accordingly, the Commission believes that good cause exists, consistent with Sections 15A(b)(6) and 19(b)(2) of the Act,[22] to approve the proposal on an accelerated basis.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposal is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–NASD–2004–144) is approved on an accelerated basis.

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[17] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] *See* note 5, *supra*.

[19] See 1993 Order, *supra* note 4. *See also* Securities Exchange Act Release No. 47350 (February 11, 2003), 68 FR 8061 (February 19, 2003) (File No. SR–NASD–2003–16) (order approving the listing standards applicable to Dreyer's Grand Ice Cream Holdings, Inc. callable puttable common stock) ("2003 Order").

[20] As discussed above, Nasdaq will advise members and employees thereof recommending a transaction in the Common Stock to: (1) determine that the transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, the transaction.

[21] *See* 2003 Order, *supra* note 19.

[22] 15 U.S.C. 78o–3(b)(6) and 78s(b)(2).

[23] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2488 Filed 10–4–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50466; File No. SR–OCC–2004–11]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Yield-Based Treasury Options

September 29, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 8, 2004, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. 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 proposed rule change would update two sections of OCC's By-Laws pertaining to yield-based Treasury options. The proposed changes would conform those sections to the corresponding By-Law provisions governing index options.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Article XVI, Section 3(c) of OCC's By-Laws currently provides OCC with the authority to adjust outstanding options in a class of yield-based Treasury options in the event that an exchange decreases the multiplier. The proposed changes to Section 3(c) would simply provide for the possibility that an exchange might increase rather than decrease the multiplier and would grant OCC the flexibility to adjust any outstanding options accordingly. The proposed rule change is similar to a previously approved OCC rule change pertaining to the adjustment of index option contracts.[3]

Article XVI, Section 4 of OCC's By-Laws currently provides OCC with the authority to fix the exercise settlement amount for exercised yield-based Treasury option contracts "in accordance with the best information available as to the correct settlement value of the underlying yield" if OCC determines that the settlement value of the underlying yield is unreported or otherwise unavailable for purposes of calculating the settlement amount for exercised contracts. Until recently, the Chicago Board Options Exchange ("CBOE"), on which yield-based Treasury options are traded, had a rule setting forth a specific method for determining the settlement value of the yield in the event the reporting authority failed to supply a settlement value. The CBOE rule setting forth that method, a random poll of a minimum of ten primary government bond dealers, was eliminated on December 2, 2003, when the Commission accepted for immediate effectiveness a CBOE rule filing deleting it. In that filing, CBOE adopted a provision stating that the settlement value would be determined in accordance with OCC's By-Laws and Rules.[4]

The repeal of the CBOE rule prompted OCC to review its own rules governing the setting of exercise settlement values for yield-based Treasury options. OCC now proposes to amend Article XVI, Section 4 to give OCC substantially the same discretion in fixing exercise settlement values for yield-based Treasury options as it has under Article XVII, Section 4 governing index options.[5] As noted in the order approving OCC's rule change for index options, OCC's authority to fix exercise settlement values in unusual market conditions should be sufficiently broad to ensure that such values are consistent with the settlement values established for related products in other markets whenever that result is deemed to be in the best interest of investors.[6] While Article VI, Section 4(a)(2) as currently drafted is also broad, OCC believes that its authority should be expressed in language parallel to other By-Laws provisions that expressly acknowledge that a settlement price may be fixed based either on the last reported price before a market disruption or the next reported price following the disruption or by some other method.

As with index options, under Revised Article XVI, Section 4(a)(2) the settlement value of yield-based Treasury options would be fixed by an adjustment panel consisting of representatives of the exchange or exchanges on which the affected series of options is traded. Additionally, under Section 4(a)(3), in the event the adjustment panel delays fixing a settlement value beyond the expiration date of the affected series, the normal exercise by exception procedures would not apply. Instead, options that are in the money by one dollar or more would be deemed to have been irrevocably exercised prior to the expiration time.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act, as amended, because it is designed to promote the prompt and accurate clearance and settlement of securities transactions, foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, remove impediments to the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest. The proposed changes promote these objectives by providing OCC with flexibility in responding to unanticipated events.

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[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release No. 44184 (April 16, 2001), 66 FR 20342 (April 20, 2001) [File No. SR–OCC–99–12].

[4] Securities Exchange Act Release No. 48865 (December 2, 2003), 68 FR 68676 (December 9, 2003) [File No. SR–CBOE–2003–48].

[5] A draft supplement to the Options Disclosure Document ("ODD") that describes the substance of the By-Laws changes proposed herein will be filed with the Commission pursuant to Rule 9b–1 under the Act. Implementation of this rule change will be coordinated with the distribution of the related ODD supplement.

[6] Securities Exchange Act Release No. 47418 (February 27, 2003), 68 FR 11439 (March 10, 2003) [File No. SR–OCC–2002–09].

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve the proposed rule change or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

VI. 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–OCC–2004–11 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–OCC–2004–11. 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 OCC and on OCC's Web site at *http://www.optionsclearing.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2004–11 and should be submitted on or before October 26, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2486 Filed 10–4–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50470; File No. SR–PCX–2004–88]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Schedule of Fees and Charges for Exchange Services by Increasing its Broker Dealer Surcharge

September 29, 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 September 23, 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, II, and III below, which Items have been prepared by PCX. 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 proposes to amend its Schedule of Fees and Charges For Exchange Services in order to increase the Broker Dealer Surcharge by $.05 to $.25 per contract. The text of the proposed rule change is available at the Office of the Secretary, 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

The purpose of this proposed rule change is to increase the Broker Dealer Surcharge by $.05 per contract from $.20 to $.25 per contract. PCX states that the rate increase is necessary to help narrow the gap in trading costs between PCX market makers and Broker Dealers as well as to help offset the costs associated with trading system enhancements that will allow for higher levels of transparency to Broker Dealers accessing the PCX markets.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Section 6(b)(4) of the Act,[4] in particular, in that it provides for the equitable allocation of dues, fees and other charges among its Options Trading Permit Holders and other persons using its facilities for the purpose of trading option contracts.

B. Self-Regulatory Organization's Statement on Burden on Competition

PCX 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, as amended.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and subparagraph (f)(2) of Rule 19b–4 thereunder.[6] At any time within 60 days of the filing of the 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.

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 No. SR–PCX–2004–88 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. SR–PCX–2004–88. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also 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 No. SR–PCX–2004–88 and should be submitted on or before October 26, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2490 Filed 10–4–04; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50471; File No. SR–PHLX–2004–60]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to its Equity Options Payment for Order Flow Program

September 29, 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 September 22, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Phlx has designated this proposal as one changing a fee imposed by the Phlx under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees, and charges to revise its equity options payment for order flow program.

Equity Options Payment for Order Flow Program Prior to September 22, 2004

The Exchange recently amended its equity options payment for order flow program.[5] Pursuant to that program, for trades settling on or after August 2, 2004, the Exchange assessed a payment for order flow fee as follows when Registered Options Traders ("ROTs") traded against a customer order: (1) $1.00 per contract for options on the Nasdaq-100 Index Tracking Stock℠ traded under the symbol QQQ;[6] and (2) $0.35 per contract for all other equity options. The ROT payment for order flow fee is not assessed on transactions between: (1) A specialist and a ROT; (2) a ROT and a ROT; (3) a ROT and a firm;[7] and (4) a ROT and a broker-dealer.[8] The ROT payment for order flow fee does not apply to index options or foreign currency options. Accordingly, the ROT payment for order flow fee applies, in effect, to equity option transactions between a ROT and a customer. In addition, a 500 contract cap per

[5] *See* SR–Phlx–2004–50 and SR–Phlx–2004–56. *See infra* note 19 for a discussion of the status of these filings.

[6] QQQ is currently the most actively-traded equity option. The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠, and QQQ℠ are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq") and have been licensed for use for certain purposes by the Phlx pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® ("Index") is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[7] For the purposes of the equity options payment for order flow program, a firm is defined as a proprietary account of a member firm, and not the account of an individual member.

[8] For purposes of the equity options payment for order flow program, broker-dealer orders are orders, entered from other than the floor of the Exchange, for any account (i) in which the holder of beneficial interest is a member or non-member broker-dealer or (ii) in which the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer. This includes orders for the account of an ROT entered from off-the-floor.

individual cleared side of a transaction is imposed.[9]

Specialist units[10] elect to participate or not to participate in the program in all options in which they are acting as a specialist by notifying the Exchange in writing no later than five business days prior to the start of the month.[11] If electing not to participate in the program, the specialist unit waives its right to any reimbursement of payment for order flow funds for the month(s) during which it elected to opt out of the program.[12]

Specialist units may opt out entirely from the equity options payment for order flow program, as long as they notify the Exchange in writing by the 15th of the month.[13] If a specialist unit opts out of the program by the 15th of the month, no payment for order flow charges will be incurred for either the specialist unit or ROTs for transactions in the affected options for that month.

If a specialist unit opts into the program, and does not request reimbursement of at least 50% of the total amount of payment for order flow funds collected from ROTs in the options for which that specialist unit is acting as the specialist, then that specialist unit will be required to pay payment for order flow fees for that month at the same rate as the ROTs.

The Exchange bills the ROTs and collects the payment for order flow fees from the ROTs on a monthly basis.[14] The collected funds will be used by each specialist unit to reimburse it for monies expended to attract options orders to the Phlx by making payments to order flow providers who provide order flow to the Exchange. Each specialist will establish the amounts that will be paid to order flow providers. Specialists receive their respective funds only after submitting an Exchange certification form identifying the amount of the requested funds.[15] Because the specialists are not being charged the payment for order flow fee for their own transactions, they may not request reimbursement for order flow funds in connection with any transactions to which they were a party.[16]

The Exchange may audit a specialist's payments to payment-accepting firms to verify the use and accuracy of the payment for order flow funds remitted to the specialists based on their certification.[17]

The Exchange also continues to implement a quality of execution program.[18]

The above referenced program was in effect for trades settling on or after August 2, 2004.[19]

Proposed Equity Options Payment for Order Flow Program Commencing September 22, 2004

The Exchange proposes to charge a payment for order flow fee on transactions by Phlx ROTs of $1.00 per contract for options on the QQQ, currently the most actively traded equity option, and $0.40 per contract for the remaining top 150 equity options, other than the QQQ.[20] The payment for

[9] Under the Exchange's equity options payment for order flow program, a 500 contract cap per individual cleared side of a transaction is imposed. Thus, the applicable payment for order flow fee is imposed only on the first 500 contracts, per individual cleared side of a transaction. For example, if a transaction consists of 750 contracts by one ROT, the applicable payment for order flow fee would be applied to, and capped at, 500 contracts for that transaction. Also, if a transaction consists of 600 contracts, but is equally divided among three ROTs, the 500 contract cap would not apply to any such ROT and each ROT would be assessed the applicable payment for order flow fee on 200 contracts, as the payment for order flow fee is assessed on a per ROT, per transaction basis. *See* Securities Exchange Act Release Nos. 47958 (May 30, 2003), 68 FR 34026 (June 6, 2003) (proposing SR–Phlx–2002–87); and 48166 (July 11, 2003), 68 FR 42450 (July 17, 2003) (approving SR–Phlx–2002–87). *See also* SR–Phlx–2004–50.

[10] The terms "specialist" and "specialist unit" are used interchangeably herein.

[11] A specialist unit must notify the Exchange in writing to either elect to participate or not to participate in the program. Once a specialist unit has either elected to participate or not to participate in the Exchange's equity options payment for order flow program in a particular month, it is not required to notify the Exchange in a subsequent month, as described above, if it does not intend to change its participation status. For example, if a specialist unit elected to participate in the program and provided the Exchange with the appropriate notice, that specialist unit would not be required to notify the Exchange in the subsequent month(s) if it intends to continue to participate in the program. However, if it elects not to participate (a change from its current status), it would need to notify the Exchange in accordance with the requirements stated above.

[12] For any month (or part of a month where an option is allocated mid-month) the specialist unit has elected to opt out of the program, no ROT payment for order flow fee will apply.

[13] If the 15th of the month is not a business day, the specialist unit may notify the Exchange of its desire to opt out of the program by the next business day.

[14] Originally, in filing SR–Phlx–2004–50, the Exchange proposed that the collected payment for order flow fees be combined in one account to form a "pool." If, after taking into account all requests for reimbursement in a given month, the amount in the pool would be insufficient to satisfy all such requests, then the reimbursement requests would be reduced on a proportionate basis among the requesting specialists for that month based on contracts executed by ROTs in the specialists' respective options. The amount by which the requests exceed the proportionate reimbursement may not be recovered in future months (and would not carry forward as claims against the pool). If there were any excess funds after monthly reimbursements, those funds would carry forward to be used for future requests. The Exchange subsequently proposed to amend this aspect of its equity options payment for order flow program. For the month of August 2004, the Exchange has proposed to require specialists to request reimbursement for payment for order flow funds on an option-by-option basis and that any excess payment for order flow funds collected but not reimbursed to specialists would be rebated back to the affected ROTs on an option-by-option basis. *See* SR–Phlx–2004–61.

[15] While all determinations concerning the amount that will be paid for orders and which order flow providers shall receive these payments will be made by the specialists, the specialists will provide to the Exchange on an Exchange form certain information, such as what firms they paid for order flow, the amount of the payment and the price paid per contract. The purpose of the form, in part, is to assist the Exchange in determining the effectiveness of the proposed fee and to account for and track the funds transferred to specialists, consistent with normal bookkeeping and auditing practices. In addition, certain administrative duties will be provided by the Exchange to assist the specialists.

[16] The amount a specialist may receive in reimbursement is limited to the percentage of ROT monthly volume to total specialist and ROT monthly volume in the equity options payment for order flow program.

[17] *See* Exchange Rule 760.

[18] *See, e.g.*, Securities Exchange Act Release No. 43436 (October 11, 2000), 65 FR 63281 (October 23, 2000) (SR–Phlx–2000–83).

[19] *See* SR–Phlx–2004–50 and SR–Phlx–2004–56, originally filed with the Commission on July 29, 2004 (subsequently amended on August 16, 2004) and August 16, 2004, respectively. These proposed rule changes were in effect until the Commission issued an abrogation order on September 22, 2004, which effectively rescinded the proposed rule changes as of the date of abrogation. *See* Securities Exchange Act Release No. 50420 (September 22, 2004). In addition, on August 31, 2004, the Exchange filed SR–Phlx–2004–58 with the Commission, which proposed to increase the payment for order flow fee of $0.35 per contract to $0.40 per contract for all equity options, other than options on the QQQ, to be effective for trades settling on or after September 1, 2004. On September 22, 2004, the Exchange withdrew SR–Phlx–2004–58 and filed with the Commission SR–Phlx–2004–60 and SR–Phlx–2004–61, which are intended to address payment for order flow fees imposed on trades settling on or after September 1, 2004.

In SR–Phlx–2004–50, the Phlx also made a technical update to a footnote on the first page of the Exchange's Summary of Equity Option Charges by deleting a page reference and inserting a reference to a section header in its place.

[20] The top 150 options will be calculated based on the most actively traded equity options in terms of the total number of contracts that are traded nationally, based on volume statistics provided by the Options Clearing Corporation ("OCC") and that are also traded on the Exchange. For example, if two of the most actively traded equity options, based on volume statistics provided by the OCC are not traded on the Exchange, then the next two most actively traded equity options that are traded on the Exchange will be selected. (For example, if the list of the top 150 options includes two options that are not traded on the Exchange, then the options ranked 151 and 152 will be included in the Exchange's top 150, assuming those options are traded on the Exchange). The measuring periods for the top 150 options will be calculated every three months. For example, for trade months September, October and November, the measuring period to determine the top 150 options will be based on volume statistics from May, June and July. This cycle will continue every three months. Members will be notified of the top 150 options approximately two weeks before the beginning of a

Continued

order flow fee will continue to apply to customer orders.[21] In addition, the 500 contract cap per individual cleared side of a transaction will continue to be imposed.[22]

The payment for order flow fee will be billed and collected on a monthly basis. Because the specialists are not being charged the payment for order flow fee for their own transactions, they may not request reimbursement for order flow funds in connection with any transactions to which they were a party.[23]

Specialists will request payment for order flow reimbursements on an option-by-option basis. The collected funds will be used by each specialist unit to reimburse it for monies expended to attract options orders to the Exchange by making payments to order flow providers who provide order flow to the Exchange. They will receive their respective funds only after submitting an Exchange certification form identifying the amount of the requested funds.[24] Each specialist unit will establish the amounts that will be paid to order flow providers.

Any excess payment for order flow funds will be carried forward to the next month by option and may not be applied retroactively to past deficits, which may be incurred when the specialist requests more than the amount collected.[25] Thus, excess funds will not be rebated to ROTs except in the limited situation discussed below, nor will deficits carry forward to subsequent months. ROTs may, however, receive a rebate of excess funds in a particular option for a particular month if the specialist unit does not request reimbursement by option of at least 50% of the total amount of payment for order flow funds billed to and collected from ROTs for each option in which that specialist unit is acting as specialist, as more fully described below. The Exchange will periodically review its equity options payment for order flow program to determine whether a cap on the amount collected for each option should be imposed in the future.[26]

Consistent with the Exchange's current equity options payment for order flow program, specialists units may opt out entirely from the program as long as they notify the Exchange in writing by the 15th of the month, or the next business day if the 15th of the month is not a business day. If a specialist unit opts out of the program by the 15th of the month, no payment for order flow charges will be incurred for either the specialist unit or ROTs for transactions in the affected options for that month.

In addition to opting out entirely from the program, specialists may opt out of the program on an option-by-option basis if they notify the Exchange in writing no later than three business days after the end of the month (which is before the payment for order flow fee is billed). If a specialist unit opts out of an option at the end of the month then no payment for order flow fees will be assessed on the applicable ROT(s) for that option. If a specialist unit opts out of the program in a particular option more than two times in a six-month period, it will be precluded from entering into the equity options payment for order flow program for that option for the next three months.

If a specialist unit opts into the program (and does not opt out of the program entirely by the 15th day of the month or by option by the third business day after the end of the month) and does not request reimbursement by option of at least 50% of the total amount of payment for order flow funds billed to and collected from ROTs for each option in which that specialist unit is acting as the specialist, then any excess payment for order flow funds remaining after the specialist has been reimbursed will be rebated, on a pro rata basis, to the affected ROTs for those particular options in which the 50% threshold was not met.[27]

Consistent with current practice, the Exchange may audit a specialist's payments to payment-accepting firms to verify the use and accuracy of the payment for order flow funds remitted to the specialists based on their certification.[28]

The Exchange will also continue to implement a quality of execution program.[29] Other aspects of the Exchange's equity options payment for order flow program will remain unchanged.[30]

The payment for order flow fees as set forth in this proposal would be in effect for trades settling on or after September 22, 2004.[31]

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new three-month trading period. As discussed below, the payment for order flow fees are incurred only when the specialist elects to participate in the equity options payment for order flow program. The Exchange's fee schedule will reflect the fee of $1.00 for options on the QQQ and $0.40 for the remaining top 150 equity options, other than the QQQ. Any change to the rate at which the payment for order flow fee is assessed would be the subject of a separate proposed rule change filed with the Commission.

[21] Thus, consistent with current practice, the ROT payment for order flow fee is not assessed on transactions between: (1) A specialist and a ROT; (2) a ROT and a ROT; (3) a ROT and a firm; and (4) a ROT and a broker-dealer. The ROT payment for order flow fee does not apply to index options or foreign currency options. Accordingly, the ROT payment for order flow fees applies, in effect, to equity option transactions between a ROT and a customer.

[22] *See supra* note 9.

[23] The amount a specialist may receive in reimbursement is limited to the percentage of ROT monthly volume to total specialist and ROT monthly volume in the equity options payment for order flow program. For example, if a specialist unit has a payment for order flow arrangement with an order flow provider to pay that order flow provider $0.70 per contract for order flow routed to the Exchange and that order flow provider sends 90,000 customer contracts to the Exchange in one month for one option, then the specialist would be required, pursuant to its agreement with the order flow provider, to pay the order flow provider $63,000 for that month. Assuming that the 90,000 represents 30,000 specialist transactions, 20,000 ROT transactions and 40,000 transactions from firms, broker-dealers and other customers, the specialist may request reimbursement of up to 40% (20,000/50,000) of the amount paid ($63,000 x 40%=$25,200). However, because the ROTs will have paid $8,000 into the payment for order flow fund for that month, the specialist may collect only $8,000 (20,000 contracts x $0.40 per contract) of its $25,200 reimbursement request plus, if applicable, any excess funds for that particular option carried over from a prior month up to the specialist's $25,200 reimbursement request.

[24] *See supra* note 15.

[25] Specialists may not receive more than the payment for order flow amount billed and collected in a given month; however, the amounts specialists receive may include excesses, if any, for that option, carried forward from prior months, up to the payment for order flow amount billed and collected in such month. Telephone conversation between Cynthia K. Hoekstra, Counsel, Phlx, and David Liu, Attorney, Division of Market Regulation, Commission, on September 24, 2004.

[26] Any such cap would have to be filed with the Commission as a proposed rule change under Section 19(b)(1) of the Act.

[27] For example, if a specialist unit requests $10,000 in reimbursement for one option and the total amount billed and collected from the ROTS was $30,000, then the specialist unit did not satisfy the 50% threshold, given the fact that it did not request reimbursement of at least $15,000. Therefore, the remaining amount of $20,000 will be rebated to the ROTs on a pro rata basis. If ROT A was assessed $15,000 in payment for order flow fees, he would receive a rebate of $10,000 ($15,000/$30,000 = 50% and 50% of $20,000 is $10,000). If ROT B was assessed $8,000 in payment for order flow fees, it would receive $5,333.33, which represents 26.67% ($8,000/$30,000) of $20,000. If ROT C was assessed $7,000 in payment for order flow fees, it would receive $4,666.67, which represents 23.33% ($7,000/$30,000) of $20,000.

[28] *See* Exchange Rule 760.

[29] *See, e.g.*, Securities Exchange Act Release No. 43436 (October 11, 2000), 65 FR 63281 (October 23, 2000) (SR–Phlx–2000–83).

[30] For example, specialists will elect to participate or not to participate in all options in which they are acting as a specialist by notifying the Exchange in writing no later than five business days prior to the start of the month. Once a specialist unit elects to participate or not to participate in the program, the specialist does not have to notify the Exchange in a subsequent month if it does not intend to change its participation status. (*See supra* note 11). Specialists will waive the right to reimbursement of payment for order flow funds for the month(s) during which it elected to opt out of the program.

[31] Because SR–Phlx–2004–50 has no legal effect as of the date of its abrogation, the Exchange's Summary of Equity Option Charges reflects changes that were proposed in SR–Phlx–2004–50. The Exchange has also filed a separate proposed rule

Below is the text of the proposed rule change. Proposed new language is in *italics*; deletions are in [brackets].

SUMMARY OF EQUITY OPTION CHARGES (p. 1/[3]*3*)

OPTION COMPARISON CHARGE (applicable to all trades—except specialist trades)

* * * * *

+ Subject to a maximum fee of $50,000, except for QQQ license fees of $0.10 per contract side—see [$50,000 "Firm Related" Equity Option and Index Option Cap.] *$50,000 "Firm Related" Equity Option and Index Option Cap.*

^ Specialists may also elect to pay a fixed fee monthly charge, see Specialist Unit Fixed Monthly Fee described below.

* ROTs are eligible for a $.08/contract side rebate and specialists who have not elected the fixed monthly fee are eligible for a $.07/contract side rebate for trades occurring as part of a dividend spread strategy.

⊕ These fees are waived from May 1, 2004 until August 31, 2004 for transactions in equity options that begin trading on the Exchange between January 1, 2004 and June 30, 2004.

Footnotes 9–13—no change.

SUMMARY OF EQUITY OPTION CHARGES (p. 2/[3]*3*)

* * * * *

[SUMMARY OF EQUITY OPTION CHARGES (P. 3/3)]

[EQUITY OPTION PAYMENT FOR ORDER FLOW FEES*]

[Registered Option Trader (on-floor): ** +

QQQ (NASDAQ–100 Index Tracking Stock℠)	$1.00 per contract.
Remaining equity options subject to charge	$0.35 per contract.

* Assessed on transactions resulting from customer orders
** Subject to a 500-contract cap, per individual cleared side of a transaction.
+ Only incurred when the specialist elects to participate in the payment for order flow program]

SUMMARY OF EQUITY OPTION CHARGES (p. 3/3)

EQUITY OPTION PAYMENT FOR ORDER FLOW FEES*

Registered Option Trader (on-floor)** +

QQQ (NASDAQ–100 Index Tracking Stock℠)	$1.00 per contract.
Remaining Top 150 Equity Options	$0.40 per contract.

* *Assessed on transactions resulting from customer orders, subject to a 500-contract cap, per individual cleared side of a transaction*
** *Any excess payment for order flow funds will be carried forward to the next month by option and will not be rebated to ROTs. ROTs may, however, receive a rebate of any excess funds in a particular option for a particular month if the specialist unit does not request reimbursement by option of at least 50% of the total amount of payment for order flow funds billed and collected from ROTs for each option in which that specialist unit is acting as specialist.*
+Only incurred when the specialist elects to participate in the payment for order flow program

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange represents that the purpose of the proposed rule change is to adopt a more competitive equity options payment for order flow program. Equity options payment for order flow programs are in place at each of the other options exchanges. The Exchanges states that the revenue generated by the $1.00 or $0.40 payment for order flow fees, as outlined in this proposal, is intended to be used by specialist units to compete for order flow in equity options listed for trading on the Exchange. The Exchange believes that, in today's competitive environment, changing its equity options payment for order flow program to compete more directly with other options exchanges is important and appropriate.

The Phlx states that the purpose of imposing the 50% threshold is to encourage specialists to have payment for order flow arrangements in place before electing to participate in the Exchange's equity options payment for order flow program.

2. Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with Section 6(b) of the Act [32] in general, and furthers the objectives of Sections 6(b)(4) of the Act [33] in particular, in that it is an equitable allocation of reasonable fees among Phlx members and that it is designed to enable the Exchange to compete with other markets in attracting customer order flow. Because the payment for order flow fees are collected only from member organizations respecting customer transactions, the Phlx believes that there is a direct and fair correlation between those members who fund the equity options payment for order flow fee program and those who receive the benefits of the program. The Exchange states that ROTs also potentially benefit from additional customer order flow. In addition, the Phlx believes that the proposed payment for order flow fees would serve to enhance the competitiveness of the Phlx and its members and that this proposal therefore is consistent with and furthers the objectives of the Act, including Section 6(b)(5) thereof,[34] which requires the rules of exchanges to be designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Phlx believes that attracting more order flow to the Exchange should, in turn, result in increased liquidity,

change to implement the payment for order flow fee, as outlined in this proposal, to be in effect for trades settling on or after September 1, 2004 through September 21, 2004. See SR–Phlx–2004–61.

[32] 15 U.S.C. 78f(b).

[33] 15 U.S.C. 78f(b)(4).

[34] 15 U.S.C. 78f(b)(5).

tighter markets and more competition among exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.[35]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[36] and Rule 19b–4(f)(2)[37] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PHLX–2004–60 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–PHLX–2004–60. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PHLX–2004–60 and should be submitted on or before October 26, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2489 Filed 10–4–04; 8:45 am]

BILLING CODE 8010–01–P

[35] Previously, in connection with SR–Phlx–2004–50, the Exchange received one written comment letter dated August 10, 2004, which was forwarded to the Commission on August 20, 2004.

[36] 15 U.S.C. 78s(b)(A)(ii).

[37] 17 CFR 240.19b–4(f)(2).

[38] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Declaration of Disaster #3624; State of Alabama (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective September 23, 2004, the above numbered declaration is hereby amended to include Autauga, Barbour, Bibb, Blount, Bullock, Calhoun, Chilton, Choctaw, Clay, Coosa, Cullman, Dallas, Dale, Elmore, Etowah, Fayette, Franklin, Greene, Hale, Jefferson, Lamar, Lawrence, Lee, Lowndes, Macon, Marengo, Marshall, Marion, Montgomery, Perry, Pickens, Pike, Shelby, St. Clair, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, Wilcox, and Winston as disaster areas due to damages caused by Hurricane Ivan occurring on September 13, 2004 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Chambers, Cherokee, Cleburne, Colbert, DeKalb, Henry, Jackson, Lauderdale, Limestone, Madison, Morgan, Randolph, and Russell in the State of Alabama; Clay, Harris, Muscogee, Quitman, and Stewart in the State of Georgia; and Clarke, Itawamba, Kemper, Lauderdale, Lowndes, Monroe, Noxubee, and Tishomingo in the State of Mississippi may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have previously been declared.

The economic injury number assigned to Georgia is 9AA500.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 15, 2004 and for economic injury the deadline is June 15, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 27, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–22291 Filed 10–4–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3635]

State of Florida

As a result of the President's major disaster declaration on September 26, 2004, and a notice received from the Department of Homeland Security—Federal Emergency Management Agency—on September 27, 2004, I find that Brevard, Hardee, Hernando, Highlands, Hillsborough, Indian River, Lake, Marion, Martin, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Seminole, St. Lucie, Sumter, and Volusia Counties in the State of Florida constitute a disaster area due to damages caused by Hurricane Jeanne occurring on September 24, 2004 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 26, 2004 and for economic injury until the close of business on June 27, 2005 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Alachua, Broward, Charlotte, Citrus, DeSoto, Flagler, Glades, Hendry, Levy, Manatee, and Putnam in the State of Florida.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.375
Homeowners without credit available elsewhere	3.187
Businesses with credit available elsewhere	5.800
Businesses and non-profit organizations without credit available elsewhere	2.900
Others (including non-profit organizations) with credit available elsewhere	4.875
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere	2.900

The number assigned to this disaster for physical damage is 363508 and for economic injury the number is 9AA400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 28, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–22290 Filed 10–4–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3632]

Commonwealth of Pennsylvania; Amendment #2

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective September 22, 2004, the above numbered declaration is hereby amended to include Franklin, Lebanon, Montour, Tioga, and York counties as disaster areas due to damages caused by Tropical Depression Ivan occurring on September 17, 2004 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Steuben in the State of New York; and Baltimore, Carroll, Frederick, and Harford Counties in the State of Maryland may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have previously been declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 18, 2004 and for economic injury the deadline is June 20, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 27, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–22288 Filed 10–4–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Declaration of Disaster #3634; Commonwealth of Puerto Rico (Amendment #1)

In accordance with notices received from the Department of Homeland Security—Federal Emergency Management Agency—effective September 19 and 22, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning September 14, 2004 and continuing through September 19, 2004. The declaration is also amended to include the municipalities of Caguas and Vieques as disaster areas due to damages caused by Tropical Storm Jeanne. All other municipalities contiguous to the above named primary municipalities have previously been declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 22, 2004 and for economic injury the deadline is June 21, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 27, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–22289 Filed 10–4–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Declaration of Disaster #3633; State of West Virginia (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective September 24, 2004, the above numbered declaration is hereby amended to include Berkeley, Cabell, Jackson, Kanawha, Lincoln, Mason, Morgan, and Wood Counties as disaster areas due to damages caused by severe storms, flooding and landslides occurring on September 16, 2004, and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Boone, Clay, Fayette, Hampshire, Jefferson, Logan, Mingo, Nicholas, Putnam, Raleigh, and Wayne in the State of West Virginia; Athens, Gallia, Lawrence, and Meigs in the State of Ohio; Allegany and Washington Counties in the State of Maryland; and Clarke and Frederick Counties in the Commonwealth of Virginia may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have previously been declared.

The economic injury number assigned to Maryland is 9AA200 and Virginia is 9AA300.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 19, 2004 and for economic injury the deadline is June 20, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 27, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–22292 Filed 10–4–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 14, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 4, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1882.
Form Number: IRS Form 8877.

Type of Review: Extension.

Title: Request for Waiver of Annual Income Recertification Requirement for the Low-Income Housing Credit.

Description: Owners of low-income housing buildings that are 100% occupied by low-income tenants may request a waiver from the annual recertification of income requirement, as provided by Code section 42(g)(8)(B).

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents/ Recordkeepers: 200.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping	5 hr., 15 min.
Learning about the law or the form.	1 hr., 17 min.
Preparing, Copying, assembling and sending the form to the IRS.	1 hr., 25 min.

Frequency of response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 1,598 hours.

OMB Number: 1545–1890.

Revenue Procedure Number: Revenue Procedure 2004–44.

Type of Review: Extension.

Title: Extension of the Amortization Period.

Description: This revenue procedure describes the process for obtaining an extension of the amortization period for the minimum funding standards set forth in section 412(e) of the Code.

Respondents: Business of other for-profit, not-for-profit institutions, farms, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 25.

Estimated Burden Hours Respondent/ Recordkeeper: 100 hours.

Frequency of response: Other (one response).

Estimated Total Reporting/ Recordkeeping Burden: 2,500 hours.

Clearance Officer: Paul H. Finger (202) 622–4078, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–22304 Filed 10–4–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 23, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 4, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1205.

Form Number: IRS Form 8826.

Type of Review: Extension.

Title: Disabled Access Credit.

Description: Code section 44 allows eligible small businesses to claim a non-refundable income tax credit of 50% of the amount of eligible access expenditures for any tax year that exceed $250 but do not exceed $10,250. Form 8826 figures the credit and the tax limit.

Respondents: Business or other for-profit, Individuals or households, Farms.

Estimated Number of Respondents/ Recordkeepers: 26,133.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—6 hr., 13 min.

Learning about the law or the form—42 min.

Preparing and sending the form to the IRS—49 min.

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 202,270 hours.

OMB Number: 1545–1292.

Regulation Project Number: PS–97–91 and PS–101–90 Final.

Type of Review: Extension.

Title: Enhanced Oil Recovery Credit.

Description: This regulation provides guidance concerning the costs subject to the enhanced oil recovery credit, the circumstances under which the credit is available, and procedures for certifying to the Internal Revenue Service that a project meets the requirements of section 43(c) of the Internal Revenue Code.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 20.

Estimated Burden Hours Respondent: 1 hour, 13 minutes.

Frequency of response: Annually.

Estimated Total Reporting Burden: 1,460 hours.

OMB Number: 1545–1345.

Regulation Project Number: CO–99–91 Final.

Type of Review: Extension.

Title: Limitations on Corporate Net Operating Loss.

Description: This regulation modifies the application of segregation rules under section 382 in the case of certain issuances of stock by a loss corporation. This regulation provides that the segregation rules do not apply to small issuances of stock, as defined, and apply only in part to certain other issuances of stock for cash.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondents: 1.

Estimated Burden Hours Respondent: 1 hour.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1545–1352.

Regulation Project Number: PS–276–76 Final.

Type of Review: Extension.

Title: Treatment of Gain from Disposition of Certain Natural Resource Recapture Property.

Description: This regulation prescribes rules for determining the tax treatment of gain from the disposition of natural resource recapture property in accordance with Internal Revenue Code section 1254. Gain is treated as ordinary income in an amount equal to the intangible drilling and development costs and depletion deductions taken with respect to the property. The information that taxpayers are required to retain will be used by the IRS to determine whether a taxpayer has properly characterized gain on the disposition of section 1254 property.

Respondents: Business of other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 400.

Estimated Burden Hours Respondent/ Recordkeeper: 5 hours.

Frequency of response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 2,000 hours.

OMB Number: 1545–1362.

Form Number: IRS Form 8835.

Type of Review: Extension.

Title: Renewable Electricity Production Credit.

Description: Filers claiming the general business credit for electricity produced from certain renewable resources under code sections 38 and 45 must file Form 8835.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 70.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—9 hr., 48 min.

Learning about the law or the form— 24 min.

Preparing and sending the form to the IRS—34 min.

Frequency of response: On occasion; Annually.

Estimated Total Reporting/ Recordkeeping Burden: 755 hours.

Clearance Officer: Paul H. Finger, (202) 622–4078, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–22305 Filed 10–4–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Bahrain, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates, Yemen, Republic of.

Dated: September 29, 2004.

Barbara Angus,

International Tax Counsel, (Tax Policy).

[FR Doc. 04–22366 Filed 10–4–04; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995. The OCC is soliciting comment concerning its information collection titled, "Transfer Agent Registration and Amendment Form—Form TA–1." The OCC also gives notice that it has sent the information collection to OMB for review and approval.

DATES: You should submit your comments to the OCC and the OMB Desk Officer by November 4, 2004.

ADDRESSES: You should direct your comments to:

OCC: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0124, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

OMB: Mark Menchik, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from John Ference, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Transfer Agent Registration and Amendment Form—Form TA–1.

OMB Number: 1557–0124.

Description: Section 17A(c) of the Securities Exchange Act of 1934 (Act), as amended by the Securities Act Amendments of 1975, provides that all those authorized to transfer securities registered under Section 12 of the Act (transfer agents) shall register by filing with the appropriate regulatory agency an application for registration in such form and containing such information and documents as such appropriate regulatory agency may prescribe to be necessary or appropriate, in furtherance of the purposes of this section. The OCC, Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve jointly developed Form TA–1 to satisfy this statutory requirement.

National bank transfer agents use Form TA–1 to register or amend registration as transfer agents. The OCC uses the information to determine whether to allow, deny, accelerate, or postpone an application. The OCC also uses the data to more effectively schedule and plan transfer agent examinations.

National bank transfer agents must file amendments to Form TA–1 with the OCC within 60 calendar days following the date on which any information reported on Form TA–1 becomes inaccurate, misleading, or incomplete. Amendments to Form TA–1 are used by the OCC to schedule and plan examinations.

The Securities and Exchange Commission maintains complete files on the registration data of all transfer agents registered, pursuant to the Act. It utilizes the data to identify transfer agents and to facilitate development of rules and standards applicable to all registered transfer agents.

Type of Review: Extension, without change, of OMB approval.

Affected Public: Businesses or other for-profit (national banks).

Estimated Number of Respondents: 60.

Estimated Total Annual Responses: 60.

Frequency of Response: On occasion.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden: 30 hours.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information

collection displays a currently valid OMB control number.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 04–22325 Filed 10–4–04; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notices 437, 437–A, 438 and 466

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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)). Currently, the IRS is soliciting comments concerning Notices 437, 437–A, 438 and 466, Notice of Intention to Disclose.

DATES: Written comments should be received on or before December 6, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Paul H. Finger, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notices should be directed to Carol Savage at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *carol.a.savage@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Notice of Intention to Disclose.

OMB Number: 1545–0633.

Notice Numbers: Notices 437, 437–A, 438, and 466.

Abstract: Section 6110(f) of the Internal Revenue Code requires that a notice of intention to disclose be sent to all persons to which a written determination (either a technical advice memorandum or a private letter ruling) is issued. That section also requires that such persons receive a notice if related background file documents are requested. Notice 437 is issued to recipients of letter rulings; Notices 437–A to recipients of Chief Counsel Advice; Notice 438 to recipients of technical advice memorandums; and Notice 466 to recipients if a request for the related background file document is received. The notices also inform the recipients of their right to request further deletions to the public inspection version of written determinations or related background file documents.

Current Actions: There are no changes being made to the notices at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local, or tribal governments.

Estimated Number of Respondents: 5,250.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 2,625.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 28, 2004.

Paul H. Finger,

IRS Reports Clearance Officer.

[FR Doc. 04–22374 Filed 10–4–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Cognitive and Psychological Research Coordinated by Statistics of Income on Behalf of All IRS Operations Functions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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)). Currently, the IRS is soliciting comments concerning Cognitive and Psychological Research Coordinated by Statistics of Income on Behalf of All IRS Operations Functions.

DATES: Written comments should be received on or before December 6, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Paul H. Finger, Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of information collection should be directed to Carol Savage at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *carol.a.savage@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Cognitive and Psychological Research Coordinated by Statistics of Income on Behalf of All IRS Operations Functions.

OMB Number: 1545–1349.

Abstract: The proposed research will improve the quality of data collection by examining the psychological and cognitive aspects of methods and procedures such as: interviewing processes, forms redesign, survey and tax collection technology and operating procedures (internal and external in nature).

Current Actions: We will be conducting different opinion surveys, focus group sessions, think-aloud interviews, and usability studies regarding cognitive research surrounding forms submission or IRS system/product development.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals and businesses or other for-profit organizations.

Estimated Number of Respondents: 75,000.

Estimated Average Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 37,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 28, 2004.

Paul H. Finger,

IRS Reports Clearance Officer.

[FR Doc. 04–22373 Filed 10–4–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974, as Amended; System of Records

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed new Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Internal Revenue Service (IRS), Department of the Treasury, gives notice of a proposed Internal Revenue-wide system of records, Treasury/IRS 35.001–Reasonable Accommodation Request Records.

DATES: Comments must be received no later than November 4, 2004. The proposed system of records will be effective November 15, 2004, unless the IRS receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to Chief, EEO and Diversity, Internal Revenue Service, Room 2422, 1111 Constitution Avenue, NW., Washington, DC 20224. Comments will be made available for inspection and copying in the IRS Freedom of Information Reading Room. An appointment for inspecting the comments can be made by contacting the library at (202) 622–5164.

FOR FURTHER INFORMATION CONTACT: Pat Mance or Teresa A. Bonham, National Headquarters EEO and Diversity Office, Internal Revenue Service, Department of the Treasury, Room 2422, 1111 Constitution Avenue, NW., Washington, DC 20224. Telephone number (202) 622–5410 or (202) 622–6786 (TDD).

SUPPLEMENTARY INFORMATION: The Internal Revenue Service (IRS) gives notice of a proposed new system of records entitled "Treasury/IRS 35.001–Reasonable Accommodation Request Records" that is subject to the Privacy Act of 1974. The IRS is establishing the system of records to facilitate the provision of reasonable accommodation by establishing procedures and a form for use in requesting such reasonable accommodation, as well as providing a record that the request was submitted. The request form initiates the agency's reasonable accommodation procedures and the system of records serves as the agency's record of the administrative events pertaining to the approval or disapproval of the requested accommodation. In implementing the procedures, a new "Reasonable Accommodation Request Form" will be implemented Servicewide.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated November 30, 2000.

The proposed new system of records, entitled "Treasury/IRS 35.001–Reasonable Accommodation Request Records," is published in its entirety below.

Dated: September 17, 2004.

Arnold I. Havens,

General Counsel.

TREASURY/IRS 35.001

SYSTEM NAME:

Reasonable Accommodation Request Records.

SYSTEM LOCATION:

National Headquarters, Chief Counsel, and Business Units (Agency-Wide Shared Services, Appeals, Modernization & Information Technology Services (MITS), Taxpayer Advocate Service, Communications and Liaison, Criminal Investigation, Wage and Investment, Small Business/Self Employed, Large and Mid-sized Business, and Tax Exempt and Governmental Entities (TE/GE)). See "system managers and addresses" for location.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants and current and former Internal Revenue Service employees with disabilities who request reasonable accommodation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's or applicant's name, occupational series and grade, operating division/function, office location and address, office telephone number, disability or medical condition, reasonable accommodation (RA) requested, explanation of how RA would assist the applicant in the application process and the employee in performing his/her job, deciding official's name and title, deciding official's telephone number, essential duties of the position, information relating to an individual's capability to satisfactorily perform the duties of the position he/she is either applying for or presently holds, relevant medical information, estimated cost of accommodation, action by deciding official, signature of employee/applicant, signature of the deciding official, signature of health care practitioner, social worker, or rehabilitation counselor, medical documentation and supporting documents relating to reasonable accommodation.

AUTHORITY:

Title VII of the Civil Rights Act of 1964, as amended; Civil Rights Act of 1991; The Rehabilitation Act of 1973, 29

U.S.C. 701 *et seq.*, as amended; The Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.* (ADA); Executive Order 13164, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation (July 26, 2000).

PURPOSE:

The purpose of the system is to implement uniform procedures to administer reasonable accommodation requests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

These records may be used:

(1) To disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law or regulations.

(2) To disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant or other benefit.

(3) To provide information to the Department of Justice for the purpose of litigating an action or seeking legal advice. Disclosure may be made during judicial processes.

(4) To disclose information in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when (a) the agency, (b) any employee of the agency in his or her official capacity, (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged.

(5) To provide information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

(6) To provide information to third parties during the course of an investigation to the extent necessary to obtain information.

(7) To disclose information to the news media and the public, in accordance with guidelines contained in 28 CFR 50.2 in the same manner as permitted for Department of Justice officials, unless release would constitute an unwarranted invasion of personal privacy.

(8) To disclose information to a contractor to the extent necessary for the performance of a contract.

(9) To disclose information to an arbitrator, mediator, or similar person, and to the parties, in the context of alternative dispute resolution, to the extent relevant and necessary to permit the arbitrator, mediator, or similar person to resolve the matters presented, including asserted privileges.

(10) To disclose information to the Merit Systems Protection Board and the Office of Special Counsel in personnel, discrimination, and labor management matters when relevant and necessary to their duties.

(11) To disclose information to foreign governments in accordance with formal or informal international agreements when necessary to respond to a request for reasonable accommodation.

(12) To disclose information to the Office of Personnel Management and/or to the Equal Employment Opportunity Commission in personnel, discrimination, and labor management matters when relevant and necessary to their duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Date of reasonable accommodation request, employee/applicant for employment's name, record number, and Business Unit.

SAFEGUARDS:

Access controls will not be less than those provided for by the Automated Information System Security Handbook, IRM 2(10)00, and the Manager's Security Handbook, IRM 1(16)12.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Record Disposition Handbooks, IRM 1(15)59.1 through 1(15)59.32. Records related to specific individuals are to be maintained for the duration of employment. Aggregate data used to track the agency's performance are to be maintained for three years.

SYSTEMS MANAGER(S) AND ADDRESS:

National Headquarters, Attn: Chief, EEO and Diversity, N:EEO, Room 2422/IR, 1111 Constitution Avenue, NW., Washington, DC 20224.

Chief Counsel, Attn: Director, EEO and Diversity Office, Suite 500, 950 L'Enfant Plaza, SW., Washington, DC 20024.

Business Units:

Agency-Wide Shared Services, Room 7554/IR; Communications and Liaison, Room 7230/IR; Taxpayer Advocate Service, Room 1314/IR; Criminal Investigation, Room 2242/IR; Attn: Director, EEO and Diversity Office, 1111 Constitution Avenue, NW., Washington, DC 20224.

Appeals, Attn: Director, EEO and Diversity Office, FCB, Suite 4200 E, 1099 14th Street, NW., Washington, DC 20005.

MITS, Attn: Director, EEO and Diversity Office, 5000 Ellin Road, B8–157, Lanham, MD 20706.

Small Business/Self Employed, Attn: Director, EEO and Diversity Office, 5000 Ellin Road, C3–275, Lanham, MD 20706.

Large and Mid-sized Business, Attn: Director, EEO and Diversity Office, 801 9th Street, Mint Building, M3–177, Washington, DC 20001.

TE/GE, Attn: Director, EEO and Diversity Office, 4050 Alpha Road, MS 1120, Dallas, TX 75244.

Wage and Investment Division, Attn: Director, EEO and Diversity, 401 W. Peachtree Street, Room 1619, Atlanta, GA 30365.

NOTIFICATION PROCEDURES:

Individuals seeking access to any record contained in this system of records pertaining to themselves or seeking to contest its contents may inquire in accordance with instructions appearing in 31 CFR part 1, subpart C, Appendix B. Inquiries should be addressed as in "Record Access Procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, Appendix B. Inquiries should be addressed to the Chief, EEO and Diversity, Chief Counsel, or Business Units (Appeals, Modernization & Information Technology Services, Taxpayer Advocate Service, Communications and Liaison, Criminal Investigation, Wage and Investment, Small Business/Self Employed, Large and Mid-sized Business, and Tax Exempt and Governmental Entities) Directors, EEO and Diversity, servicing

the area in which the individual resides. (*See* "System Manager(s) and Address" for location)

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Information given by an individual requesting accommodation(s), input from individual's manager, documentation from individual's medical practitioner, agency medical representative, contractors or offices relating to the issuance of accommodation(s).

EXEMPTIONS:

None.

[FR Doc. 04–22306 Filed 10–4–04; 8:45 am]

BILLING CODE 4830–01–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

Name: C. Richard D'Amato, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate and report to Congress annually on "the national security implications of the bilateral trade and economic relationship between the United States and the People's Republic of China." Pursuant to this mandate, the Commission will be holding a public hearing in Seattle, Washington, October 14, 2004. The purpose of this hearing is to examine the impact of U.S.-China trade and investment on Pacific Northwest industries. The Commission will receive testimony from industry representatives, labor organizations, researchers and analysts of the aviation, aerospace, software, technology, agriculture, forest products and other key industries on: (1) How these industries have been affected by economic relations with China, and (2) how this may be indicative of broader trends for the U.S. economy. The Commission will also hear from witnesses on the economic development and other local effects on the region of trade and investment relations with China.

Background

This event is part of a series of field hearings the Commission is holding to collect input from local industry and labor leaders, government officials, researchers, other informed witnesses and the public on the impact of U.S.-China trade and economic relations. Information on upcoming field hearings, as well as transcripts of past Commission hearings, can be obtained from the USCC Web site at *http://www.uscc.gov.*

The Seattle, Washington hearing will be Co-chaired by Commissioner George Becker, Former International President of the United Steelworkers of America and AFL-CIO Vice President and Executive Council Member, and Commissioner Robert F. Ellsworth, Chairman and Founding Partner, Hamilton Apex Technology Ventures.

Purpose of Hearing

The hearing is designed to assist the Commission in fulfilling its mandate by exploring how U.S.-China trade and investment is impacting vital sectors of the U.S. economy. The Commission seeks to gain a better understanding of how Washington State and the aviation, technology, agriculture and other important regional industries have been impacted by U.S.-China economic relations. The Commission will also investigate how this is indicative of broader trends for the U.S. economy and the implications for U.S. economic and national security.

Copies of the hearing agenda will be made available on the Commission's Web site at *http://www.uscc.gov.* The hearing will be held in two sessions, one in the morning and one in the afternoon, where Commissioners will take testimony from invited witnesses.

DATE AND TIME: Thursday, October 14, 2004, 8:45 a.m. to 5 p.m. Pacific Daylight Time inclusive. A detailed agenda for the hearing will be posted to the Commission's Web site at *http://www.uscc.gov* in the near future.

ADDRESSES: The hearing will be held at the Olympic Conference Room, 4th Floor, The Edgewater Hotel, Pier 67, 2411 Alaskan Way, Seattle, Washington. Garage parking is available across the street from the hotel at a daily rate of $7. Public seating is available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the hearing should contact Kathy Michels, Associate Director for the U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington, DC 20001; phone (202) 624–1409, or via e-mail at *kmichels@uscc.gov.*

Authority: The Commission was established in October 2000 pursuant to the Floyd D. Spence National Defense Authorization Act Section 1238, Public Law 106–398, 114 STAT. 1654A–334 (2000) (codified at 22 U.S.C. 7002 (2001), as amended, and the "Consolidated Appropriations Resolution of 2003," Public Law 108–7 dated February 20, 2003.

Dated: September 30, 2004.

Kathleen J. Michels,

Associate Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 04–22377 Filed 10–4–04; 8:45 am]

BILLING CODE 1137–00–P

Corrections

Federal Register
Vol. 69, No. 192
Tuesday, October 5, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

48 CFR Part 219

[DFARS Case 2004–D015]

Defense Federal Acquisition Regulation Supplement; Extension of Partnership Agreement—8(a) Program

Correction

In rule document 04–21852 beginning on page 58353 in the issue of Thursday, September 30, 2004 make the following correction:

On page 58353, in the third column, in the **DATES** section "September 29, 2004" should read "September 30, 2004".

[FR Doc. C4–21852 Filed 10–4–04; 8:45 am]
BILLING CODE 1505–01–D

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37 CFR Part 270

[Docket No. RM 2002–1G]

Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

Correction

In rule document 04–22002 beginning on page 58261 in the issue of Thursday, September 30, 2004 make the following corrections:

(1) On page 58261, in the third column, in the second paragraph, in the next to last line "new types of subscription" should read "new subscription".

(2) On page 58262, in the first column, in the second paragraph, in the eighth line "types of subscription services" should read "subscription services".

[FR Doc. C4–22002 Filed 10–4–04; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Tuesday,
October 5, 2004

Part II

Department of Agriculture

Rural Business-Cooperative Service

7 CFR Part 4280
Renewable Energy Systems and Energy Efficiency Improvements Grant, Guaranteed Loan, and Direct Loan Program; Proposed Rule

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Part 4280

RIN 0570–AA50

Renewable Energy Systems and Energy Efficiency Improvements Grant, Guaranteed Loan, and Direct Loan Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed rule.

SUMMARY: Rural Business-Cooperative Service proposes to implement a program for making grants, loan guarantees, and direct loans to farmers and ranchers (agricultural producers) or rural small businesses to purchase renewable energy systems and make energy efficiency improvements. The Farm Security and Rural Investment Act of 2002 (2002 Act) established the Renewable Energy Systems and Energy Efficiency Improvements Program. This program will help farmers, ranchers, and rural small businesses to reduce energy costs and consumption.

DATES: Written comments on this proposed rule must be received on or before November 4, 2004 to be assured of consideration. The comment period for the information collection under the Paperwork Reduction Act of 1995 continues through November 4, 2004.

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

- *Agency Web Site: http://rdinit.usda.gov/regs/.* Follow instructions for submitting comments on the Web Site.
- *E-Mail: comments@usda.gov.* Include the RIN No. 0570–0050 in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742.
- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or another courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular working hours at 300 7th Street, SW., 7th Floor, address listed above.

FOR FURTHER INFORMATION CONTACT: Georg A. Shultz, Special Advisor for Renewable Energy Policy and Programs, Office of the Deputy Administrator Business Programs, U.S. Department of Agriculture, Mail Stop 3220, 1400 Independence Ave., SW., Washington, DC 20250–3220, Telephone: (202) 720–2976.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Background

A. Statutory Authority

The Farm Security and Rural Investment Act of 2002 (2002 Act) established the Renewable Energy Systems and Energy Efficiency Improvements Program under Title IX, Section 9006. The 2002 Act mandates that the Secretary of Agriculture create a program to make loans, loan guarantees, and grants to "a farmer, rancher, or rural small business" to purchase renewable energy systems and make energy efficiency improvements. The purpose of the program is to help agricultural producers and rural small businesses to reduce energy costs and consumption. The 2002 Act mandates the maximum percentage that the Agency will provide in funding for these projects. Grant funding is limited to 25 percent of the eligible project cost and will be made only to those who demonstrate financial need. Guaranteed loans and direct loans are each limited to 50 percent of the eligible project costs. Lastly, the Agency may fund up to 50 percent of the eligible cost for any combination of grants, guaranteed loans, and direct loans per project under this program.

In determining the amount of a grant, guaranteed loan, or direct loan for renewable energy systems and energy efficiency improvements, the 2002 Act requires the Agency to take into consideration, as applicable, the following factors:

1. The type of renewable energy system or energy efficiency improvement to be purchased;
2. The estimated quantity of energy to be generated by the renewable energy system or energy efficiency improvement;
3. The expected environmental benefits of the renewable energy system or energy efficiency improvement;
4. The extent to which the renewable energy system or energy efficiency improvement will be replicable;
5. The demonstrated amount of energy savings expected to be derived from this activity or project;
6. The estimated length of time it would take for the energy savings generated by the project to equal the cost of the activity or project; and
7. Other appropriate factors.

B. Background Information

Due to time constraints for implementing this program, the Agency decided to institute only the grant program for FY 2003. Therefore, a NOFA inviting applications to purchase renewable energy systems and make energy efficiency improvements under the grant program was published in the **Federal Register** on April 8, 2003 (68 FR 17009). Of the 147 applications for grant funds received, 114 were approved and funded under this program for FY 2003. For FY 2004, the Agency published a second NOFA (May 5, 2004; 69 FR 25234) for a grant program for

renewable energy systems and energy efficiency improvements. For FY 2005, the Agency is in the process of developing a rule for a complete grant, guaranteed loan, and direct loan program. This notice is the first formal step of this process.

In developing the proposed rule, the Agency relied on several main components. First, the rule needs to be consistent with the requirements specified in the 2002 Act. Thus, some of the proposed requirements are statutorily-based. Second, Rural Development is proposing to implement the grant and guaranteed loan program based on the requirements outlined in the NOFA published on April 8, 2003, including stakeholder comments. Third, in proposing the guaranteed loan program, the Agency is proposing requirements based on the experience of other loan programs (*e.g.*, the Business and Industry Loan program) and the need to ensure that loan programs are based on sound financial principles.

Based on experience, the Agency is proposing to require applicants and borrowers as well as their proposed projects to meet certain eligibility requirements to ensure that the funds available under this program are disbursed to those who meet the target market in the 2002 Act. To assess the eligibility and viability of proposed projects, applicants will be required to provide certain information.

Because of limitations of available funds, the Agency is proposing criteria to score and rank eligible projects to determine those projects that are funded first. To make funds available to more agricultural producers and rural small businesses, the Agency is proposing limits to maximum funding levels. In addition, minimum funding levels are being proposed to help ensure that most projects that have beneficial aspects of energy production and energy savings in rural areas can be considered for assistance.

Finally, the Agency is proposing processing and servicing requirements, which are necessary for any grant and guaranteed loan program.

With regards to the direct loan program, the Agency has chosen not to promulgate a regulation for the direct loan program under section 9006 at this time because we believe the government needs to have options for dealing with change and innovation within the renewable energy industry. By allowing the Agency to tailor the direct program to specific needs that are not properly addressed by either the grant or guarantee gives the government some flexibility in dealing with the ever changing and evolving nature of the renewable energy industry. As funding is provided for this purpose, the Agency will develop the appropriate rules, terms, conditions and criteria for the direct loan program that will address the specific direct loan needs for renewable energy at that time. Finally, the implementation of a direct loan program can require significant staffing and resources, which the Agency does not currently have. By implementing a direct loan program tailored to specific needs at a later time, the Agency will be in a better position to allocate the necessary staff and resources to implement a direct loan program. For these reasons, the Agency is not proposing a specific direct loan program at this time, but is instead identifying the process for developing a direct loan program and the information that would be included in the direct loan program.

C. Request for Comments

The Agency is requesting comments on the overall program being proposed. The Agency is especially interested in comments on the following areas:

1. The rule sets a minimum funding amount of $2,500. How would this minimum value affect the projects most likely to otherwise use this program?

2. The rule does not allow non-traditional lenders to participate in the program. Is this appropriate for renewable energy projects or would some non-traditional lenders be likely to lend funds for this type of activity if the rule did not prohibit their participation?

3. Are there ways to improve, streamline, or simplify the application process for the program? The Agency is particularly interested in the views of program applicants and other interested stakeholders. The Agency will consider comments based on its need to assess the eligibility and viability of proposed projects. Applicants and the Agency must meet all applicable laws, regulations and executive orders. The applicants must provide the Agency and other agencies with appropriate information so that all compliance issues can be addressed and competing applications can be evaluated in a fair and objective process. The Agency will balance the above criteria, where possible, with the need to establish information requirements commensurate with the scale and complexity of the proposed renewable energy system or energy efficiency improvement.

Comments are to be submitted as indicated in the **DATES** and **ADDRESSES** sections above. The Agency will consider all comments, although some may be addressed at a future date.

The Agency believes that a 30-day comment period, rather than a 60-day comment period, is sufficient for soliciting public comments on this proposed rulemaking. First, the stakeholders are already very familiar with the grant and guaranteed loan program being proposed. The Agency issued two Notices of Funds Availability (NOFAs) for grant programs under section 9006, one in fiscal year (FY) 2003 and one in FY 2004, and requested public comments on both NOFAs. In addition, the Agency's current Business and Industry (B&I) guaranteed loan program forms the basis of the proposed guaranteed loan program. Second, in developing the proposed program, the Agency considered all of the comments received on the NOFAs and used its experience with the NOFAs in developing the proposed rule. Third, the Agency hosted a national public stakeholders forum for constituents on December 3, 2002, which was simulcast nationwide over the Internet. At this forum, attendees expressed their views on the implementation of section 9006. There was significant participation with both oral and written comments, which were also considered in the development of the proposed rule. Finally, the grant program is identical to the latest NOFA and there are only a few differences being proposed between the section 9006 guaranteed loan program and the existing B&I guaranteed loan program. For these reasons, the Agency believes that 30 days is sufficient for the stakeholders to understand the proposed program and to provide comment on it. If additional time is required, stakeholders can always request an extension of the public comment period.

II. General Criteria and Terms for Approval of Grants and Guaranteed Loans

There exist thousands of agricultural producers and rural small businesses engaged in meeting the needs of the nation's growing population. The potential contribution of this group toward meeting the national goal of conserving and reducing energy usage nationwide is great. In implementing this program, the Agency encourages agricultural producers and rural small businesses to utilize commercially available technologies.

Terminology

Throughout this preamble, we use the term "applicant," "borrower," and "grantee" in describing the proposed grant and loan program. The term "applicant" refers to the entity seeking

a grant or loan. For the grant program, this entity is the agricultural producer or rural small business. For the direct loan program, this entity is the agricultural producer. For the guaranteed loan program, however, this entity is the lender. We use the term "borrower" when referring to the agricultural producer or rural small business that is seeking the guaranteed loan or to whom a loan has been made. We use the term "grantee," to refer to the agricultural producer or rural small business that has received a grant.

In summary, when the phrase "applicant or borrower" is used in the preamble, it refers to the agricultural producer or rural small business seeking the grant, guaranteed loan, or direct loan. When just the term "applicant" is used, it refers to the entity (agricultural producer, rural small business, or lender) submitting the application, as described in the above paragraph.

A. Applicant and Applicant/Borrower Eligibility

To be eligible to receive a grant or guaranteed loan, an applicant or borrower must meet each of the five criteria, as applicable, identified below. These criteria were selected because they are identified in Section 9006 of the 2002 Act.

1. To receive a grant or guaranteed loan, the applicant or borrower must be an agricultural producer (farmer or rancher) or a rural small business;

2. If the applicant or borrower is an individual, the applicant or borrower must be a citizen of the United States (U.S.) or reside in the U.S. after being legally admitted for permanent residence;

3. Entities must be at least 51 percent owned, directly or indirectly, by individuals who are either citizens of the U.S. or reside in the U.S. after being legally admitted for permanent residence;

4. If the applicant or borrower is applying as a rural small business, both the applicant's or borrower's business headquarters and the proposed project must be in a rural area; and

5. For grants only, the applicant must have demonstrated financial need.

Any applicant, borrower, or owner that has an outstanding Federal judgment, is delinquent in paying Federal income taxes, or is delinquent on a Federal debt is ineligible to receive a grant or guaranteed loan under this program. This condition is consistent with standard Agency practice for funding programs.

B. Project Eligibility

The proposed rule contains criteria to determine if an applicant's proposed project is eligible to receive funds or guarantees under the Renewable Energy Systems and Energy Efficiency Improvements Program. To be eligible, the proposed project is required to meet the following criteria, as applicable:

1. The project must be for the purchase of a renewable energy system or to make energy efficiency improvements;

2. The project must be for a replicable, pre-commercial or a replicable, commercially available technology;

3. The project must be technically feasible;

4. The project must be located in a rural area;

5. The applicant or borrower must be the owner of the system and control the operation and maintenance of the proposed project. However, a qualified third-party operator will be allowed to manage the operation and/or maintenance of the proposed project; and

6. All projects must be based on satisfactory sources of revenues in an amount sufficient to provide for the operation and maintenance of the system or project.

Projects that are still in the research and development stage are not eligible for funds under this program, because the 2002 Act requires projects to be "replicable" and the Agency does not believe projects that are in the research and development stage meet this statutory requirement. In addition, a project for which construction has been initiated will not be considered by the Agency because the necessary environmental assessment cannot be conducted in accordance with the National Environmental Protection Act.

The technical feasibility of each proposed project will be based on all of the information provided by the applicant and on other sources of information, such as recognized industry experts in the applicable technology field, as necessary. If the project is determined to be not technically feasible, the applicant will be notified in writing of this determination and the reasons therefore. The rule allows the applicant or borrower to appeal such determinations.

C. Eligible Project Costs

Funds may be used only for certain specified project costs, provided these costs are an integral and necessary part of the total project. Funds received under 7 CFR part 4280, subpart B, cannot be used for any other project costs. The eligible project costs are:

1. Post-application purchase and installation of equipment, except agricultural tillage equipment and vehicles. Vehicles are considered to be any powered mobile equipment, including but not limited to cars and tractors;

2. Post-application construction or project improvements, except residential;

3. Energy audits or assessments;

4. Permit fees;

5. Professional service fees, except for application preparation;

6. Feasibility studies;

7. Business plans;

8. Retrofitting;

9. Construction of a new facility only when the facility is used for the same purpose; is approximately the same size; and, based on the energy audit, will provide more energy savings than improving an existing facility. Only costs identified in the energy audit for energy efficiency projects are allowed;

10. Working capital (guaranteed loans only); and

11. Land acquisition (guaranteed loans only).

The Agency selected these items as eligible project costs because they are integral to the acquisition or construction of eligible projects and these items are necessary for the successful implementation and quality assurance of the project; and allowing these costs provides for support of actual purchase of a renewable energy system and energy efficiency improvements. The Agency is allowing working capital and land acquisition as an eligible project costs for guaranteed loans because the Agency wants to ensure that the relatively limited percentage of grant funds (25 percent for grants versus 50 percent for guaranteed loans) are used for the renewable energy system or energy efficiency improvement project itself.

D. Project Funding

1. *Funding Amounts.* The minimum level of funding available for a grant, guaranteed loan, or a combined grant and guaranteed loan is $2,500. The Agency believes that including this minimum level of funding will allow more agricultural producers and rural small businesses to qualify and take advantage of this program. The Agency's goal in implementing this program is to distribute all of the available funds quickly and equitably to qualified applicants and borrowers.

To encourage wide participation and distribution of funds, the Agency has established levels of available funding for both funding programs. The following paragraphs discuss maximum

funding levels and specific details related to funding for grants and guaranteed loans, and percentages of eligible project costs available under each funding program.

i. *Grant Funding.* The maximum funding level for grants for renewable energy systems is $500,000. The maximum funding level for grants for energy efficiency improvements is $250,000. The maximum amount of grant assistance to one individual or entity is limited to $750,000.

As required by the 2002 Act, the amount of grant funds made available to an applicant for an eligible project must not exceed 25 percent of eligible project costs. The remaining funds needed to complete the project must come from other sources. The applicant may use third-party, in-kind contributions as part of the remaining funds. Third-party, in-kind contributions, however, cannot exceed 10 percent of the matching funds provided by other sources.

ii. *Loan funding.* For guaranteed loans, the maximum funding level is $10 million. If a more than $10 million in loan guarantees is sought, then the loan should be sought under the Agency's B&I program.

The amount of guaranteed loan funds made available to an applicant or borrower for an eligible project will not exceed 50 percent of eligible project costs.

For guaranteed loans, the total amount of Agency loans to one borrower will be limited to no more than $10 million. The percentage of the guarantee, which will be negotiated between the lender and the borrower, cannot exceed 85 percent for loans of $600,000 or less; 80 percent for loans greater than $600,000 but up to $5 million; and 70 percent for loans greater than $5 million but up to $10 million.

c. *Combined Grant and Guaranteed Loan Funding.* As required by the 2002 Act, a combined grant and guaranteed loan under this program cannot exceed 50 percent of eligible project costs and the applicant or borrower is responsible for having other funding sources for the remaining funds. Eligible project costs will be based on costs identified for each type of funding being requested under a combination funding request.

2. *Interest rates on loans.*

i. *Guaranteed loans.* The interest rate for a guaranteed loan will be negotiated between the lender and the borrower and may be fixed, variable, or a combination of fixed and variable as long as it is a legal rate. If a variable interest rate is used, it must be tied to a base rate agreed to by the lender and the borrower and may be varied no more than once per quarter.

The interest rate for a guaranteed loan is to be based on indices, such as money market indices, that are published in a recognized banking industry source. As in the Agency's B&I program, the interest rate can not be more than that rate customarily charged borrowers in similar circumstances in the ordinary course of business and is subject to Agency review and approval.

ii. *Combination Funding.* The interest rate for the loan portion of a combined funding request will be determined based on the procedures specified for guaranteed loans.

3. *Terms of Loan.* This rule sets maximum loan term limits for guaranteed loans and also applies when they are part of a combination funding request. These term limits vary according to the type of item and will be utilized only when the loan cannot reasonably be repaid over a shorter term. The maximum loan terms being proposed are established loan terms used under the Agency's B&I program and are familiar to commercial lenders. The maximum loan term limits in this rule are as follows:

i. For real estate, 30 years.

ii. For machinery and equipment, 15 years, or the useful life, whichever is less.

iii. For repayment for combined loans on real estate and equipment, 20 years.

iv. For working capital, 7 years.

The first installment of principal and interest will, if possible, be scheduled for payment after the project is operational and has begun to generate income.

4. *Guaranteed Loan Fees.* This rule sets the maximum guarantee fee at 1 percent and the maximum annual renewal fee at 0.5 percent. The Agency considered establishing a higher guarantee fee (2 percent), which would help leverage funds. However, the Agency believes that the lower fee is more appropriate because it provides a financial incentive, relative to other programs, to agricultural producers and rural small businesses to participate in this program. The maximum annual renewal fee is based on Small Business Administration (SBA) programs and is adopted for this program to provide additional funds to supplement the available funds appropriate to the program, thereby allowing the program to reach more potential applicants. The Agency will publish each year in the **Federal Register** the fee levels in effect for that year.

E. Appeals

Consistent with standard Agency policy, appeals will be handled in accordance with 7 CFR part 11. Any party adversely affected by an Agency decision under this subpart may request a determination of appealability from the Director, National Appeals Division, USDA, within 30 days of the adverse decision.

F. Insurance

This rule will require the applicant or borrower to carry certain types of insurance. The insurance requirements are consistent with other Rural Development programs and are applicable to this program. All insurance must be maintained for the life of the grant or loan, unless such requirement is waived or modified by the Agency.

G. Construction Planning and Performing Development

Consistent with Agency policies, construction planning and performing development requirements of 7 CFR part 1924, subpart A, will be used for grants.

Under the Guaranteed Loan program, lenders will be required to ensure that all project facilities are designed utilizing accepted architectural and engineering practices, conform to applicable Federal, state, and local codes and requirements, and meet the requirements of this regulation.

H. Laws That Contain Other Requirements

There are several laws that applicants and borrowers must comply with under this program. These are:

- Executive Order 11246, "Equal Employment Opportunity;"
- Americans with Disabilities Act of 1990;
- Title VI of the Civil Rights Act of 1964 (grants only);
- Section 504 of the Rehabilitation Act of 1973 (grants only);
- Equal Credit Opportunity Act (Title V of Pub. L. 90–321, as amended) (guaranteed loans only);
- 7 CFR part 1940, subpart G, which requires an environmental impact analysis; and
- Executive Order 12898, "Environmental Justice," under which the Agency will conduct a Civil Rights Impact Analysis in regard to environmental justice.

III. Application and Documentation Requirements for Grants and Guaranteed Loans

The Agency is requiring the minimum amount of information that it needs to evaluate an applicant's or borrower's

eligibility, evaluate the proposed project's eligibility, evaluate the applications and establish selection priorities among competing projects, ensure compliance with applicable regulations, and effectively monitor the applicant's or borrower's activities after the loan is made or the grant is awarded. The following paragraphs describe the Agency's proposed application and documentation requirements when applying for a grant or guaranteed loan.

In applying for grant or guaranteed loan funds under this program, the applicant will be required to submit an application; submit a series of forms, certifications, and agreements; perform a feasibility study for renewable energy systems projects of more than $100,000; and prepare technical requirements reports.

A. Application

Separate applications must be submitted for renewable energy system and for energy efficiency improvement projects from applicants applying for both. Only one application per each type of project may be submitted. Applicants applying for a combined grant and guaranteed loan will submit a separate application for each grant and guaranteed loan, with at least one set of documentation. The separate applications must be submitted simultaneously.

Applications will consist of:

- A table of contents;
- A one page summary of the project;
- A description of applicant/borrower eligibility and project eligibility;
- A description of agricultural producer's/rural small business' business, farm, or ranch operation and ownership;
- Management information;
- Financial information including an explanation of financial need (grants only), balance sheets and income statements or equivalent, information to allow assessment of annual receipts (rural small businesses only), historical financial statements, pro forma balances sheets, and gross market value of agricultural products (agricultural producers only); and
- A Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number (grants only).

For renewable energy systems, the applicant must also indicate whether the technology to be employed is commercially or pre-commercially available and is replicable, the information to support this position, and a description of the availability of materials, labor, and equipment for the facility. Also required is information on the demand for the product and/or service; who will buy the product and/or service, identification of the supply (past, present, and future) of the product and/or service; identification of competitors; and a description how the business will be able to sell enough of its product/service to be profitable given the trends in demand and supply.

The Agency will then evaluate applications to determine if the applicant or borrower is eligible and if the project is eligible to receive funds and to score each application to assist in determining those projects that are funded first.

B. Forms, Certifications, and Agreements

Applicants must submit a series of forms, certifications, and agreements with each application. These forms, certifications, and agreements are necessary for the Agency to evaluate applications and to administer this program. Some of these are applicable to both funding programs. Applicants applying for a combined grant and guaranteed loan will be required to submit all applicable forms for both types of funding.

Most of the forms being used for this program have been used in other, similar programs. Rather than develop new forms, which would be very time consuming, the Agency is amending these existing forms. For example, Form 4279–4, "Lender's Agreement," would be amended to note that Section III, Item A.2, is only applicable to the Business and Industry program.

1. *Grants.* For grants, an applicant will be required to submit the following:

i. Form SF–424, "Application for Federal Assistance."

ii. Form SF–424C, "Budget Information—Construction Programs."

iii. Form SF–424D, "Assurances—Construction Programs."

iv. AD–1049, "Certification Regarding Drug-Free Workplace Requirements (Grants)."

v. AD–1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -Lower Tiered Covered Transactions."

vi. A copy of a bank statement or a copy of the commitment letter from the funding source.

vii. Exhibit A–1 of RD Instruction 1940–Q, "Certification for Contracts, Grants and Loans," if the grant exceeds $100,000 (or Exhibit A–2 of RD Instruction 1940–Q, "Statement for Loan Guarantees," if the guaranteed loan exceeds $150,000).

viii. Form SF–LLL, "Disclosure of Lobbying Activities."

ix. AD–1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions."

x. Form RD 400–1, "Equal Opportunity Agreement."

xi. Form RD 400–4, "Assurance Agreement."

xii. Where applicable, a copy of a letter of intent to purchase power, a power purchase agreement, a copy of a letter of intent for an interconnection agreement, or an interconnection agreement will be required from your utility company or other purchaser for renewable energy systems.

xiii. Where applicable, intergovernmental consultation comments in accordance with Executive Order 12372.

xiv. Certification indicating whether or not there is a known relationship or association with an Agency employee.

xv. An environmental impact analysis prepared in accordance with 7 CFR part 1940, subpart G, using Form RD 1940–20, "Request for Environmental Information."

2. *Guaranteed loans.* For guaranteed loans, an applicant will be required to submit the items described above in paragraphs B.1.vii through xv as well as the following items:

i. Form 4279–1, "Application for Loan Guarantee."

ii. A personal credit report for the borrower, a proprietor (owner), and anyone owning 20 percent or more interest in the borrower's business from a credit reporting company acceptable to the Agency.

iii. Completed appraisals should be submitted when the application is filed. If the appraisal has not been completed when the application is filed, the applicant must submit an estimated appraisal. In all cases, a completed appraisal must be submitted prior to the loan being closed.

iv. Lender's complete comprehensive written analysis.

v. Commercial credit reports on the borrower and any parent, affiliate, and subsidiary firms.

vi. Current personal and corporate financial statements of any guarantors.

vii. A proposed Loan Agreement or a sample Loan Agreement with an attached list of the proposed Loan Agreement provisions.

viii. A certification by the lender that it has completed a comprehensive written analysis of the proposal, the borrower is eligible, the loan is for authorized purposes, and there is reasonable assurance of repayment ability based on the borrower's history, projections and equity, and the collateral to be obtained.

C. Studies and Reports

1. *Feasibility Study for Renewable Energy Systems.* Because of factors of cost and complexity for renewable energy system projects of more than $100,000, a project-specific feasibility study prepared by a qualified independent consultant will be required. The feasibility study will have to include an analysis of the market, financial, economic, technical, and management feasibility of the proposed project. The feasibility study will also have to include an opinion and a recommendation by the independent consultant. Applicants for renewable energy system projects of $100,000 or less and for all energy efficiency improvement projects will not be required to conduct a feasibility study.

2. *Technical Requirements Reports.* This rule contains technical requirements for renewable energy systems and energy efficiency improvement projects. The rule identifies the following project technology categories:

- Biomass, bioenergy.
- Biomass, digesters.
- Geothermal, electric.
- Geothermal, direct use.
- Hydrogen.
- Solar, small.
- Solar, large.
- Wind, small.
- Wind, large.
- Energy efficiency improvements.

The purpose of these technical requirements reports is to ensure that the renewable energy system or energy efficiency improvement operates or performs as expected over its design life in a reliable and cost effective manner. To this end, the applicant must provide information on project design, procurement, startup, operation, and maintenance.

The technical requirements vary for each different system and project. In general, smaller projects will require less information than larger projects, projects using mature technologies will require less information than pre-commercial technologies or technologies with limited commercial operational history; projects using pre-engineered systems or kits will require less information than projects that require system design engineering; and systems or improvements using design-build project delivery methods where the supplier assumes all project delivery risks will require less information than those projects utilizing design-bid-construction methods where the risks of project delivery fall on the applicant or borrower. Small projects using pre-engineered kits or appliances utilizing a mature technology with significant commercial operational history will require the least information.

The type of information to be provided includes the qualifications of the project team, agreements and permits, resource assessment, preliminary design and engineering, project development schedules, economic/feasibility modeling, equipment procurement, equipment installation, operations and maintenance, and project decommissioning. Energy efficiency improvement projects of more than $100,000 would be required to conduct an energy audit. The specific inputs for each of the ten technologies are identified in the proposed rule. The Agency allows for the use of an abbreviated set of requirements for small projects using a pre-engineered kits or complete integrated appliances utilizing a mature technology.

Projects costing more than $100,000 will be required to employ the services of a professional engineer (PE). The applicant or borrower may be required to use the services of a PE for projects of $100,000 or less, depending on the level of engineering required for the specific project or if necessary to ensure public safety.

To facilitate the review of proposed projects, all technical information provided will be required to follow a specific format, which is set forth in § 4280.111(d). However, supporting information may be submitted in other formats as determined by the applicant. Although not required in the proposed rule, the Agency recommends that the narrative portion of the technical requirements portion of the application for small solar and small wind projects be less than 10 pages. For all proposed projects, the applicant will be required to submit the original technical requirements report plus one copy to the State Rural Development Office.

IV. Evaluation of Grant and Guaranteed Loan Applications

The Agency will evaluate each application and make a determination as to whether the applicant or borrower is eligible, whether the proposed project is eligible, and whether the proposed grant or guaranteed loan or combined funding request complies with all applicable statutes and regulations. The Agency will also evaluate the technical feasibility of each grant, while the lender will make this evaluation for guaranteed loans. The evaluation will be based on the information provided by the applicant and on other sources of information, such as recognized industry experts in the applicable technology field, as necessary.

If the Agency determines that either the applicant or borrower or the project is ineligible, the Agency will notify the applicant in writing of the decision, reasons therefore, and any appeal rights, and no further evaluation will take place.

If the Agency determines that the application is incomplete, the Agency will return it to the applicant to provide the applicant the opportunity to resubmit the application. The Agency will identify those parts of the application that are incomplete. Upon receipt of a complete application, the Agency will complete its evaluation of the application and forward a copy of the technical requirements to outside qualified industry experts for review.

The Agency will score each application in order to prioritize each proposed project. The evaluation criteria that the Agency will use to score renewable energy systems and energy efficiency improvement projects are discussed in Sections IV.A and IV.B, respectively. The rationale for the selection criteria and their point values is presented in Sections IV.C.1 and IV.C.2, respectively.

A. Criteria for Applications for Renewable Energy Systems

1. *Quantity of Energy Produced.* Points are earned for the amount of energy replaced or the amount of energy generated, not both.

i. *Energy replacement.* If the proposed renewable energy system is intended primarily for self use by the agricultural producer or rural small business and will provide energy replacement of greater than 75 percent, 20 points will be awarded; greater than 50 percent, but equal to or less than 75 percent, 15 points will be awarded; or greater than 25 percent, but equal to or less than 50 percent, 10 points will be awarded. The energy replacement should be determined by dividing the estimated quantity of energy to be generated by at least the past 12 months' energy profile of the agricultural producer or rural small business or anticipated energy use.

ii. *Energy generation.* If the proposed renewable energy system is intended primarily for production of energy for sale, 20 points will be awarded.

2. *Environmental Benefits.* If the purpose of the proposed renewable energy system is to upgrade an existing facility or construct a new facility required to meet applicable health or sanitary standards, 10 points will be awarded. The applicant must supply appropriate documentation.

3. *Commercial Availability.* If the renewable energy system is currently commercially available and replicable, an additional 10 points will be awarded.

4. *Cost Effectiveness.* If the proposed renewable energy system will return the cost of the investment in 5 years or less, 25 points will be awarded; up to 10 years, 20 points will be awarded; up to 15 years, 15 points will be awarded; or up to 20 years, 10 points will be awarded. The estimated return on investment will be determined by dividing the total project cost by the estimated projected net annual income and/or energy savings of the renewable energy system.

5. *Matching Funds (for Grants only).* If the agricultural producer or rural small business has provided eligible matching funds of over 90 percent, 15 points will be awarded; 85–90 percent, 10 points will be awarded; or at least 80 and up to but not including 85 percent, 5 points will be awarded.

6. *Management.* If the renewable energy system will be monitored and managed by a qualified third-party operator, an additional 10 points will be awarded.

7. *Small Agricultural Producer.* If the applicant (for grants) or borrower (for guaranteed loans) is an agricultural producer producing agricultural products with a gross market value of less than $1 million in the preceding year, an additional 10 points will be awarded.

8. *Loan Rate (Guaranteed loans only).* If the rate of the loan is below the Prime Rate (as published in The Wall Street Journal) plus 1.75 percent, 5 points will be awarded. If the rate of the loan is below the Prime Rate (as published in The Wall Street Journal) plus 1 percent, an additional 5 points will be awarded.

B. Criteria for Applications for Energy Efficiency Improvements

1. *Energy savings.* If the estimated energy expected to be saved, as determined by an energy assessment or audit, will be 35 percent or greater, 20 points will be awarded; 30 and up to but not including 35 percent, 15 points will be awarded; 25 and up to but not including 30 percent, 10 points will be awarded; or 20 and up to but not including 25 percent, 5 points will be awarded.

2. *Cost Effectiveness.* If the proposed energy efficiency improvements will return the cost of the investment in 2 years or less, 25 points will be awarded; greater than 2 and up to and including 5 years, 20 points will be awarded; greater than 5 and up to and including 9 years, 15 points will be awarded; or greater than 9 and up to and including 11 years, 10 points will be awarded.

3. *Matching Funds (for Grants only).* If the agricultural producer or rural small business has provided eligible matching funds of over 90 percent, 15 points will be awarded; 85–90 percent, 10 points will be awarded; or 80 and up to but not including 85 percent, 5 points will be awarded.

4. *Small Agricultural Producer.* If the applicant (for grants) or borrower (for guaranteed loans) is an agricultural producer producing agricultural products with a gross market value of less than $1 million in the preceding year, an additional 10 points will be awarded.

5. *Loan Rate (Guaranteed loans only).* If the rate of the loan is below the Prime Rate (as published in The Wall Street Journal) plus 1.75 percent, 5 points will be awarded. If the rate of the loan is below the Prime Rate (as published in The Wall Street Journal) plus 1 percent an additional 5 points will be awarded.

C. Selection of Evaluation Criteria and Their Point Values

1. *Selection of Evaluation Criteria.* The 2002 Act requires the Agency to consider the following factors in determining the amount of a grant or loan to be awarded or approved under this program:

i. The type of renewable energy systems to be purchased;

ii. The estimated quantity of energy to be generated by the renewable energy system;

iii. The expected environmental benefits of the renewable energy system;

iv. The extent to which the renewable energy system is replicable.

v. The amount of energy savings expected to be derived from the activity, as determined by an energy audit comparable to an energy audit conducted under section 9004;

vi. The estimated length of time it would take for the energy savings generated by the activity to equal the cost of the activity; and

vii. Other factors as appropriate.

The Agency has incorporated Items C.1.ii through vi into the evaluation criteria for renewable energy systems and Items C.1.v and vi into the evaluation criteria for energy efficiency improvements (Items C.1.i through iv are not applicable to energy efficiency improvements). The Agency did not use Item C.1.i, the type of renewable energy system, as an evaluation criteria because the rule specifies the types of renewable energy systems that are approvable and no reason was found to "favor" one technology over another.

The Agency identified up to four additional factors that were considered appropriate. These factors, the programs to which they are applicable, and the reasons for their selection, are:

- Matching funds, which is applicable to both renewable energy systems and energy efficiency improvements. One of the Agency's goals for this program is to fund as many projects as possible. To enable more projects to be funded, the Agency elected to include as a criterion the amount of funds being requested. Those projects requesting less assistance will be awarded more points than those projects requesting more assistance. As there are no matching funds associated with guaranteed loans, this criterion is applicable only to grants.
- Management, which is applicable to renewable energy systems only. One of the Agency's goals for this program is to fund projects that have a high likelihood of success. One key component to a successful project is the quality of the management team. Therefore, the Agency believes it appropriate to include management as an evaluation criterion for renewable energy projects. This criterion is applicable for grants and guaranteed loans.
- Small agricultural producers, which is applicable to renewable energy systems and energy efficiency improvements. The 2002 Act specifies the target market as rural small businesses and agricultural producers, but does not limit the size associated with agricultural producers. Another of the Agency's goals for this program is to help ensure additional income to small agricultural producers, thereby assisting in their economic sustainability. In order to help meet this goal, the Agency has elected to include as an evaluation criterion the size of the agricultural producer. This criterion is applicable to grants and guaranteed loans.
- Loan rate, which is only appropriate for guaranteed loans, because there are no loan rates associated with grants. The Agency is adopting loan rate as a criterion because it is consistent with Agency procedures under the B&I program and are applicable to this program.

2. *Evaluation Criteria Point Values.* The Agency has assigned point values or point value ranges to each of the criterion identified above. Generally, the Agency considers all of the evaluation criteria to be of similar value for scoring applications and, therefore, most have similar point values. It is possible, and likely, that many applications will receive no points for some of the criteria because the application does not meet the conditions for being awarded points.

For example, a guaranteed loan with an interest at the Prime Rate plus 2 percent would receive no points for the Loan Rate criterion.

The criterion that the Agency believes should have the highest potential weight is cost effectiveness, because this criterion evaluates the overall return on investment for each project. Point values for this criterion range from 10 to 25.

After this criterion, the Agency believes the criterion for the amount of energy generated or saved is the second most important criterion because it reflects the basic goals of the program's projects—to create new renewable energy systems and to improve energy efficiency. Point values for this criterion range from 10 to 20 for energy replacement and 20 points for energy generation for renewable energy systems, and from 5 to 20 points for energy savings for energy improvement projects.

The remaining criteria all have point values of about 10 points, although some have the potential to be slightly higher (*e.g.*, 15 points under matching funds for those seeking the lowest percentage assistance) or lower (*e.g.*, 5 points under loan rate for higher interest rates).

V. Processing and Servicing Grants and Guaranteed Loans

A. Processing and Servicing Grants

The Agency will prepare a Letter of Conditions, which establishes conditions that must be understood and agreed to by the applicant before the Agency will obligate any funds. The applicant must sign the Letter of Intent to Meet Conditions, if they accept the conditions of the grant. The grantee must sign a Grant Agreement (Form RD 4280–2) and abide by all requirements contained in the Grant Agreement as well as other requirements specified.

Grants will be serviced in accordance with 7 CFR part 1951, subpart E and the Grant Agreement. The Agency is using 7 CFR part 1951, subpart E, for this program because it is the Agency's regulations for servicing Agency grant programs.

B. Processing and Servicing Guaranteed Loans

Under the proposed program, guaranteed loans will be processed and serviced in essentially the same manner as guaranteed loans are processed and serviced under the Agency's B&I program. The Agency determined that the requirements in the B&I program for processing and servicing guaranteed loans under the renewable energy systems and energy efficiency improvements program are applicable and therefore have essentially adopted the B&I requirements. Two exceptions to note are:

- Under the proposed program, the Agency is not utilizing the "Certified Lender" aspect of the B&I program because the Agency believes that there are few, if any, lenders who would pre-qualify as "certified" lenders for making guaranteed loans for renewable energy systems and energy efficiency improvements.
- Under the proposed program, the Agency is only allowing a single note system and is not incorporating the multi-note system from the B&I program. The Agency is doing this because the size of the loans associated with the renewable energy systems and energy efficiency improvements program are likely to be small enough that there is minimal benefit to allowing multi-notes and the program becomes simpler to implement without multi-notes.

The following paragraphs discuss the processing and servicing requirements of the guaranteed loan program.

1. *Eligible Lenders.* Lenders eligible to make guaranteed loans under this program are the "traditional" lenders, as identified under the B&I guaranteed loan program. Such lenders include, but are not limited to: Federal or State chartered banks, Farm Credit Banks, other Farm Credit System institutions with direct lending authority, Banks for Cooperatives, or Savings and Loan Associations. These lenders have a broad range of experience and expertise to make, secure, service, and collect loans. In addition, these lenders allow the Agency to implement this program quickly because of the similarities between this program and the B&I program.

2. *Lender's Functions and Responsibilities.* As under the B&I program, lenders are responsible for properly implementing the guaranteed loan program, making sound loans, and conducting all servicing in a reasonable and prudent manner, in accordance with Agency regulations and approvals, as required. Lender's responsibilities in fulfilling this requirement include, but are not limited to:

i. Processing applications;

ii. Developing and maintaining loan files. Both the lender and borrower must permit representatives of the Agency to inspect and make copies of any records of the lender or borrower pertaining to the loan;

iii. Obtaining valid evidence of debt and collateral. Complete, self, contained appraisals are required for loans of $600,000 or more. Complete summary appraisals are required for loans less than $600,000. Unconditional personal and corporate guarantees for those owning or having a beneficial interest greater than 20 percent of the borrower will be required where legally permissible;

iv. Supervising and monitoring project construction and ensuring all projects are designed according to accepted practices;

v. Distributing loan funds;

vi. Conducting credit evaluations. For each proposed project, lenders will be required to conduct a credit analysis in order to determine credit quality of the borrower. Elements of credit quality to be addressed include adequacy of equity, cash flow, collateral, history, management, and the current status of the industry for which credit is to be extended. In determining the adequacy of equity, the lender must ensure that, for loans over $600,000, evidence of cash equity injection in the project of not less than 25 percent of eligible project costs is demonstrated and that, for loans of $600,000 or less, evidence of cash equity injection in the project of not less than 15 percent of eligible project costs is demonstrated;

vii. Ensuring that borrowers furnish all required environmental information and reporting any environmental issues to the Agency; and

viii. Closing loans. When loan closing plans are established, the lender must notify the Agency in writing. At the same time, or immediately after loan closing, the lender must provide to the Agency the lender's certifications (as required by § 4280.146), an executed Form 4279–4, "Lender's Agreement," an executed Form RD 1980–19, "Guaranteed Loan Closing Report," and appropriate guarantee fee, copies of legal loan documents, and disbursement plan if working capital is a purpose of the project. Note that, if a valid Lender's Agreement already exists, the lender will not be required to execute a new Lender's Agreement with each loan guarantee.

3. *Loan Note Guarantee.* A loan guarantee will be evidenced by Form 4279–5, "Loan Note Guarantee," which is prepared and issued by the Agency. The entire loan must be evidenced by one note, and the Agency will issue only one Loan Note Guarantee. The lender may assign all or part of the guaranteed portion of the loan to one or more holders.

The Agency will not issue the Loan Note Guarantee until the lender certifies certain conditions have been met (*e.g.*, all required insurance is in effect, the loan has been properly closed). If the

Agency determines that it cannot execute the Loan Note Guarantee, the Agency will inform the lender of the reasons and give the lender a reasonable period within which to satisfy the objections. If the lender satisfies the objections within the time allowed, the guarantee will be issued.

Any changes in borrower ownership or organization prior to the issuance of the Loan Note Guarantee must meet the eligibility requirements of the program and be approved by the Agency loan approval official.

Upon approval of a loan guarantee, the Agency will issue a Conditional Commitment, which contains the conditions under which a Loan Note Guarantee will be issued. If certain conditions cannot be met, the lender and/or borrower may propose alternate conditions and the Agency may negotiate with the lender and/or borrower regarding any proposed changes to the Conditional Commitment.

4. *Additional actions.* This rule also provides procedures for actions that may be made in connection to a guaranteed loan. Actions covered include:

i. *Sale or assignment.* A lender may sell all or part of the guaranteed portion of the loan on the secondary market or retain the entire loan, provided the loan is not in default. Sale or assignment cannot be made to the borrower or members of the borrower's immediate families, officers, directors, stockholders, other owners, or a parent, subsidiary or affiliate.

ii. *Participation.* The lender may obtain participation in the loan under its normal operating procedures. However, the lender must retain title to the note and retain its interest in the collateral.

iii. *Minimum retention.* The lender must hold in its own portfolio a minimum of 5 percent of the total loan amount. The amount required to be maintained must be of the unguaranteed portion of the loan and cannot be participated to another. The lender may sell the remaining amount of the unguaranteed portion of the loan only through participation. Sale of this part of the unguaranteed portion, while allowable, will not be guaranteed.

iv. *Repurchase from holder.* A holder may submit a written demand for repurchase of the unpaid guaranteed portion of the loan to the lender or to the Agency under certain conditions. The lender has the option to repurchase. The lender must notify, in writing, the holder and the Agency of its decision. If the lender declines, the Agency will purchase from the holder the unpaid principal balance of the guaranteed portion according to the conditions set forth in the regulations and instruments.

Purchase by the Agency does not change, alter, or modify any of the lender's obligations to the Agency arising from the loan or guarantee nor does it waive any of the Agency's rights against the lender. The Agency has the right to set-off against the lender all rights inuring to the Agency as the holder of the instrument against the Agency's obligation to the lender under the guarantee.

Alternatively to the holder requesting repurchase, if the lender determines that repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the holder must sell the guaranteed portion of the loan to the lender for an amount equal to the unpaid principal and interest on such portion less the lender's servicing fee according to the requirements of the regulations and instruments.

v. *Transfer of lenders.* The Agency may approve the substitution of a new eligible lender provided there are no changes in the borrower's ownership or control, loan purposes, or scope of project, and loan conditions in the Conditional Commitment and the Loan Agreement remain the same. The Agency will analyze the new lender's servicing capability, eligibility, and experience prior approving the substitution.

5. *Servicing guaranteed loans.* The lender is responsible for servicing the entire loan and for taking all servicing actions that a reasonable, prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The lender must remain mortgagee and secured party of record. The entire loan must be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan.

i. *Servicing.* Servicing responsibilities include, but are not limited to, the collection of payments, obtaining compliance with the covenants and provisions in the Loan Agreement obtaining and analyzing financial statements, checking on payment of taxes and insurance premiums, and maintaining liens on collateral. Lenders will be responsible for:

A. Submitting semiannual reports on the outstanding principal and interest balance on each guaranteed loan using Form RD 1980–41, "Guaranteed Loan Status Report."

B. Notifying the Agency, in writing, of the loan's classification or rating under its regulatory standards.

C. Attending meetings with the Agency to ascertain how the guaranteed loan is being serviced and that the conditions and covenants of the Loan Agreement are being enforced; and

D. Submitting annual financial statements and a written summary of the lender's analysis and conclusions, including trends, strengths, weaknesses, extraordinary transactions, and other indications of the financial condition of the borrower.

The lender will not be allowed to make additional loans to the borrower without first obtaining the prior written approval of the Agency, even though such loans will not be guaranteed.

ii. *Changes to the loan.* This rule allows changes in the interest rate, the release of collateral, subordination of lien position, alterations of the loan instrument, and loan transfer and assumption.

A. Under certain circumstances, interest rates may be temporarily or permanently reduced or increased, and fixed rates can be changed to variable rates.

B. All releases of collateral with a value exceeding $100,000 must be supported by a current appraisal. The remaining collateral must be sufficient to provide for repayment of the Agency's guaranteed loan. Sale or release of collateral must be based on an arm's-length transaction as specified in the regulations and instruments.

C. The Agency will only consider a parity or junior lien position. After the subordination, collateral must be adequate to secure the loan.

D. Agency approval is required before the lender can alter or approve changes to any loan instrument.

E. All transfers and assumptions must be approved by the Agency, in writing, and must be to borrowers eligible under this program and any new loan terms must be within the terms authorized by § 4280.125. Other transfer and assumption conditions include: loan terms can only be changed with Agency approval and concurrence of any holder and the transferor (including guarantors); loans to provide additional funds in connection with a transfer and assumption will be considered as a new loan application under § 4280.128; the lender must make a complete credit analysis, which is subject to Agency review and approval; and document and ensure that the transaction can be and is properly and legally transferred, and the conveyance instruments will be and are filed, registered, or recorded as appropriate.

iii. *Other servicing requirements.* This rule also contains requirements for:

A. Substitution of Lender. Agency written approval is required. The Agency will not pay any loss or share

in any costs with a new lender unless a relationship is established through a substitution of lender that has been approved by the Agency. The proposed substitute lender must be an eligible lender under this program, must be able to service the loan in accordance with the original loan documents, and must agree in writing to acquire and must acquire title to the unguaranteed portion of the loan held by the original lender and to assume all original loan requirements, including liabilities and servicing responsibilities.

B. Default by Borrower. This rule outlines options a borrower can use to resolve a default. These include, but are not limited to, deferment of principal, reamortization and rescheduling, and liquidation.

C. Protective Advances. If a borrower cannot meet its obligations, the lender will be required to make protective advances for the purpose of preserving and protecting the collateral as required in the regulations and instruments. Protective advances, however, cannot be made in lieu of additional loans.

D. Liquidation. Liquidation of the loan may be considered by the lender under certain circumstances and must be concurred with by the Agency. Conditions and requirements associated with many aspects of liquidation are specified in the regulations and instruments, including, but not limited to, those for the decision to liquidate, liquidation plans, accounting and reports, abandonment of collateral, and settlements. The procedures and requirements are the same as those associated with the B&I guaranteed loan program.

E. Bankruptcy. The lender will be required to protect the guaranteed loan and all collateral securing the loan in bankruptcy proceedings. This rule specifies procedures to be followed in reorganization proceedings and in liquidation proceeding covering such items, as applicable, as estimated loss, interest loss, and final loss payments; payment application, overpayments; and protective advances.

F. Requirements After Project Construction. Once the project has been constructed, the lender must provide the Agency periodic reports from the borrower. For renewable energy systems, this report will be required beginning the first full calendar year following the year in which project construction was completed and continuing for 3 full years. Information in this report will include the actual amount of energy produced in BTUs, kilowatts, or similar energy equivalents; if applicable, documentation that identified health and/or sanitation problem has been solved; the annual income and/or energy savings of the renewable energy system; a summary of the cost of operating and maintaining the facility; a description of any maintenance or operational problems associated with the facility; and recommendations for development of future similar projects.

For energy efficiency improvement projects, this report will be required beginning the first full calendar year following the year in which project construction was completed and continuing for 2 full years. This report will specify the actual amount of energy saved due to the energy efficiency improvements.

G. Replacement of Documents. The Agency may issue a replacement Loan Note Guarantee or Assignment Guarantee Agreement, which has been lost, stolen, destroyed, mutilated, or defaced, to the lender or holder upon receipt of an acceptable certificate of loss and an indemnity bond. This rule identifies responsibilities for replacing documents and the information required for their replacement.

C. Processing and Servicing Combined Funding

Where the Agency approves a combined funding request, the grant portion will be processed and serviced according to the procedures described in paragraph A for grants. The guaranteed loan portion will be processed and serviced according to the procedures described in paragraph B for guaranteed loans.

VI. Economic Analysis

To support the development of this rule, a benefit-cost analysis was performed. In addition, an assessment of the potential impacts on small businesses was made. The following paragraphs summarize the benefit-cost analysis that was performed and the results. This summary is then followed by a brief discussion of the benefit-cost analysis as it applies to small businesses. Because this rule is not an economically significant rule under Executive Order 12866, the economic analysis conducted by USDA in support of this rule does not necessarily conform to OMB Circular A–4, Regulatory Analysis.

A. Benefit-Cost Analysis

1. *Scope of the Analysis.* This analysis looks at the social benefits and costs from the implementation of the proposed rule. The social benefits examined are:

i. The value of the energy produced or saved, including green tag values. "Green tag" refers to the positive environmental attributes of renewable energy compared to "dirtier" generation power sources. The green tag value refers to the additional amount an electricity service provider will pay to "green" their energy supply or to the additional amount a retail customer is willing to pay to purchase "green" power.

ii. The amount of carbon emissions reduced as the result of electricity generation being displaced or reduced.

The social costs examined are the costs of participating in the proposed program and the amount of USDA funds used in the program.

Other effects examined included:

i. The number of agricultural producers and rural small businesses that are served by the program.

ii. The number of jobs created.

iii. The amount of electricity generated or saved (energy cost savings).

iv. The amount of energy displaced (*e.g.*, the number of barrels of oil no longer needed).

2. *Scenarios Analyzed.* The analysis examines a baseline case and several policy alternatives. In addition, the analysis varied several of the parameters to assess the sensitivity of the results. The basic inputs into the analysis are:

i. The total amount of program funding in FYs 2003 through 2007;

ii. The amount of program funding obligated for grants, guaranteed loans, and direct loans;

iii. The amount of program funding for renewable energy projects and for energy efficiency improvements;

iv. The subsidy rate;

v. The discount rate; and

vi. The useful life of projects.

3. *Results—Baseline Case*

Table 1 summarizes the social benefits and costs of the proposed rule.

TABLE 1.—SUMMARY OF SOCIAL BENEFITS AND COSTS BY FY FOR BASELINE CASE

[Million dollars]

Item	FY				
	2003	2004	2005	2006	2007
Social Costs:					
Participation	2.4	2.4	2.4	2.4	2.4
USDA Funds	19.8	15.7	20.0	20.0	20.0
Social Benefits:					
Green Tag Value	1.2	3.5	6.8	6.9	7.1
Carbon Emission Reduction (million tons per year)	0.055	0.22	0.44	0.44	0.44

As seen in Table 1, the annual estimated social cost (in year 2000 dollars) for each of the five FYs ranges from $18 to $22.4 million. In return, the annual estimated social benefits (in year 2000 dollars) of the green tag values for each of the five FYs ranges from $1 million to $7 million, while carbon emission reductions range from 55,000 tons in FY 2003 up to 440,000 tons in the last three FYs.

In addition to the social benefits, the proposed program is also projected to provide other benefits, as noted earlier. These other benefits are summarized in Table 2 for each of the five FYs. Once the program is fully implemented, approximately 300 agricultural producers and rural small businesses are estimated to participate in the program. The projects that these participants would implement are estimated to create approximately 1,800 jobs per year, provide energy cost savings up to $131 million in FY 2007, and save approximately 3 million barrels of oil each year.

TABLE 2.—OTHER BENEFITS—BASELINE CASE

Item	Units	FY				
		2003	2004	2005	2006	2007
Agricultural producers and rural small businesses served.	Number	113	238	300	300	300
Jobs Created	Number of full time equivalents	243	887	1,770	1,830	1,890
Energy Cost Savings	Million dollars	8.4	35.6	78.4	108.6	131.7
Energy Displaced	Million barrels	0.5	1.7	3.3	3.1	3.1

4. *Results—Other Scenarios.* As noted earlier, several alternative policy scenarios and sensitivity analysis scenarios were examined to evaluate the effect of variations in several of the parameters. The following paragraphs summarize the effects of three of these other scenarios on green tag values. For more details, please refer to the complete analysis document.

i. *Grants Only.* Under this alternative policy scenario, the Agency would only provide grants in FY 2004 through FY 2007; no guaranteed or direct loans would be made. The effect under this scenario is estimated to be a reduction in green tag benefits of over 75 percent for both the five year period and the useful life of the projects.

ii. *Change in Subsidy Rate.* A 1 percent drop in the subsidy rate (from 5.18 percent to 4.18 percent) in FY 2005 through FY 2007 is estimated to increase green tag benefits by over 30 percent. On the other hand, a 1 percent increase in the subsidy rate (to 6.18 percent) is estimated to result in a 10 percent decrease in green tag benefits.

iii. *Change in Discount Rate.* A decrease in the discount rate from 7 percent to 3 percent increases the present value of the green tag benefits by about 16 percent over the five year period and by over 55 percent over the useful life of the projects.

B. Small Businesses

This program is targeted to agricultural producers and rural small businesses. Based on data compiled by the USDA Economic Research Service and the Small Business Administration, over 3 million entities would be eligible for this program. The vast majority of agricultural producers also fit the definition of small businesses. Excluding the small percentage of agricultural producers that do not qualify as small entities, the almost 3 million entities would qualify as small businesses under this program. Given this situation, the benefit-cost analysis discussed above can be considered as the relevant analysis for analyzing the impacts of the proposed program on small businesses.

VII. Administrative Requirements

A. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, Rural Development will seek OMB approval of the reporting and recordkeeping requirements contained in this proposed rule. Rural Development is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

The following estimates are based on the average over the first three years the program is in place.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6 hours per response.

Respondents: Agricultural producers and rural small businesses.

Estimated Number of Respondents: 388.

Estimated Number of Responses per Respondent: 14.

Estimated Number of Responses: 5,335.

Estimated Total Annual Burden on Respondents: 32,149.

Type of Request: New collection.

Abstract: The Farm Security and Rural Investment Act of 2002 (2002 Act) established the Renewable Energy Systems and Energy Efficiency Improvements Program under Title IX, Section 9006. The 2002 Act requires the

Secretary of Agriculture to create a program to make grants, loan guarantees, and direct loans to agricultural producers and rural small businesses to purchase renewable energy systems and make energy efficiency improvements. The program will help agricultural producers and rural small businesses to reduce energy costs and consumption and help meet the nation's energy needs.

The information requirements contained in this proposed rule require information from grant, guaranteed loan, and direct loan applicants and borrowers. The information is vital for Rural Development to make wise decisions regarding the eligibility of applicants and borrowers, establish selection priorities among competing applicants, ensure compliance with applicable Rural Development regulations, and effectively monitor the grantees and borrowers activities to protect the Government's financial interest and ensure that funds obtained from the Government are use appropriately. This collection of information is necessary in order to implement the grant, guaranteed loan, and direct loan program for Renewable Energy Systems and Energy Efficiency Improvements established under the 2002 Act.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Burden at (202) 692–0043.

Comments are invited on (1) whether the proposed collection of information is necessary for the proper performance of the functions of Rural Development, including whether the information will have practical utility; (2) the accuracy of the new Rural Development estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Cheryl Thompson, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

B. Intergovernmental Review

The Rural Development Grant, Guaranteed Loan, and Direct Loan Program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. Rural Development will conduct intergovernmental consultation in the manner delineated in RD Instruction 1940–J, "Intergovernmental Review of Rural Development Programs and Activities," and in the notice related to 7 CFR part 3015, subpart V.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures 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 governments. The major purpose of the RFA is to keep paperwork and regulatory requirements from getting out of proportion to the scale of the entities being regulated, without compromising the objectives of the Act.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to the Small Business Administration (SBA) size standards by NAICS code ranging from 500 to 1,000 employees; (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.

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), the undersigned has determined and certified by signature of this document that this proposed rule would not have a significant economic impact on a substantial number of small entities. This action impacts those who choose to participate in the grant, guaranteed loan, and direct loan program and requires only minimum information/paperwork to evaluate an application. Therefore, a regulatory flexibility analysis was not performed.

Although a regulatory flexibility analysis was not performed, the Agency conducted a benefit-cost analysis and an initial regulatory flexibility analysis (IRFA) that examines the impact on small entities. The benefit-cost analysis and the IRFA (referred to as the Unified Analysis) are available for review in the docket and the results are summarized below.

The program targets rural small businesses plus agricultural producers. The vast majority of these agricultural producers qualify as small businesses too. Based on data compiled by the USDA Economic Research Service and the SBA, there are approximately 3 million of the entities who would qualify under this program.

The benefit-cost analysis reflects a large net beneficial impact. The expenditure of slightly less than $100 million in nominal USDA funds over five years (approximately $20 million per year) from FY 2003 through FY 2007 represents a present value cost in constant year 2000 dollars of approximately $71 million. This sum in turn supports total program funding (USDA funds and private funds) of over $1 billion. The cumulative cash flow benefits through 2007 are $360 million in comparison to the $71 million cost. The cash flow benefits based upon life cycle analysis are $1.5 billion, again based upon this $71 million cost.

Given that almost the entire program is directed at small businesses, the burden analysis is a representative measure for small businesses of the reporting, recordkeeping, and other compliance costs. The burden analysis estimated an annual (three-year average) cost of $1.9 million for an estimated 388 applicants per year.

As noted above, the proposed rule is directed almost entirely at small businesses. Therefore, the benefit-cost analysis represents the results as it affects small businesses.

D. Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this proposed rule will be preempted, (2) no retroactive effect will be given to this rule, and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule, unless those regulations specifically allow bringing suit at an earlier time.

E. National Environmental Policy Act

This document has been reviewed in accordance with 7 CFR part 1940, subpart G. Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the

human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub.L 91–190, an Environmental Impact Statement is not required.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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, Rural Development must prepare a written statement, including a benefit-cost analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of UMRA generally requires Rural Development to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

G. Executive Order 13132, Federalism

It has been determined under Executive Order 13132, Federalism, that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism assessment. The provisions contained in this proposed rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

H. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, this proposed rule has been determined to be "significant" and, therefore, has been reviewed by the Office of Management and Budget (OMB). The Order defines "significant" regulatory action as one that is likely to result in a rule that may:

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

List of Subjects in 7 CFR Part 4280

Business and industry, Direct loan programs, Economic development, Energy, Energy efficiency improvements, Grant programs, Guaranteed loan programs, Renewable energy systems, Rural areas.

For the reasons stated in the preamble, title 7, chapter XLII of the Code of Federal Regulations is amended as follows:

CHAPTER XLII—RURAL BUSINESS—COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

1. Part 4280 is added to read as follows:

PART 4280—LOANS AND GRANTS

Subpart A—[Reserved]

Subpart B—Renewable Energy Systems and Energy Efficiency Improvements Grant, Guaranteed Loan, and Direct Loan Program

Sec.

Authority: 7 U.S.C. 8106.

Subpart A—[Reserved]

Subpart B—Renewable Energy Systems and Energy Efficiency Improvements Grant, Guaranteed Loan, and Direct Loan Program

§ 4280.101 Purpose.

This subpart contains a program of procedures and requirements for making grants and guaranteed loans, or a combination thereof, to agricultural producers and rural small businesses for the purchase of renewable energy systems and energy efficiency improvements in rural areas. This subpart also presents the process that will be used to provide funds for direct loans.

§ 4280.102 General.

Sections 4280.103 through 4280.105 contain definitions, exception authority,

and appeals, which are applicable to all of the funding programs under this subpart. Sections 4280.107 through 4280.117 contain the procedures and requirements for obtaining a grant, and processing and servicing of grants by the Agency. Sections 4280.121 through 4280.151 contain the procedures and requirements for making and processing loans guaranteed by the Agency. Sections 4280.152 through 4280.160 contain the requirements for servicing loans guaranteed by the Agency. These requirements apply to lenders, holders, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans. Section 4280.161 presents the process the Agency will use to make direct loans available. Section 4280.193 contains the requirements for obtaining and servicing a combined grant and guaranteed loan.

§ 4280.103 Definitions.

The following definitions are applicable to this subpart.

Agency. Rural Development or successor Agency assigned by the Secretary of Agriculture to administer the program.

Agricultural producer. An individual or entity directly engaged in the production of agricultural products, including crops (including farming); livestock (including ranching); forestry products; hydroponics; nursery stock; or aquaculture, whereby 50 percent or greater of their gross income is derived from the operations.

Annual receipts. The total income or gross income (sole proprietorship) plus cost of goods sold.

Applicant. For grant programs, the applicant is the agricultural producer or rural small business that is seeking a grant under this subpart. For guaranteed loan programs, the applicant is the lender that is seeking a loan guarantee under this subpart.

Arm's-length transaction. The sale, release, or disposition of assets in which the title to the property passes to a ready, willing, and able disinterested third party that is not affiliated with or related to and has no security, monetary or stockholder interest in the borrower or transferor at the time of the transaction.

Assignment guarantee agreement. Form 4279–6. The signed agreement among the Agency, the lender, and the holder containing the terms and conditions of an assignment of a guaranteed portion of a loan.

Assumption of debt. The signed agreement by one party to legally bind itself to pay the debt incurred by another.

Biogas. Biomass converted to gaseous fuels.

Biomass. Any organic material that is available on a renewable or recurring basis including agricultural crops; trees grown for energy production; wood waste and wood residues; plants, including aquatic plants and grasses; fibers; animal waste and other waste materials; and fats, oils, and greases, including recycled fats, oils, and greases. It does not include paper that is commonly recycled or unsegregated solid waste.

Borrower. All parties liable for the loan except for guarantors.

Capacity. The load that a power generation unit or other electrical apparatus or heating unit is rated by the manufacturer to be able to meet or supply.

Commercially available. Systems that have a proven operating history and an established design, installation, equipment, and service industry.

Conditional commitment (Form 4279–3). The Agency's notice to the lender that the loan guarantee it has requested is approved subject to the completion of all conditions and requirements.

Default. The condition where a borrower is not in compliance with one or more loan covenants as stipulated in the Letter of Conditions, Conditional Commitment, or Loan Agreement.

Deficiency balance. The balance remaining on a loan after all collateral has been liquidated.

Deficiency judgment. A monetary judgment rendered by a court of competent jurisdiction after foreclosure and liquidation of all collateral securing the loan.

Delinquent loan. A loan where a scheduled loan payment has not been received within the due date and any grace period as stipulated in the promissory note and loan agreement.

Demonstrated financial need. The demonstration by an applicant that the applicant is unable to finance the project from its own resources or other funding sources without grant assistance.

Eligible project cost. The total project costs that are eligible to be paid with grant and/or guaranteed loan funds.

Energy audit. A written report by an independent, qualified entity or individual that documents current energy usage, recommended improvements and their costs, energy savings from these improvements, dollars saved per year, and the weighted-average payback period in years.

Energy efficiency improvement. Improvements to a facility or process that reduce energy consumption.

Existing business. A business that has completed at least one full business cycle.

Existing lender debt. A debt not guaranteed by the Agency, but owed by a borrower to the same lender that is applying for or has received the Agency guarantee.

Fair market value. The price that could reasonably be expected for an asset in an arm's-length transaction between a willing buyer and a willing seller under ordinary economic and business conditions.

Fair market value of equity in real property. Fair market value of real property as established by appraisal; less the outstanding balance of any mortgages, liens, or enhancements.

Financial feasibility. The ability of the business to achieve the projected income and cash flow. The concept includes assessments of the cost-accounting system, the availability of short-term credit for seasonal business, and the adequacy of raw materials and supplies, where necessary.

Grant close-out. When all required work is completed, administrative actions relating to the completion of work and expenditures of funds have been accomplished, and the Agency accepts final expenditure information.

Holder. A person or entity, other than the lender, who owns all or part of the guaranteed portion of the loan, with no servicing responsibilities.

In-kind contributions. Applicant or third-party real or personal property or services benefiting the Federally assisted project or program that are contributed by the applicant or a third party. The identifiable value of goods and services must directly benefit the project.

Interconnection agreement. The terms and conditions governing the interconnection and parallel operation of the grantee's or borrower's electric generation equipment and the utility's electric power system.

Interim financing. A temporary or short-term loan made with the clear intent that it will be repaid through another loan. Interim financing is frequently used to pay construction and other costs associated with a planned project, with permanent financing to be obtained after project completion.

Lender. The organization making, servicing, and collecting the loan that is guaranteed under the provisions of this subpart.

Lender's agreement, Form 4279–4. Agreement between the Agency and the lender setting forth the lender's loan responsibilities when the Loan Note Guaranteed is issued.

Loan agreement. For guaranteed loans, the agreement between the borrower and lender containing the terms and conditions of the guaranteed loan and the responsibilities of the borrower and lender.

Loan Note Guarantee, Form 4279–5. The terms and conditions of the guarantee issued and executed by the Agency.

Loan-to-value. The ratio of the dollar amount of a loan to the dollar value of the discounted collateral pledged as security for the loan.

Matching funds. The funds needed to pay for the portion of the eligible project costs not funded or guaranteed by the Agency through a grant or guaranteed loan under this program. Matching funds can not include grants from any Federal grant program.

Negligent servicing. The failure to perform those services which a reasonable, prudent lender would perform in servicing (including liquidation of) its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner, or acting in a manner contrary to the manner in which a reasonable, prudent lender would act.

Nonprogram (NP) loan. An NP loan exists when credit is extended to an ineligible applicant and/or transferee in connection with a loan assumption or sale of inventory property; in cases of unauthorized assistance; or a borrower whose legal organization has changed, resulting in the borrower being ineligible for program benefits.

Other waste materials. Inorganic or organic materials that are used as inputs for energy production or are by-products of the energy production process.

Parity. A lien position whereby two or more lenders share a security interest of equal priority in collateral. In the event of default, each lender will be affected on a pro rata basis.

Participation. Sale of an interest in a loan by the lender wherein the lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

Power purchase arrangement. The terms and conditions governing the sale and transportation of electricity produced by the grantee or borrower to another party.

Pre-commercial technology. Technologies that have emerged through the research and development process and have technical and economic potential for application in commercial energy markets but are not yet commercially available.

Promissory Note. Evidence of debt. A note that a loan recipient signs promising to pay a specific amount of money at a stated time or on demand.

Renewable energy. Energy derived from a wind, solar, biomass, or geothermal source; or hydrogen derived from biomass or water using wind, solar, or geothermal energy sources.

Renewable energy system. A process that produces energy from a renewable energy source.

Rural. Any area other than a city or town that has a population of greater than 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town according to the latest decennial census of the United States.

Small business. A private entity including a sole proprietorship, partnership, corporation, and a cooperative (including a cooperative qualified under section 501(c)(12) of the Internal Revenue Code) but excluding any private entity formed solely for a charitable purpose, and which private entity is considered a small business concern in accordance with the Small Business Administration's (SBA) Small Business Size Standards by North American Industry Classification System (NAICS) Industry found in 13 CFR part 121; provided the entity has 500 or fewer employees and $20 million or less in total annual receipts including all parent, affiliate, or subsidiary entities at other locations.

Spreadsheet. A table containing data from a series of financial statements of a business over a period of time. Financial statement analysis normally contains spreadsheets for balance sheet items and income statements and may include funds flow statement data and commonly used ratios. The spreadsheets enable a reviewer to easily scan the data, spot trends, and make comparisons.

State. Any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Subordination. An agreement whereby lien priorities on certain assets pledged to secure payment of a loan will be reduced to a position junior to, or on parity with, the lien position of another loan in order for the borrower to obtain additional financing, not guaranteed by the Agency, from the lender or a third party.

Total project cost. The sum of all costs associated with a completed, operational project.

§ 4280.104 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law if the Administrator determines that application of the requirement or provision would adversely affect the USDA's interest.

§ 4280.105 Appeals.

Only the grantee, borrower, lender, or holder can appeal an Agency decision made under this subpart. In cases where the Agency has denied or reduced the amount of final loss payment to the lender, the adverse decision may be appealed by the lender only. An adverse decision that only impacts the holder may be appealed by the holder only. A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, whether or not concurred in by the Agency. Appeals will be handled in accordance with 7 CFR part 11. Any party adversely affected by an Agency decision under this subpart may request a determination of appealability from the Director, National Appeals Division, USDA, within 30 days of the adverse decision.

§ 4280.106 Conflict of interest.

No conflict of interest or appearance of conflict of interest will be allowed. For purposes of this subpart, conflict of interest includes, but is not limited to, distribution or payment to an individual owner, partner, stockholder, or beneficiary of the applicant or borrower or a close relative of such an individual when such individual will retain any portion of the ownership of the applicant or borrower.

Grants

§ 4280.107 Applicant eligibility.

To receive a grant under this subpart, an applicant must meet each of the criteria, as applicable, as set forth in paragraphs (a) through (f) of this section.

(a) The applicant or borrower must be an agricultural producer or rural small business.

(b) Individuals must be citizens of the United States (U.S.) or reside in the U.S. after being legally admitted for permanent residence.

(c) Entities must be at least 51 percent owned, directly or indirectly, by individuals who are either citizens of the U.S. or reside in the U.S. after being legally admitted for permanent residence.

(d) If the applicant or borrower or an owner has an outstanding judgment obtained by the United States in a

Federal Court (other than in the United States Tax Court), is delinquent in the payment of Federal income taxes, or is delinquent on a Federal debt, the applicant or borrower is not eligible to receive a grant or guaranteed loan until the judgment is paid in full or otherwise satisfied or the delinquency is resolved.

(e) In the case of an applicant or borrower that is applying as a rural small business, the business headquarters must be in a rural area and the project to be funded also must be in a rural area.

(f) The applicant must have demonstrated financial need.

§ 4280.108 Project eligibility.

For a project to be eligible to receive a grant under this subpart, the proposed project must meet each of the criteria, as applicable, in paragraphs (a) through (f) of this section.

(a) The project must be for the purchase of a renewable energy system or to make energy efficiency improvements.

(b) The project must be for a pre-commercial or commercially available and replicable technology.

(c) The project must be technically feasible, as determined using the procedures specified in § 4280.112(c).

(d) The project must be located in a rural area.

(e) The applicant (for grants) or borrower (for guaranteed loans) must be the owner of the system and control the operation and maintenance of the proposed project. A qualified third-party operator may be used to manage the operation and/or maintenance of the proposed project.

(f) All projects financed under this subpart must be based on satisfactory sources of revenues in an amount sufficient to provide for the operation and maintenance of the system or project.

§ 4280.109 Grant funding.

(a) The amount of grant funds that will be made available to an eligible project under this subpart will not exceed 25 percent of eligible project costs.

(1) The only eligible project costs are those costs associated with the items identified in paragraphs (a)(1)(i) through (ix) of this section, as long as the items are an integral and necessary part of the total project:

(i) Post-application purchase and installation of equipment, except agricultural tillage equipment and vehicles;

(ii) Post-application construction or project improvements, except residential;

(iii) Energy audits or assessments;

(iv) Permit fees;

(v) Professional service fees, except for application preparation;

(vi) Feasibility studies;

(vii) Business plans;

(viii) Retrofitting; and

(ix) Construction of a new facility only when the facility is used for the same purpose, is approximately the same size, and based on the energy audit will provide more energy savings than improving an existing facility. Only costs identified in the energy audit for energy efficiency projects are allowed.

(2) The applicant must provide at least 75 percent of eligible project costs to complete the project. Applicant in-kind and other Federal grant awards cannot be used to meet the matching fund requirement. However, the Agency will allow third-party, in-kind contributions to be used in meeting the matching fund requirement. Third-party, in-kind contributions will be limited to 10 percent of the matching fund requirement of the grantee. The Agency will advise if the third-party, in-kind contributions are acceptable in accordance with 7 CFR part 3015.

(b) The maximum amount of grant assistance to one individual or entity will not exceed $750,000.

(c) Applications for renewable energy systems must be for a minimum grant request of $2,500, but no more than $500,000.

(d) Applications for energy efficiency improvements must be for a minimum grant request of $2,500, but no more than $250,000.

§ 4280.110 [Reserved]

§ 4280.111 Application and documentation.

The following requirements apply to all grant applications under this subpart.

(a) *Application.* Separate applications must be submitted for renewable energy system and energy efficiency improvement projects. For each type of project, only one application may be submitted.

(1) *Table of Contents.* The first item in each application will be a detailed Table of Contents in the order presented below. Include page numbers for each component of the proposal. Begin pagination immediately following the Table of Contents.

(2) *Project Summary.* A summary of the project proposal, not to exceed one page, must include the following: Title of the project, description of the project including goals and tasks to be accomplished, names of the individuals responsible for conducting and completing the tasks, and the expected timeframes for completing all tasks, including an operational date. The applicant must also clearly state whether the application is for the purchase of a renewable energy system or to make energy efficiency improvements.

(3) *Eligibility.* Each applicant must describe how the grantee or borrower meets the requirements of § 4280.107.

(4) *Agricultural producer/rural small business information.* All applications must contain the following information on the agricultural producer or rural small business seeking funds under this program:

(i) Business/farm/ranch operation.

(A) A description of the ownership, including a list of individuals and/or entities with ownership interest, names of any corporate parents, affiliates, and subsidiaries, as well as a description of the relationship, including products, between these entities.

(B) A description of the operation.

(ii) Management. The resume of key managers focusing on relevant business experience. If a third-party operator is used to monitor and manage the project, provide a discussion on the benefits and burdens of such monitoring and management as well as the qualifications of the third party.

(iii) Financial Information.

(A) Explanation of demonstrated financial need.

(B) For rural small businesses, a current balance sheet and income statement prepared in accordance with generally accepted accounting principles (GAAP) and dated within 90 days of the application. Agricultural producers should present financial information in the format that is generally required by commercial agriculture lenders. Financial information is required on the total operations of the agricultural producer/rural small business and its parent, subsidiary, or affiliates at other locations.

(C) Rural small businesses must provide sufficient information to determine total annual receipts of the business and any parent, subsidiary, or affiliates at other locations. Voluntarily providing tax returns is one means of satisfying this requirement. Information provided must be sufficient for the Agency to make a determination of total income and cost of goods sold by the business.

(D) If available, historical financial statements prepared in accordance with GAAP for the past 3 years, including income statements and balance sheets. If agricultural producers are unable to

present this information in accordance with GAAP, they may instead present financial information for the past 3 years in the format that is generally required by commercial agriculture lenders.

(E) Pro forma balance sheet at startup of the agricultural producer's/rural small business' business that reflects the use of the loan proceeds or grant award; and 3 additional years, indicating the necessary start-up capital, operating capital, and short-term credit; and projected cash flow and income statements for 3 years supported by a list of assumptions showing the basis for the projections.

(F) For agricultural producers, identify the gross market value of your agricultural products for the calendar year preceding the year in which you submit your application.

(iv) Production information for renewable energy system projects.

(A) Provide a statement as to whether the technology to be employed by the facility is commercially or pre-commercially available and replicable. Provide information to support this position.

(B) Describe the availability of materials, labor, and equipment for the facility.

(v) Business market information for renewable energy system projects.

(A) Demand. Identify the demand (past, present, and future) for the product and/or service and who will buy the product and/or service.

(B) Supply. Identify the supply (past, present, and future) of the product and/or service and your competitors.

(C) Market niche. Given the trends in demand and supply, describe how the business will be able to sell enough of its product/service to be profitable.

(vi) A Dun and Bradstreet Universal Numbering System (DUNS) number.

(b) *Forms, certifications, and agreements.* Each application submitted under paragraph (a) of this section must contain, as applicable, the items identified in paragraphs (b)(1) through (15) of this section.

(1) Form SF–424, "Application for Federal Assistance."

(2) Form SF–424C, "Budget Information—Construction Programs." Each cost classification category listed on the form must be filled out if it applies to your project. Any cost category item not listed on the form that applies to your project can be put under the miscellaneous category. Attach a separate sheet if you are using the miscellaneous category and list each miscellaneous cost by not allowable and allowable costs in the same format as on Form 424C, "Budget Information—Construction Programs." All project costs must be categorized as either allowable or not allowable.

(3) Form SF–424D, "Assurances—Construction Programs."

(4) AD–1049, "Certification Regarding Drug-Free Workplace Requirements."

(5) AD–1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tiered Covered Transactions."

(6) A copy of a bank statement or a copy of the confirmed funding commitment from the funding source. Matching funds must be included on the Application for Federal Assistance (SF 424) and Budget Information—Construction Programs (SF 424C).

(7) Exhibit A–1 of RD Instruction 1940–Q, "Certification for Contracts, Grants and Loans," required by Section 319 of Public Law 101–121 if the grant exceeds $100,000 or Exhibit A–2 of RD Instruction 1940–Q, "Statement for Loan Guarantees," required by Section 319 of Public Law 101–121 if the guaranteed loan exceeds $150,000.

(8) If the applicant or borrower has made or agreed to make payment using funds other than Federal appropriated funds to influence or attempt to influence a decision in connection with the application, Form SF–LLL, "Disclosure of Lobbying Activities," must be completed.

(9) AD–1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions."

(10) Form RD 400–1, "Equal Opportunity Agreement."

(11) Form RD 400–4, "Assurance Agreement."

(12) If the project involves interconnection to an electric utility, a copy of a letter of intent to purchase power, a power purchase agreement, a copy of a letter of intent for an interconnection agreement, or an interconnection agreement will be required from your utility company or other purchaser for renewable energy systems.

(13) If applicable, intergovernmental consultation comments in accordance with Executive Order 12372.

(14) Applicants and borrowers must provide a certification indicating whether or not there is a known relationship or association with an Agency employee.

(15) Each applicant must prepare an environmental impact analysis as specified in § 4280.114(d).

(c) *Feasibility study for renewable energy systems.* Each application for a renewable energy system project, except for requests of $100,000 or less, must include a project-specific feasibility study prepared by a qualified independent consultant. The feasibility study must include an analysis of the market, financial, economic, technical, and management feasibility of the proposed project. The feasibility study must also include an opinion and a recommendation by the independent consultant.

(d) *Technical requirements reports.* The technical report must demonstrate that the project design, procurement, installation, startup, operation and maintenance of the renewable energy system or energy efficiency improvement will operate or perform as specified over its design life in a reliable and a cost effective manner. The technical report must also identify all necessary project agreements, demonstrate that those agreements will be in place, and that necessary project equipment and services are available over the design life. All technical information provided must follow the format specified in paragraphs (d)(1) through (10) of this section. Supporting information may be submitted in other formats. Design drawings and process flow charts are encouraged as exhibits. A discussion of each topic identified in paragraphs (d)(1) through (10) of this section is not necessary if the topic is not applicable to the specific project. Questions identified in the Agency's technical review of the project must be answered to the Agency's satisfaction before the application will be approved. The applicant must submit the original technical requirements report plus one copy to the State Rural Development Office. For small solar and small wind projects, the narrative portion of technical requirements portion of the proposals, excluding supporting documentation and drawings, should be less than ten pages. Projects costing more than $100,000 require the services of a professional engineer (PE). Depending on the level of engineering required for the specific project or if necessary to ensure public safety, the services of a PE may be required for smaller projects.

(1) *Biomass, bioenergy.* The technical requirements specified in paragraphs (d)(1)(i) through (x) of this section apply to renewable energy projects that produce fuel, thermal energy, or electric power from a lignocellulosic biomass source, including wood, agricultural residue excluding animal wastes, or other energy crops considered biomass or bioenergy projects. The major components of bioenergy systems will vary significantly depending on the type of feedstock, product, type of process, and size of the process but in general

includes components around which the balance of the system is designed.

(i) *Qualifications of project team.* The biomass project team will vary according to the complexity and scale of the project. For engineered systems, the project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor or system installer, and a system operator and maintainer. One individual or entity may serve more than one role. The project team must have demonstrated expertise in similar biomass systems development, engineering, installation, and maintenance. The applicant must provide authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services. The applicant must also provide authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life. The application must:

(A) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design build method, often referred to as turn key, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(B) Discuss the biomass system equipment manufacturers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(C) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing biomass energy systems including any relevant certifications by recognized organizations or bodies. Provide a list of the same or similar projects designed, installed, or supplied and currently operating and with references if available; and

(D) Describe the system operator's qualifications and experience for servicing, operating, and maintaining biomass renewable energy equipment or projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating and with references if available.

(ii) *Agreements and permits.* The applicant must identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (d)(1)(ii)(A) through (G) of this section.

(A) Biomass systems must be installed in accordance with applicable local, State, and national codes and regulations. Identify zoning and code issues, and required permits and the schedule for meeting those requirements and securing those permits.

(B) Identify licenses where required and the schedule for obtaining those licenses.

(C) Identify land use agreements required for the project and the schedule for securing the agreements and the term of those agreements.

(D) Identify any permits or agreements required for solid, liquid, and gaseous emissions or effluents and the schedule for securing those permits and agreements.

(E) Identify available component warranties for the specific project location and size.

(F) Systems interconnected to the electric power system will need arrangements to interconnect with the utility. Identify utility system interconnection requirements, power purchase arrangements, or licenses where required and the schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program, describe the applicable local net metering program.

(G) Identify all environmental issues, including environmental compliance issues, associated with the project.

(iii) *Resource assessment.* The applicant must provide adequate and appropriate evidence of the availability of the renewable resource required for the system to operate as designed. Indicate the type, quantity, quality, and seasonality of the biomass resource including harvest and storage, where applicable. Where applicable, also indicate shipping or receiving method and required infrastructure for shipping. For proposed projects with an established resource, provide a summary of the resource.

(iv) *Design and engineering.* The applicant must provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified entity. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive including site selection, system and component selection, and system monitoring equipment. Systems must be constructed by a qualified entity.

(A) The application must include a concise but complete description of the biomass project including location of the project, resource characteristics, system specifications, electric power system interconnection, and monitoring equipment. Identify possible vendors and models of major system components. Describe the expected electric power, fuel production, or thermal energy production of the proposed system as rated and as expected in actual field conditions. For systems with a capacity more than 20 tons per day of biomass, address performance on a monthly and annual basis. For small projects such as a commercial biomass furnace or pelletizer of up to 5 tons daily capacity, proven, commercially available devices need not be addressed in detail. Describe the uses of or the market for electricity, heat, or fuel produced by the system. Discuss the impact of reduced or interrupted biomass availability on the system process.

(B) The application must include a description of the project site and address issues such as site access, foundations, backup equipment when applicable, and environmental concerns with emphasis on visibility, odor, noise, construction, and installation issues. Identify any unique construction and installation issues.

(C) Sites must be controlled by the agricultural producer or rural small business for the proposed project life or for the financing term of any associated federal loans or loan guarantees.

(v) *Project development schedule.* The applicant must identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(vi) *Financial feasibility.* The applicant must provide a study that describes costs and revenues of the proposed project to demonstrate the financial performance of the project. Provide a detailed analysis and description of project costs including project management, resource assessment, project design, project permitting, land agreements, equipment, site preparation, system installation,

startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed analysis and description of annual project revenues and expenses. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants.

(vii) *Equipment procurement.* The applicant must demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Biomass systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Procurement must be made in accordance with the requirements of 7 CFR part 1924, subpart A.

(viii) *Equipment installation.* The applicant must fully describe the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specification and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole.

(ix) *Operations and maintenance.* The applicant must identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The applicant must:

(A) Provide information regarding available system and component warranties and availability of spare parts;

(B) For systems having a biomass input capacity exceeding 10 tons of biomass per day,

(*1*) Describe the routine operations and maintenance requirements of the proposed system, including maintenance schedule for the mechanical, piping, and electrical systems and system monitoring and control requirements. Provide information that supports expected design life of the system and timing of major component replacement or rebuilds; and

(*2*) Discuss the costs and labor associated with operations and maintenance of system and plans for in or outsourcing. Describe opportunities for technology transfer for long term project operations and maintenance by a local entity or owner/operator; and

(C) Provide and discuss the risk management plan for handling large, unanticipated failures or major components. Include in the discussion, costs and labor associated with operations and maintenance of system and plans for in-sourcing or out-sourcing.

(x) *Decommissioning.* When uninstalling or removing the project, describe the decommissioning process. Describe any issues, requirements, and costs for removal and disposal of the system.

(2) *Anaerobic digester projects.* The technical requirements specified in paragraphs (d)(2)(i) through (x) of this section apply to renewable energy projects, called anaerobic digester projects, that use animal waste and other organic substrates to produce thermal or electrical energy via anaerobic digestion. The major components of an anaerobic digester system include the digester, the gas handling and transmission systems, and the gas use system.

(i) *Qualifications of project team.* The anaerobic digester project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor, and a system operator or maintainer. One individual or entity may serve more than one role. The project team must have demonstrated commercial-scale expertise in anaerobic digester systems development, engineering, installation, and maintenance as related to the organic materials and operating mode of the system. The applicant must provide authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services. The applicant must also provide authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life. The applicant must:

(A) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design build method, often referred to as turn key, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(B) Discuss the anaerobic digester system equipment manufacturers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(C) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing anaerobic digester systems including any relevant certifications by recognized organizations or bodies. Provide a list of the same or similar projects designed, installed, or supplied and currently operating consistent with the substrate material and with references if available; and

(D) For regional or centralized digester plants, describe the system operator's qualifications and experience for servicing, operating, and maintaining similar projects. Farm scale systems may not require operator experience as the developer is typically required to provide operational training during system startup and shakedown. Provide a list of the same or similar projects designed, installed, or supplied and currently operating consistent with the substrate material and with references if available.

(ii) *Agreements and permits.* The applicant must identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (d)(2)(ii)(A) through (G) of this section.

(A) Anaerobic digester systems must be installed in accordance with applicable local, State, and national codes and regulations. Anaerobic digesters must also be designed and constructed in accordance with USDA anaerobic digester standards. Identify zoning and code issues, and required permits and the schedule for meeting those requirements and securing those permits.

(B) Identify licenses where required and the schedule for obtaining those licenses.

(C) For regional or centralized digester plants, identify feedstock access agreements required for the project and the schedule for securing those agreements and the term of those agreements.

(D) Identify any permits or agreements required for transport and ultimate waste disposal and the schedule for securing those agreements and permits.

(E) Identify available component warranties for the specific project location and size.

(F) Systems interconnected to the electric power system will need arrangements to interconnect with the

utility. Identify utility system interconnection requirements, power purchase arrangements, or licenses where required and the schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program, describe the applicable local net metering program.

(G) Identify all environmental issues, including environmental compliance issues, associated with the project.

(iii) *Resource assessment.* The applicant must provide adequate and appropriate evidence of the availability of the renewable resource required for the system to operate as designed. Indicate the substrates used as digester inputs including animal wastes, food processing wastes, or other organic wastes in terms of type, quantity, seasonality, and frequency of collection. Describe any special handling of feedstock that may be necessary. Describe the process for determining the feedstock resource. Provide either tabular values or laboratory analysis of representative samples that include biodegradability studies to produce gas production estimates for the project on daily, monthly, and seasonal basis.

(iv) *Design and engineering.* The applicant must provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified entity. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive including site selection, digester component selection, gas handling component selection, and gas use component selection. Systems must be constructed by a qualified entity.

(A) The application must include a concise but complete description of the anaerobic digester project including location of the project, farm description, feedstock characteristics, a step-by-step flowchart of unit operations, electric power system interconnection equipment, and any required monitoring equipment. Identify possible vendors and models of major system components. Provide the expected system energy production, heat balances, material balances as part of the unit operations flowchart.

(B) The application must include a description of the project site and address issues such as site access, foundations, backup equipment when applicable, and environmental concerns with emphasis on visibility, odor, noise, construction and installation issues. Identify any unique construction and installation issues.

(C) Sites must be controlled by the agricultural producer or rural small business for the proposed project life or for the financing term of any associated federal loans or loan guarantees.

(v) *Project development schedule.* The applicant must identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline including feedstock assessment, system and site design, permits and agreements, equipment procurement, system installation from excavation through startup and shakedown, and operator training.

(vi) *Financial feasibility.* The applicant must provide a study that describes costs and revenues of the proposed project to demonstrate the financial performance of the project. Provide a detailed analysis and description of project costs including project management, feedstock assessment, project design, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, training and operations, and maintenance costs of both the digester and the gas use systems. Provide a detailed analysis and description of annual project revenues and expenses. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants.

(vii) *Equipment procurement.* The applicant must demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Anaerobic digester systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Procurement must be made in accordance with the requirements of 7 CFR part 1924, subpart A.

(viii) *Equipment installation.* The applicant must fully describe the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specification and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole.

(ix) *Operations and maintenance.* The applicant must identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The applicant must:

(A) Ensure that systems must have at least a 3-year warranty for equipment and a 10-year warranty on design. Provide information regarding system warranties and availability of spare parts;

(B) Describe the routine operations and maintenance requirements of the proposed project, including maintenance for the digester, the gas handling equipment, and the gas use systems. Describe any maintenance requirements for system monitoring and control equipment;

(C) Provide information that supports expected design life of the system and the timing of major component replacement or rebuilds;

(D) Provide and discuss the risk management plan for handling large, unanticipated failures of major components. Include in the discussion, costs and labor associated with operations and maintenance of system and plans for insourcing or outsourcing; and

(E) Describe opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator.

(x) *Decommissioning.* When uninstalling or removing the project, describe the decommissioning process. Describe any issues, requirements, and costs for removal and disposal of the system.

(3) *Geothermal, electric generation.* The technical requirements specified in paragraphs (d)(3)(i) through (x) of this section apply to geothermal projects that produce electric power from the thermal potential of a geothermal source. The major components of an electric generating geothermal system include the production well, the separator or heat exchanger, the turbine, the generator, condenser, and the balance of station elements including the field piping, roads, fencing and grading, plant buildings, transformers and other electrical infrastructure such as interconnection equipment.

(i) *Qualifications of project team.* The electric generating geothermal plant project team should consist of a system designer, a project manager, an equipment supplier, a project engineer,

a construction contractor, and a system operator and maintainer. One individual or entity may serve more than one role. The project team must have demonstrated expertise in geothermal electric generation systems development, engineering, installation, and maintenance. The applicant must provide authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services. The applicant must also provide authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life. The applicant must:

(A) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design build method, often referred to as turn key, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(B) Discuss the geothermal plant equipment manufacturers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(C) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing geothermal electric generation systems including any relevant certifications by recognized organizations or bodies. Provide a list of the same or similar projects designed, installed, or supplied and currently operating and with references if available; and

(D) Describe system operator's qualifications and experience for servicing, operating, and maintaining electric generating geothermal projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating and with references if available.

(ii) *Agreements and permits.* The applicant must identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (d)(3)(ii)(A) through (F) of this section.

(A) Electric generating geothermal systems must be installed in accordance with applicable local, State, and national codes and regulations. Identify zoning and code issues, and required permits and the schedule for meeting those requirements and securing those permits.

(B) Identify any permits or agreements required for well construction and for disposal or re-injection of cooled geothermal waters and the schedule for securing those agreements and permits.

(C) Identify land use or access to the resource agreements required for the project and the schedule for securing the agreements and the term of those agreements.

(D) Identify available component warranties for the specific project location and size.

(E) Systems interconnected to the electric power system will need arrangements to interconnect with the utility. Identify utility system interconnection requirements, power purchase arrangements, or licenses where required and the schedule for meeting those requirements and obtaining those agreements.

(F) Identify all environmental issues, including environmental compliance issues, associated with the project.

(iii) *Resource assessment.* The applicant must provide adequate and appropriate evidence of the availability of the renewable resource required for the system to operate as designed. Indicate the quality of the geothermal resource including temperature, flow, and sustainability and what conversion system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

(iv) *Design and engineering.* The applicant must provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified entity. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive including site selection, system and component selection, conversion system component and selection, design of the local collection grid, interconnection equipment selection, and system monitoring equipment. Systems must be constructed by a qualified entity.

(A) The application must include a concise but complete description of the geothermal project including location of the project, resource characteristics, thermal system specifications, electric power system interconnection equipment and project monitoring equipment. Identify possible vendors and models of major system components. Provide the expected system energy production on a monthly and annual basis.

(B) The application must include a description of the project site and address issues such as site access, proximity to the electrical grid, environmental concerns with emphasis on visibility, noise, construction, and installation issues. Identify any unique construction and installation issues.

(C) Sites must be controlled by the agricultural producer or rural small business for the proposed project life or for the financing term of any associated federal loans or loan guarantees.

(v) *Project development schedule.* The applicant must identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(vi) *Financial feasibility.* The applicant must provide a study that describes costs and revenues of the proposed project to demonstrate the financial performance of the project. Provide a detailed analysis and description of project costs including project management, resource assessment, project design, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed analysis and description of annual project revenues including electricity sales, production tax credits, revenues from green tags, and any other production incentive programs throughout the life of the project. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants.

(vii) *Equipment procurement.* The applicant must demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Geothermal systems may be constructed of

components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Procurement must be made in accordance with the requirements of 7 CFR part 1924, subpart A.

(viii) *Equipment installation.* The applicant must fully describe the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specification and process and the conditions required for startup or shakedown for each equipment item individually and for the system as a whole.

(ix) *Operations and maintenance.* The applicant must identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The applicant must:

(A) Ensure that systems must have at least a 3-year warranty for equipment. Provide information regarding turbine warranties and availability of spare parts;

(B) Describe the routine operations and maintenance requirements of the proposed project, including maintenance for the mechanical and electrical systems and system monitoring and control requirements;

(C) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(D) Provide and discuss the risk management plan for handling large, unanticipated failures of major components such as the turbine. Include in the discussion, costs and labor associated with operations and maintenance of system and plans for insourcing or outsourcing; and

(E) Describe opportunities for technology transfer for long term project operations and maintenance by a local entity or owner/operator.

(x) *Decommissioning.* When uninstalling or removing the project, describe the decommissioning process. Describe any issues, requirements, and costs for removal and disposal of the system.

(4) *Geothermal, direct use.* The technical requirements specified in paragraphs (d)(4)(i) through (x) of this section apply to geothermal projects that directly use thermal energy from a geothermal source. The major components of a direct use geothermal system include the production well, the heat exchanger, pumps, and the balance of station elements including the, field piping, re-injection wells or other disposal equipment as required, and final point-of-use heat exchangers and control systems.

(i) *Qualifications of project team.* The geothermal project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor, and a system operator and maintainer. One individual or entity may serve more than one role. The project team must have demonstrated expertise in geothermal heating systems development, engineering, installation, and maintenance. The applicant must provide authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services. The applicant must also provide authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life. The applicant must:

(A) Discuss the proposed project delivery method. Such method include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design build method, often referred to as turn key, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(B) Discuss the geothermal system equipment manufacturers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(C) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing direct use geothermal systems including any relevant certifications by recognized organizations or bodies. Provide a list of the same or similar projects designed, installed, or supplied and currently operating and with references if available; and

(D) Describe system operator's qualifications and experience for servicing, operating, and maintaining direct use generating geothermal projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating and with references if available.

(ii) Agreements and permits. The applicant must identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (d)(4)(ii)(A) through (F) of this section.

(A) Direct use geothermal systems must be installed in accordance with applicable local, State, and national codes and regulations. Identify zoning and code issues, and required permits and the schedule for meeting those requirements and securing those permits.

(B) Identify licenses where required and the schedule for obtaining those licenses.

(C) Identify land use or access to the resource agreements required for the project and the schedule for securing the agreements and the term of those agreements.

(D) Identify any permits or agreements required for well construction and for disposal or re-injection of cooled geothermal waters and the schedule for securing those permits and agreements.

(E) Identify available component warranties for the specific project location and size.

(F) Identify all environmental issues, including environmental compliance issues, associated with the project.

(iii) *Resource assessment.* The applicant must provide adequate and appropriate evidence of the availability of the renewable resource required for the system to operate as designed. Indicate the quality of the geothermal resource including temperature, flow, and sustainability and what direct use system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

(iv) *Design and engineering.* The applicant must provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified entity. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive including site selection, system and component selection, thermal system component

selection, and system monitoring equipment. Systems must be constructed by a qualified entity.

(A) The application must include a concise but complete description of the geothermal project including location of the project, resource characteristics, thermal system specifications, and monitoring equipment. Identify possible vendors and models of major system components. Provide the expected system energy production on a monthly and annual basis.

(B) The application must include a description of the project site and address issues such as, site access, thermal backup equipment, environmental concerns with emphasis on visibility, noise, construction, and installation issues. Identify any unique construction and installation issues.

(C) Sites must be controlled by the agricultural producer or rural small business for the proposed project life or for the financing term of any associated federal loans or loan guarantees.

(v) *Project development schedule.* The applicant must identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(vi) *Financial feasibility.* The applicant must provide a study that describes costs and revenues of the proposed project to demonstrate the financial performance of the project. Provide a detailed analysis and description of project costs including project management, resource assessment, project design, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed analysis and description of annual project revenues and expenses. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants.

(vii) *Equipment procurement.* The applicant must demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Geothermal systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Procurement must be made in accordance with the requirements of 7 CFR part 1924, subpart A.

(viii) *Equipment installation.* The applicant must fully describe the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specification and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole.

(ix) *Operations and maintenance.* The applicant must identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The applicant must:

(A) Ensure that systems must have at least a 3-year warranty for equipment. Provide information regarding system warranties and availability of spare parts;

(B) Describe the routine operations and maintenance requirements of the proposed project, including maintenance for the mechanical and electrical systems and system monitoring and control requirements;

(C) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(D) Provide and discuss the risk management plan for handling large, unanticipated failures of major components. Include in the discussion, costs and labor associated with operations and maintenance of system and plans for insourcing or outsourcing; and

(E) Describe opportunities for technology transfer for long term project operations and maintenance by a local entity or owner/operator.

(x) *Decommissioning.* When uninstalling or removing the project, describe the decommissioning process. Describe any issues, requirements, and costs for removal and disposal of the system.

(5) *Hydrogen.* The technical requirements specified in paragraphs (d)(5)(i) through (x) of this section apply to renewable energy projects that produce hydrogen and renewable energy projects that use mechanical or electric power or thermal energy from a renewable resource using hydrogen as an energy transport medium. The major components of hydrogen systems include reformers, electrolyzers, hydrogen compression and storage components, and fuel cells.

(i) *Qualifications of project team.* The hydrogen project team will vary according to the complexity and scale of the project. For engineered systems, the project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor or system installer, and a system operator and maintainer. One individual or entity may serve more than one role. The project team must have demonstrated expertise in similar hydrogen systems development, engineering, installation, and maintenance. The applicant must provide authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services. The applicant must also provide authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life. The applicant must:

(A) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design build method, often referred to as turn key, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(B) Discuss the hydrogen system equipment manufacturers of major components for the hydrogen system being considered in terms of the length of time in the business and the number of units installed at the capacity and scale being considered;

(C) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing hydrogen systems including any relevant certifications by recognized organizations or bodies. Provide a list of the same or similar projects designed, installed, or supplied and currently operating and with references if available; and

(D) Describe the system operator's qualifications and experience for servicing, operating, and maintaining hydrogen system equipment or projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating and with references if available.

(ii) *Agreements and permits.* The applicant must identify all necessary

agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (d)(5)(ii)(A) through (G) of this section.

(A) Hydrogen systems must be installed in accordance with applicable local, State, and national codes and regulations. Identify zoning and building code issues, and required permits and the schedule for meeting those requirements and securing those permits.

(B) Identify licenses where required and the schedule for obtaining those licenses.

(C) Identify land use agreements required for the project and the schedule for securing the agreements and the term of those agreements.

(D) Identify any permits or agreements required for solid, liquid, and gaseous emissions or effluents and the schedule for securing those permits and agreements.

(E) Identify available component warranties for the specific project location and size.

(F) Systems interconnected to the electric power system will need arrangements to interconnect with the utility. Identify utility system interconnection requirements, power purchase arrangements, or licenses where required and the schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program, provide a description of the applicable local net metering program.

(G) Identify all environmental issues, including environmental compliance issues, associated with the project.

(iii) *Resource assessment.* The applicant must provide adequate and appropriate evidence of the availability of the renewable resource required for the system to operate as designed. Indicate the type, quantity, quality, and seasonality of the biomass resource. For solar, wind, or geothermal sources of energy used to generate hydrogen, indicate the local renewable resource where the hydrogen system is to be installed. Local resource maps may be used as an acceptable preliminary source of renewable resource data. For proposed projects with an established renewable resource, provide a summary of the resource.

(iv) *Design and engineering.* The applicant must provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified entity. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive including site selection, system and component selection, and system monitoring equipment. Systems must be constructed by a qualified entity.

(A) The application must include a concise but complete description of the hydrogen project including location of the project, resource characteristics, system specifications, electric power system interconnection equipment, and monitoring equipment. Identify possible vendors and models of major system components. Describe the expected electric power, fuel production, or thermal energy production of the proposed system. Address performance on a monthly and annual basis. Describe the uses of or the market for electricity, heat, or fuel produced by the system. Discuss the impact of reduced or interrupted resource availability on the system process.

(B) The application must include a description of the project site and address issues such as site access, foundations, backup equipment when applicable, and any environmental and safety concerns. Identify any unique construction and installation issues.

(C) Sites must be controlled by the agricultural producer or rural small business for the proposed project life or for the financing term of any associated federal loans or loan guarantees.

(v) *Project development schedule.* The applicant must identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(vi) *Financial feasibility.* The applicant must provide a study that describes costs and revenues of the proposed project to demonstrate the financial performance of the project. Provide a detailed analysis and description of project costs including project management, resource assessment, project design and engineering, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed analysis and description of annual project revenues and expenses. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants.

(vii) *Equipment procurement.* The applicant must demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Hydrogen systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues, such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, and receiving, and on-site storage or inventory. Procurement must be made in accordance with the requirements of 7 CFR part 1924, subpart A.

(viii) *Equipment installation.* The applicant must fully describe the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specification and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole.

(ix) *Operations and maintenance.* The applicant must identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The applicant must:

(A) Provide information regarding system warranties and availability of spare parts;

(B) Describe the routine operations and maintenance requirements of the proposed project, including maintenance of the reformer, electrolyzer, or fuel cell as appropriate, and other mechanical, piping, and electrical systems and system monitoring and control requirements;

(C) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(D) Provide and discuss the risk management plan for handling large, unanticipated failures of major components. Include in the discussion, costs and labor associated with operations and maintenance of system and plans for in or outsourcing; and

(E) Describe opportunities for technology transfer for long term project operations and maintenance by a local entity or owner/operator.

(x) *Decommissioning.* When uninstalling or removing the project, describe the decommissioning process. Describe any issues, requirements, and costs for removal and disposal of the system.

(6) *Solar, small.* The technical requirements specified in paragraphs (d)(6)(i) through (x) of this section apply to small solar electric projects and small solar thermal projects. Small solar electric projects are those for which the rated power of the system is 10kW or smaller. The major components of a small solar electric system are the solar panels, the support structure, the foundation, the power conditioning equipment, the interconnection equipment, surface or submersible water pumps, energy storage equipment and supporting documentation including operations and maintenance manuals. Small solar electric projects are either stand-alone (off grid) or interconnected to the grid at less than 600 volts (on grid). Small solar thermal projects are those for which the rated storage volume of the system is 240 gallons, or smaller. The major components of a small solar thermal system are the solar collector(s), the support structure, the foundation, the circulation pump(s) and piping, heat exchanger (if required), energy storage equipment and support

(i) *Qualifications of project team.* The small solar project team should consist of a system designer, a project manager or general contractor, an equipment supplier of major components, a system installer, a system maintainer, and, in some cases, the owner of the application or load served by the system. One individual or entity may serve more than one role. The applicant must provide authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services. The applicant must also provide authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life. The applicant must:

(A) Discuss the qualifications of the suppliers of major components being considered;

(B) Describe the knowledge, skills, and abilities needed to service, operate, and maintain the system for the proposed application; and

(C) Discuss the project manager, system designer, and system installer qualifications for engineering, designing, and installing small solar systems including any relevant certifications by recognized organizations or bodies. Provide a list of the same or similar systems designed or installed by the design and installation team and currently operating and with references if available.

(ii) *Agreements and permits.* The applicant must identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (d)(6)(ii)(A) through (D) of this section.

(A) Small solar systems must be installed in accordance with local, State, and national building and electrical codes and regulations. Identify zoning, building and electrical code issues, and required permits and the schedule for meeting those requirements and securing those permits.

(B) Identify available component warranties for the specific project location and size.

(C) Small solar electric systems interconnected to the electric power system will need arrangements to interconnect with the utility. Identify utility system interconnection requirements, power purchase arrangements, or licenses where required and the schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program, describe the applicable local net metering program.

(D) Identify all environmental issues, including environmental compliance issues, associated with the project.

(iii) *Resource assessment.* The applicant must provide adequate and appropriate evidence of the availability of the renewable resource required for the system to operate as designed. Describe the local solar resource where the solar system is to be installed. Acceptable sources of solar resource data include state solar maps and nearby weather station data. Incorporate information from state solar resource maps when possible. Indicate the source of the solar data and assumptions made when applying nearby solar data to the site.

(iv) *Design and engineering.* The applicant must provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. For small solar electric systems, the engineering must be comprehensive, including solar collector design and selection, support structure design and selection, power conditioning design and selection, surface or submersible water pumps and energy storage requirements as applicable, and selection of cabling, disconnects and interconnection equipment. For small solar thermal systems, the engineering must be comprehensive, including solar collector design and selection, support structure design and selection, pump and piping design and selection, and energy storage design and selection.

(A) The application must include a concise but complete description of the small solar system including location of the project and proposed equipment specifications. Identify possible vendors and models of major system components. Provide the expected system energy production based on available solar resource data on a monthly (when possible) and annual basis and how the energy produced by the system will be used.

(B) The application must include a description of the project site and address issues such as solar access, orientation, proximity to the load or the electrical grid, environmental concerns, unique safety concerns, construction, and installation issues, and whether special circumstances exist.

(C) Sites and application load must be controlled by the agricultural producer or rural small business for the proposed project life or for the financing term of any associated federal loans or loan guarantees.

(v) *Project development schedule.* The applicant must identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline including system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(vi) *Financial feasibility.* The applicant must provide a study that describes costs and revenues of the proposed project to demonstrate the financial performance of the project. Provide a detailed analysis and description of project costs including design, permitting, equipment, site preparation, system installation, system startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. Provide a detailed description of historic or expected energy use and expected energy offsets or sales on monthly and annual bases.

(vii) *Equipment procurement.* The applicant must demonstrate that

equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Small solar systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Procurement must be made in accordance with the requirements of 7 CFR part 1924, subpart A.

(viii) *Equipment installation.* The applicant must fully describe the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specification and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole.

(ix) *Operations and maintenance.* The applicant must identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The applicant must:

(A) Ensure that systems must have at least a 5-year warranty for equipment. Provide information regarding system warranty and availability of spare parts;

(B) Describe the routine operations and maintenance requirements of the proposed system, including maintenance schedules for the mechanical and electrical and software systems;

(C) For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance; and

(D) Provide information regarding expected system design life and timing of major component replacement or rebuilds. Include in the discussion, costs and labor associated with operations and maintenance of system and plans for in or outsourcing.

(x) *Decommissioning.* When uninstalling or removing the project, describe the decommissioning process. Describe any issues, requirements, and costs for removal and disposal of the system.

(7) *Solar, large.* The technical requirements specified in paragraphs (d)(7)(i) through (x) of this section apply to large solar electric projects and large solar thermal projects. Large solar electric systems are those for which the rated power of the system is larger than 10kW. The major components of a large solar electric system are the solar panels, the support structure, the foundation, the power conditioning equipment, the interconnection equipment, surface or submersible water pumps and energy storage equipment and supporting documentation including operations and maintenance manuals. Large solar electric systems are either stand-alone (off grid) or interconnected to the grid (on grid.) Large solar thermal systems are those for which the rated storage volume of the system is greater than 240 gallons. The major components of a small solar thermal system are the solar collector(s), the support structure, the foundation, the circulation pump(s) and piping, heat exchanger (if required), energy storage equipment and supporting documentation including operations and maintenance manuals.

(i) *Qualifications of project team.* The large solar project team should consist of an equipment supplier of major components, a project manager, general contractor, a system engineer, a system installer, and system maintainer. One individual or entity may serve more than one role. The applicant must provide authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services. The applicant must also provide authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life. The applicant must:

(A) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design build method, often referred to as turn key, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(B) Discuss the qualifications of the suppliers of major components being considered;

(C) Discuss the project manager, general contractor, system engineer, and system installer qualifications for engineering, designing, and installing large solar systems including any relevant certifications by recognized organizations or bodies. Provide a list of the same or similar systems designed or installed by the design, engineering, and installation team and currently operating and with references if available; and

(D) Describe the system operator's qualifications and experience for servicing, operating, and maintaining the system for the proposed application. Provide a list of the same or similar systems designed or installed by the design, engineering, and installation team and currently operating and with references if available.

(ii) *Agreements and permits.* The applicant must identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (d)(7)(ii)(A) through (D) of this section.

(A) Large solar systems must be installed in accordance with local, State, and national building and electrical codes and regulations. Identify zoning, building and electrical code issues, and required permits and the schedule for meeting those requirements and securing those permits.

(B) Identify available component warranties for the specific project location and size.

(C) Large solar electric systems interconnected to the electric power system will need arrangements to interconnect with the utility. Identify utility system interconnection requirements, power purchase arrangements, or licenses where required and the schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program, describe the applicable local net metering program.

(D) Identify all environmental issues, including environmental compliance issues, associated with the project.

(iii) *Resource assessment.* The applicant must provide adequate and appropriate evidence of the availability of the renewable resource required for the system to operate as designed. Describe the local solar resource where the solar system is to be installed. Acceptable sources of solar resource data include state solar maps and nearby weather station data. Incorporate information from state solar resource maps when possible. Indicate the source of the solar data and assumptions made when applying nearby solar data to the site.

(iv) *Design and engineering.* The applicant must provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable

laws, regulations, agreements, permits, codes, and standards.

(A) For large solar electric systems, the engineering must be comprehensive, including solar collector design and selection, support structure design and selection, power conditioning design and selection, surface or submersible water pumps and energy storage requirements as applicable, and selection of cabling, disconnects and interconnection equipment. A complete set of engineering drawings, stamped by a professional engineer must be provided.

(B) For large solar thermal systems, the engineering must be comprehensive, including solar collector design and selection, support structure design and selection, pump and piping design and selection, and energy storage design and selection. Provide a complete set of engineering drawings, stamped by a professional engineer.

(C) For either type of system, provide a concise but complete description of the large solar system including location of the project and proposed equipment and system specifications. Identify possible vendors and models of major system components. Provide the expected system energy production based on available solar resource data on a monthly (when possible) and annual basis and how the energy produced by the system will be used.

(D) For either type of system, provide a description of the project site and address issues such as, solar access, orientation, proximity to the load or the electrical grid, environmental concerns, unique safety concerns, construction, and installation issues and whether special circumstances exist.

(E) Sites must be controlled by the agricultural producer or rural small business for the proposed project life or for the financing term of any associated federal loans or loan guarantees.

(v) *Project development schedule.* The applicant must identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline including system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(vi) *Financial feasibility.* The applicant must provide a study that describes costs and revenues of the proposed project to demonstrate the financial performance of the project. Provide a detailed analysis and description of project costs including design and engineering, permitting, equipment, site preparation, system installation, system startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. Provide a detailed description of historic or expected energy use and expected energy offsets or sales on a monthly and annual basis.

(vii) *Equipment procurement.* The applicant must demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Large solar systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Procurement must be made in accordance with the requirements of 7 CFR part 1924, subpart A.

(viii) *Equipment installation.* The applicant must fully describe the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment, including cranes and other devices, needed for project construction, and provide a description of the startup and shakedown specification and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole.

(ix) *Operations and maintenance.* The applicant must identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The applicant must:

(A) Ensure that systems must have at least a 5-year warranty for equipment. Provide information regarding system warranty and availability of spare parts;

(B) Describe the routine operations and maintenance requirements of the proposed system, including maintenance schedules for the mechanical and electrical and software systems;

(C) For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance; and

(D) Provide information regarding expected system design life and timing of major component replacement or rebuilds. Include in the discussion, costs and labor associated with operations and maintenance of system and plans for insourcing or outsourcing.

(x) *Decommissioning.* When uninstalling or removing the project, describe the decommissioning process. Describe any issues, requirements, and costs for removal and disposal of the system.

(8) *Wind, small.* The technical requirements specified in paragraphs (d)(8)(i) through (x) apply to wind energy systems for which the rated power of the wind turbine is 100kW or smaller and with a generator hub height of 120 ft or less. Such systems are considered small wind systems. The major components of a small wind system are the wind turbine, the tower, the foundation, the inverter, the interconnection equipment and energy storage when applicable. A small wind system is either stand-alone or connected to the local electrical system at less than 600 volts.

(i) *Qualifications of project team.* The small wind project team should consist of a system designer, a project manager or general contractor, an equipment supplier of major components, a system installer, a system maintainer, and, in some cases, the owner of the application or load served by the system. One individual or entity may serve more than one role. The applicant must provide authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services. The applicant must also provide authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life. The applicant must:

(A) Discuss the small wind turbine manufacturers and other equipment suppliers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(B) Describe the knowledge, skills, and abilities needed to service, operate, and maintain the system for the proposed application; and

(C) Discuss the project manager, system designer, and system installer qualifications for engineering, designing, and installing small wind systems including any relevant certifications by recognized organizations or bodies. Provide a list of the same or similar systems designed, installed, or supplied and currently operating and with references if available.

(ii) *Agreements and permits.* The applicant must identify all necessary

agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (d)(8)(ii)(A) through (D) of this section.

(A) Small wind systems must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Identify zoning, building and electrical code issues, and required permits and the schedule for meeting those requirements and securing those permits.

(B) Identify available component warranties for the specific project location and size.

(C) Small wind systems interconnected to the electric power system will need arrangements to interconnect with the utility. Identify utility system interconnection requirements, power purchase arrangements, or licenses where required and the schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program, describe the applicable local net metering program.

(D) Identify all environmental issues, including environmental compliance issues, associated with the project.

(iii) *Resource assessment.* The applicant must provide adequate and appropriate evidence of the availability of the renewable resource required for the system to operate as designed. Indicate the local wind resource where the small wind turbine is to be installed. Acceptable sources of wind resource data include state wind maps and nearby weather station data. Incorporate information from state wind resource maps when possible. Indicate the source of the wind data and the conditions of the wind monitoring when collected at the site or assumptions made when applying nearby wind data to the site.

(iv) *Design and engineering.* The applicant must provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Small wind systems must be engineered by either the wind turbine manufacturer or other qualified party. Systems must be offered as a complete, integrated system with matched components. The engineering must be comprehensive including turbine design and selection, tower design and selection, specification of guy wire anchors and tower foundation, inverter/controller design and selection, energy storage requirements as applicable, and selection of cabling, disconnects and interconnection equipment as well as the engineering data needed to match the wind system output to the application load, if applicable.

(A) The application must include a concise but complete description of the small wind system including location of the project, proposed turbine specifications, tower height and type of tower, type of energy storage and location of storage if applicable, proposed inverter manufacturer and model, electric power system interconnection equipment, and application load and load interconnection equipment as applicable. Identify possible vendors and models of major system components. Provide the expected system energy production based on available wind resource data on monthly (when possible) and annual basis and how the energy produced by the system will be used.

(B) The application must include a description of the project site and address issues such as access to the wind resource, proximity to the electrical gird or application load, environmental concerns with emphasis on visibility, noise, and avian impacts, construction, and installation issues and whether special circumstances such as proximity to airports exist. Provide a 360-degree panoramic photograph of the proposed site including indication of prevailing winds when possible.

(C) Sites and application loads must be controlled by the agricultural producer or rural small business for the proposed project life or for the financing term of any associated federal loans or loan guarantees.

(v) *Project development schedule.* The applicant must identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline including system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(vi) *Financial feasibility.* The applicant must provide a study that describes costs and revenues of the proposed project to demonstrate the financial performance of the project. Provide a detailed analysis and description of project costs including design, permitting, equipment, site preparation, system installation, system startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. Provide a detailed description of historic or expected energy use and expected energy offsets or sales on a monthly and annual basis.

(vii) *Equipment procurement.* The applicant must demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Small wind systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Procurement must be made in accordance with the requirements of 7 CFR part 1924, subpart A.

(viii) *Equipment installation.* The applicant must fully describe the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment, including cranes and other devices, needed for project construction, and provide a description of the startup and shakedown specification and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole.

(ix) *Operations and maintenance.* The applicant must identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The applicant must:

(A) Ensure that systems must have at least a 5-year warranty for equipment and a commitment from the supplier to have spare parts available. Provide information regarding system warranty and availability of spare parts;

(B) Describe the routine operations and maintenance requirements of the proposed system, including maintenance schedules for the mechanical and electrical and software systems;

(C) Provide historical or engineering information that supports expected design life of the system and timing of major component replacement or rebuilds. Include in the discussion, costs and labor associated with operations and maintenance of system and plans for in or outsourcing; and

(D) For owner maintained portions of the system, describe any unique

knowledge, skills, or abilities needed for service operations or maintenance.

(x) *Decommissioning.* When uninstalling or removing the project, describe the decommissioning process. Describe any issues, requirements, and costs for removal and disposal of the system.

(9) *Wind, large.* The technical requirements specified in paragraphs (d)(9)(i) through (x) of this section apply to wind energy systems for which the rated power of the individual wind turbine(s) is larger than 100kW. Such systems are considered large wind systems. The major components of a large wind system are the wind turbine rotor, the gearbox, the generator, the tower, the power electronics, the local collection grid, and the interconnection equipment.

(i) *Qualifications of project team.* The large wind project team should consist of a project manager, a meteorologist, an equipment supplier, a project engineer, a primary or general contractor, construction contractor, and a system operator and maintainer and in some cases the owner of the application or load served by the system. One individual or entity may serve more than one role. The applicant must provide authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services. The applicant must also provide authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life. The applicant must:

(A) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design build method, often referred to as turn key, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developers risk;

(B) Discuss the large wind turbine manufacturers and other equipment suppliers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(C) Discuss the project manager, equipment supplier, project engineer, and construction contractor qualifications for engineering, designing, and installing large wind systems including any relevant certifications by recognized organizations or bodies. Provide a list of the same or similar projects designed, installed, or supplied and currently operating and with references if available;

(D) Discuss the qualifications of the meteorologist, including references; and

(E) Describe system operator's qualifications and experience for servicing, operating, and maintaining the system for the proposed application. Provide a list of the same or similar projects designed, installed, or supplied and currently operating and with references if available.

(ii) *Agreements and permits.* The applicant must identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (d)(9)(ii)(A) through (E) of this section.

(A) Large wind systems must be installed in accordance with local, State, and national building and electrical codes and regulations. Identify zoning, building and electrical code issues, and required permits and the schedule for meeting those requirements and securing those permits.

(B) Identify land use agreements required for the project and the schedule for securing the agreements and the term of those agreements.

(C) Identify available component warranties for the specific project location and size.

(D) Large wind systems interconnected to the electric power system will need arrangements to interconnect with the utility. Large wind systems interconnected to the electric power system will need arrangements to interconnect with the utility. Identify utility system interconnection requirements, power purchase arrangements, or licenses where required and the schedule for meeting those requirements and obtaining those agreements.

(E) Identify all environmental issues, including environmental compliance issues, associated with the project.

(iii) *Resource assessment.* The applicant must provide adequate and appropriate evidence of the availability of the renewable resource required for the system to operate as designed. Indicate the local wind resource where the wind turbine is to be installed. Wind resource maps may be used as an acceptable preliminary source of wind resource data. Projects greater than 500kW must obtain wind data from the proposed project site. For such projects, describe the proposed measurement setup for the collection of the wind resource data. For proposed projects with an established wind resource, provide a summary of the wind resource and the specifications of the measurement setup. Large wind systems larger than 500kW in size will typically require at least one year of on-site monitoring. If less than one year of data is used, the qualified meteorological consultant must provide a detailed analysis of correlation between the site data and a near-by long-term measurement site.

(iv) *Design and engineering.* The applicant must provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Large wind systems must be engineered by a qualified entity. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive including site selection, turbine selection, tower selection, tower foundation, design of the local collection grid, interconnection equipment selection, and system monitoring equipment. For stand alone, non-grid applications, engineering information must be provided that demonstrates appropriate matching of wind turbine and load.

(A) The application must include a concise but complete description of the large wind project including location of the project, proposed turbine specifications, tower height and type of tower, the collection grid, interconnection equipment, and monitoring equipment. Identify possible vendors and models of major system components. Provide the expected system energy production based on available wind resource data on monthly and annual bases. For wind projects larger than 500kW in size, provide the expected system energy production over the life of the project including a discussion on inter-annual variation using a comparison of the on-site monitoring data with long-term meteorological data from a nearby monitored site.

(B) The application must include a description of the project site and address issues such as site access, proximity to the electrical grid or application load, environmental concerns with emphasis on visibility, noise, and avian impacts, construction, and installation issues and whether special circumstances such as proximity to airports exist.

(C) Sites must be controlled by the agricultural producer or rural small business for the proposed project life or

for the financing term of any associated federal loans or loan guarantees.

(v) *Project development schedule.* The applicant must identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(vi) *Financial feasibility.* The applicant must provide a study that describes costs and revenues of the proposed energy efficiency improvement(s) to demonstrate the financial performance of the energy efficiency improvement(s). Provide a detailed analysis and description of project costs including project management, resource assessment, project design, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. Provide a detailed analysis and description of annual project revenues including electricity sales, production tax credits, revenues from green tags, and any other production incentive programs throughout the life of the project. Provide a description of planned contingency fees or reserve funds to be used for unexpected large component replacement or repairs and for low productivity periods.

(vii) *Equipment procurement.* The applicant must demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Large wind turbines may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Procurement must be made in accordance with the requirements of 7 CFR part 1924, subpart A.

(viii) *Equipment installation.* The applicant must fully describe the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment, including cranes or other devices, needed for project construction, and provide a description of the startup and shakedown specification and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole.

(ix) *Operations and maintenance.* The applicant must identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The applicant must:

(A) Ensure that systems must have at least a 3-year warranty for equipment. Provide information regarding turbine warranties and availability of spare parts;

(B) Describe the routine operations and maintenance requirements of the proposed project, including maintenance schedules for the mechanical and electrical systems and system monitoring and control requirements;

(C) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(D) Provide and discuss the risk management plan for handling large, unanticipated failures of major components such as the turbine gearbox or rotor. Include in the discussion, costs and labor associated with operations and maintenance of system and plans for insourcing or outsourcing;

(E) Describe opportunities for technology transfer for long term project operations and maintenance by a local entity or owner/operator; and

(F) For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance.

(x) *Decommissioning.* When uninstalling or removing the project, describe the decommissioning process. Describe any issues, requirements, and costs for removal and disposal of the system.

(10) *Energy efficiency improvements.* The technical requirements specified in paragraphs (d)(10)(i) through (ix) of this section apply to projects that involve improvements to a facility, building or process resulting in reduced energy consumption or reduced amount of energy required per unit of production are regarded as energy efficiency projects. Projects in excess of $100,000 require a full energy audit as specified in paragraph (d)(10)(iii)(B) of this section. The system engineering for such projects must be performed by a qualified entity certified Professional Engineer as specified in paragraph (d)(10)(iv)(A) of this section.

(i) *Qualifications of project team.* The energy efficiency project team is expected to consist of an energy auditor, a project manager, an equipment supplier of major components, a project engineer, and a construction contractor or system installer. One individual or entity may serve more than one role. The applicant must provide authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services. The applicant must also provide authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life. The applicant must:

(A) Discuss the qualifications of the various project team members including any relevant certifications by recognized organizations or bodies;

(B) Describe qualifications or experience of the team as related to installation, service, operation and maintenance of the project;

(C) Provide a list of the same or similarly engineered projects designed, installed, or supplied by the team or by team members and currently operating. Provide references if available; and

(D) Discuss the manufacturers of major energy efficiency equipment being considered including length of time in business.

(ii) *Agreements and permits.* The applicant must identify all necessary agreements and permits required for the energy efficiency improvement(s) and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (d)(10)(ii)(A) through (C) of this section.

(A) Energy efficiency improvements must be installed in accordance with local, State, and national building and electrical codes and regulations. Identify building code, electrical code, and zoning issues and required permits, and the schedule for meeting those requirements and securing those permits.

(B) Identify available component warranties for the specific project location and size.

(C) Identify all environmental issues, including environmental compliance issues, associated with the project.

(iii) *Energy assessment.* The applicant must provide adequate and appropriate evidence of energy savings expected when the system is operated as designed.

(A) The application must include information on baseline energy usage (preferably including energy bills for at least one year), expected energy savings based on manufacturers specifications

or other estimates, estimated dollars saved per year, and payback period in years (total investment cost equal to cumulative total dollars of energy savings). Calculation of energy savings should follow accepted methodology and practices. System interactions should be considered and discussed.

(B) For energy efficiency improvement projects in excess of $100,000, an energy audit is required. An energy audit is a written report by an independent, qualified entity that documents current energy usage, recommended potential improvements and their costs, energy savings from these improvements, dollars saved per year, and simple payback period in years (total costs divided by annual dollars of energy savings). The methodology of the energy audit must meet professional and industry standards. The energy audit must cover the following:

(*1*) *Situation report.* Provide a narrative description of the facility or process, its energy system(s) and usage, and activity profile. Also include price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.) paid by the customer on the date of the audit. Any energy conversion should be based on use rather than source.

(*2*) *Potential improvements.* List specific information on all potential energy-saving opportunities and their costs.

(*3*) *Technical analysis.* Give consideration to the interactions among the potential improvements and other energy systems:

(*i*) Estimate the annual energy and energy costs savings expected from each improvement identified in the potential project.

(*ii*) Calculate all direct and attendant indirect costs of each improvement.

(*iii*) Rank potential improvements measures by cost-effectiveness.

(*4*) *Potential improvement description.* Provide a narrative summary of the potential improvement and its ability to provide needed benefits, including a discussion of non-energy benefits such as project reliability and durability.

(*i*) Provide preliminary specifications for critical components.

(*ii*) Provide preliminary drawings of project layout, including any related structural changes.

(*iii*) Document baseline data compared to projected consumption, together with any explanatory notes. When appropriate, show before-and-after data in terms of consumption per unit of production, time or area. Include at least 1 year's bills for those energy sources/fuel types affected by this project. Also submit utility rate schedules, if appropriate.

(*iv*) Identify significant changes in future related operations and maintenance costs.

(*v*) Describe explicitly how outcomes will be measured.

(iv) *Design and engineering.* The applicant must provide authoritative evidence that the energy efficiency improvement(s) will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards.

(A) Energy efficiency improvement projects in excess of $100,000 must be engineered by a qualified entity. Systems must be engineered as a complete, integrated system with matched components.

(B) For all energy efficiency improvement projects, identify and itemize major energy efficiency improvements including associated project costs. Specifically delineate which costs of the project are directly associated with energy efficiency improvements. Describe the components, materials or systems to be installed and how they improve the energy efficiency of the process or facility being modified. Discuss passive improvements that reduce energy loads, such as improving the thermal efficiency of a storage facility, and active improvements that directly reduce energy consumption, such as replacing existing energy consuming equipment with high efficiency equipment, as separate topics. Discuss any anticipated synergy between active and passive improvements or other energy systems. Include in the discussion any change in on-site effluents, pollutants, or other by-products.

(C) Identify possible suppliers and model of major pieces of equipment.

(v) *Project development schedule.* The applicant must identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline including energy audit (if applicable), system and site design, permits and agreements, equipment procurement, and system installation from site preparation through startup and shakedown.

(vi) *Equipment procurement.* The applicant must demonstrate that equipment required for the energy efficiency improvement(s) is available and can be procured and delivered within the proposed project development schedule. Energy efficiency improvements may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Procurement must be made in accordance with the requirements of 7 CFR part 1924, subpart A.

(vii) *Equipment installation.* The applicant must fully describe the management of and plan for installation of the energy efficiency improvement(s), identify specific issues associated with installation, provide details regarding the scheduling of major installation equipment needed for project discussion, and provide a description of the startup and shakedown specification and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include in this discussion any unique concerns, such as the effects of energy efficiency improvements on system power quality.

(viii) *Operations and maintenance.* The applicant must identify the operations and maintenance requirements of the energy efficiency improvement(s) necessary for the energy efficiency improvement(s) to operate as designed over the design life. The applicant must:

(A) Provide information regarding component warranties and the availability of spare parts;

(B) Describe the routine operations and maintenance requirements of the proposed project, including maintenance schedules for the mechanical and electrical systems and system monitoring and control requirements;

(C) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(D) Provide and discuss the risk management plan for handling large, unanticipated failures of major components. Include in the discussion, costs and labor associated with operations and maintenance of system and plans for in or outsourcing; and

(E) For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance.

(ix) *Decommissioning.* Where appropriate, describe the decommissioning process. Describe the

decommissioning budget and any unique concerns to the decommissioning process.

§ 4280.112 Evaluation of grant applications.

(a) *General review.* The Agency will evaluate each application and make a determination whether the applicant is eligible, the proposed grant is for an eligible project, and the proposed grant complies with all applicable statutes and regulations.

(b) *Ineligible or incomplete applications.* If either the applicant or the project is ineligible, the Agency will inform the applicant in writing of the decision, reasons therefore, and any appeal rights, and no further evaluation of the application will occur. If the application is incomplete, the Agency will return it to the applicant to provide the applicant the opportunity to resubmit the application. The Agency will identify those parts of the application that are incomplete. Upon receipt of a complete application, the Agency will complete its evaluation of the application.

(c) *Technical feasibility determination.* The Agency's determination of a project's technical feasibility will be based on the information provided by the applicant and on other sources of information, such as recognized industry experts in the applicable technology field, as necessary, to determine technical feasibility of the proposed project.

(d) *Evaluation criteria.* Agency personnel will score and fund each application based on the evaluation criteria specified in paragraph (d)(1) of this section for renewable energy systems and in paragraph (d)(2) of this section for energy efficiency improvements. These criteria must be individually addressed in narrative form on a separate sheet of paper.

(1) *Criteria for applications for renewable energy systems.* Criteria for applications for renewable energy systems are:

(i) *Quantity of energy produced.* Points may only be awarded for either energy replacement or energy generation, but not for both;

(A) *Energy replacement.* If the proposed renewable energy system is intended primarily for self use by the farm, ranch, or rural small business and will provide energy replacement of greater than 75 percent, 20 points will be awarded; greater than 50 percent, but equal to or less than 75 percent, 15 points will be awarded; or greater than 25 percent, but equal to or less than 50 percent, 10 points will be awarded. The energy replacement should be determined by dividing the estimated quantity of energy to be generated by at least the past 12 months' energy profile of the agricultural producer or rural small business or anticipated energy use. The estimated quantity of energy may be described in Btu's, kilowatts, or similar energy equivalents. Energy profiles can be obtained from the utility company;

(B) *Energy generation.* If the proposed renewable energy system is intended primarily for production of energy for sale, 20 points will be awarded;

(ii) *Environmental benefits.* If the purpose of the proposed renewable energy system is to upgrade an existing facility or construct a new facility required to meet applicable health or sanitary standards, 10 points will be awarded. Documentation must be obtained by the applicant from the appropriate regulatory agency with jurisdiction to establish the standard, to verify that a bona fide standard exists, what that standard is, and that the proposed project is needed and required to meet the standard;

(iii) *Commercial availability.* If the renewable energy system is currently commercially available and replicable, an additional 10 points will be awarded;

(iv) *Cost effectiveness.* If the proposed renewable energy system will return the cost of the investment in 5 years or less, 25 points will be awarded; up to 10 years, 20 points will be awarded; up to 15 years, 15 points will be awarded; or up to 20 years, 10 points will be awarded. The estimated return on investment is calculated by dividing the total project cost by the estimated projected net annual income and/or energy savings of the renewable energy system;

(v) *Matching funds.* If the agricultural producer or rural small business has provided eligible matching funds of over 90 percent, 15 points will be awarded; 85–90 percent, 10 points will be awarded; or at least 80 and up to but not including 85 percent, 5 points will be awarded;

(vi) *Management.* If the renewable energy system will be monitored and managed by a qualified third-party operator, such as pursuant to a service contract, maintenance contract, or remote telemetry, an additional 10 points will be awarded; and

(vii) *Small agricultural producer.* If the applicant (for grants) or borrower (for guaranteed loans) is an agricultural producer producing agricultural products with a gross market value of less than $1 million in the preceding year, an additional 10 points will be awarded.

(2) *Criteria for applications for energy efficiency improvements.* Criteria for applications for energy efficiency improvements are:

(i) *Energy savings.* If the estimated energy expected to be saved by the installation of the energy efficiency improvements will be 35 percent or greater, 20 points will be awarded; 30 and up to but not including 35 percent, 15 points will be awarded; 25 and up to but not including 30 percent, 10 points will be awarded; or 20 and up to but not including 25 percent, 5 points will be awarded. Energy savings will be determined by the projections in an energy assessment or audit;

(ii) *Cost effectiveness.* If the proposed energy efficiency improvements will return the cost of the investment in 2 years or less, 25 points will be awarded; greater than 2 and up to and including 5 years, 20 points will be awarded; greater than 5 and up to and including 9 years, 15 points will be awarded; or greater than 9 and up to and including 11 years, 10 points will be awarded. The estimated return on investment is calculated by dividing the total project cost by the project net annual energy savings of the energy efficiency improvements;

(iii) *Matching funds.* If the agricultural producer or rural small business has provided eligible matching funds of over 90 percent, 15 points will be awarded; 85–90 percent, 10 points will be awarded; or 80 and up to but not including 85 percent, 5 points will be awarded; and

(iv) *Small agricultural producer.* If the applicant (for grants) or borrower (for guaranteed loans) is an agricultural producer producing agricultural products with a gross market value of less than $1 million in the preceding year, an additional 10 points will be awarded.

§ 4280.113 Insurance requirements.

Insurance is required to protect the interest of the recipient of funds under this subpart and the Agency. The coverage must be maintained for the life of the grant unless this requirement is waived or modified by the Agency in writing.

(a) Worker compensation insurance is required in accordance with State law.

(b) National flood insurance is required in accordance with 7 CFR part 1806, subpart B (RD Instructions 426.2).

(c) Business interruption insurance will be required.

§ 4280.114 Laws that contain other compliance requirements.

(a) *Equal employment opportunity.* For all construction contracts and grants

in excess of $10,000, the contractor must comply with Executive Order 11246, as amended by Executive Order 11375, and as supplemented by applicable Department of Labor regulations (41 CFR part 60). The applicant and borrower are responsible for ensuring that the contractor complies with these requirements.

(b) *Americans with Disabilities Act (ADA).* Loans and grants that involve the construction of or addition to facilities that accommodate the public and commercial facilities, as defined by the ADA, must comply with the ADA. The applicant and borrower are responsible for compliance.

(c) *Civil rights compliance.* Recipients of grants must comply with the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973. This may include collection and maintenance of data on the race, sex, and national origin on the recipient's membership/ownership and employees. These data should be available to conduct compliance reviews in accordance with 7 CFR part 1901, subpart E, § 1901.204, Compliance Review. Initial reviews will be conducted after Form RD 400–4, "Assurance Agreement," is signed and all subsequent reviews every three years thereafter. The Agency should be contacted to provide further guidance on collection of information and compliance with Civil Rights laws.

(d) *Environmental analysis.* Each applicant must prepare an environmental impact analysis using Form 1940–20, "Request for Environmental Information," pursuant to Rural Development environmental regulations found at 7 CFR part 1940, subpart G. The applicant will contact the appropriate State Agency office located in the applicant's State for assistance in completing this form. A site visit by the Agency will be scheduled, if necessary, to determine the scope of the review. The applicant will be notified of all specific compliance requirements, such as the publication of public notices. Any required environmental review must be completed by the Agency prior to the Agency obligating any grant or loan funds. The taking of any actions or incurring any obligations during the time of application or application review and processing that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction, will result in project ineligibility.

(e) *Executive Order 12898, Environmental Justice.* When grant and loans are proposed, Rural Development employees are to conduct a Civil Rights Impact Analysis in regard to environmental justice. The CIRA must be conducted and the analysis documented utilizing Form RD 2006–38, Civil Rights Impact Analysis Certification. This must be done prior to loan approval, obligation of funds, or other commitments of agency resources, including issuance of a Letter of Conditions or a Conditional Commitment (Form 4279–3) of guarantee, whichever occurs first.

§ 4280.115 Construction planning and performing development.

The requirements of 7 CFR part 1924, except as identified in paragraph (a) of this section, apply for construction of renewable energy systems and energy efficiency improvement projects as applicable.

(a) The following sections and paragraphs either do not apply to this subpart or are modified for the purposes of this subpart as described:

(1) Under § 1924.4,

(i) For the purposes of this subpart, "County Supervisor," "Assistant County Supervisor," "District Director," and "Assistant District Director" means the Agency. Wherever those terms are used in 7 CFR part 1924, subpart A, read "the Agency."

(ii) The definition for "manufactured housing" does not apply; and

(iii) The definition for "modular/panelized housing" does not apply;

(2) § 1924.5(c) does not apply;

(3) § 1924.5(d)(1)(i), (ii), and (vi) do not apply;

(4) § 1924.5(d)(2) does not apply;

(5) § 1924.5(d)(4)(i) and (iv) do not apply;

(6) § 1924.5(f)(1)(i), (ii), (iii)(A), (iii)(B), (iii)(D), and (iii)(F) do not apply;

(7) § 1924.5(f)(2) does not apply;

(8) § 1924.5(i) does not apply;

(9) § 1924.6(a)(1), (2), and (3) do not apply;

(10) § 1924.6(b) does not apply;

(11) § 1924.6(c) does not apply;

(12) § 1924.6(d) does not apply;

(13) § 1924.8 does not apply;

(14) § 1924.10(c)(1) does not apply;

(15) § 1924.12 does not apply;

(16) § 1924.13(c) does not apply;

(17) § 1924.13(e)(1) does not apply; and

(18) § 1924, Exhibits A through E and I through M do not apply.

(b) Recipients of grants under this subpart are not authorized to construct the facility, project, or improvement in total, or in part, or utilize their own personnel and/or equipment.

§ 4280.116 Grantee requirements.

(a) Letter of Conditions, which is prepared by the Agency, establishes conditions that must be understood and agreed to by the applicant before any obligation of funds can occur. The applicant must sign Letter of Intent to Meet Conditions and Form 1940–1, "Request for Obligation of Funds," if they accept the conditions of the grant. These forms will be enclosed with the Letter of Conditions. The grant will be obligated when the Agency receives an executed Letter of Intent and Request for Obligation of Funds from the applicant agreeing to all provisions in the Letter of Conditions.

(b) The grantee must sign and abide by all requirements contained in Form 4280–2, "Grant Agreement," and this subpart.

§ 4280.117 Servicing grants.

Grants will be serviced in accordance with 7 CFR part 1951, subpart E and the Grant Agreement.

§§ 4280.118–4280.120 [Reserved]

Guaranteed Loans

§ 4280.121 Borrower eligibility.

To receive a guaranteed loan under this subpart, a borrower must meet each of the criteria, as applicable, identified in § 4280.107(a) through (e).

§ 4280.122 Project eligibility.

For a project to be eligible to receive a guaranteed loan under this subpart, the project must meet each of the criteria, as applicable, in § 4280.108.

§ 4280.123 Guaranteed loan funding.

(a) The amount of guaranteed loan funds that will be made available to an eligible project under this subpart will not exceed 50 percent of eligible project costs. Eligible project costs are only those costs associated with the items listed in paragraphs (a)(1) through (11) of this section, as long as the items are an integral and necessary part of the total project.

(1) Post-application purchase and installation of equipment, except agricultural tillage equipment and vehicles;

(2) Post-application construction or project improvements, except residential;

(3) Energy audits or assessments;

(4) Permit fees;

(5) Professional service fees, except for application preparation;

(6) Feasibility studies;

(7) Business plans;

(8) Retrofitting;

(9) Construction of a new facility only when the facility is used for the same purpose, is approximately the same size, and, based on the energy audit, will provide more energy savings than

improving an existing facility. Only costs identified in the energy audit for energy efficiency projects are allowed;

(10) Working capital; and

(11) Land acquisition.

(b) The minimum amount of a guaranteed loan made to a borrower is $2,500. The maximum amount of a guaranteed loan made to a borrower is $10 million.

(c) The percentage of guarantee, up to the maximum allowed by this section, will be negotiated between the lender and the Agency. The maximum percentage of guarantee is 85 percent for loans of $600,000 or less; 80 percent for loans greater than $600,000 but up to $5 million; 70 percent for loans greater than $5 million but up to $10 million.

(d) The total amount of Agency loans under this program to one borrower, including the guaranteed and unguaranteed portions, the outstanding principal and interest balance of any existing Agency guaranteed loans, and new loan request, must not exceed $10 million.

§ 4280.124 Interest rates.

(a) The interest rate for the guaranteed loan will be negotiated between the lender and the borrower and may be either fixed or variable as long as it is a legal rate. The variable rate will be based on published indices, such as money market indices. In no case, however, shall the rate be more than the rate customarily charged borrowers in similar circumstances in the ordinary course of business. The interest rate charged is subject to Agency review and approval.

(b) A variable interest rate agreed to by the lender and borrower must be a rate that is tied to a base rate agreed to by the lender and the Agency. The variable interest rate may be adjusted at different intervals during the term of the loan, but the adjustments may not be more often than quarterly and must be specified in the Loan Agreement. The lender must incorporate, within the variable rate Promissory Note at loan closing, the provision for adjustment of payment installments coincident with an interest-rate adjustment. The lender must ensure that the outstanding principal balance is properly amortized within the prescribed loan maturity to eliminate the possibility of a balloon payment at the end of the loan.

(c) Any change in the interest rate between the date of issuance of the Conditional Commitment and before the issuance of the Loan Note Guarantee must be approved in writing by the Agency approval official. Approval of such a change will be shown as an amendment to the Conditional Commitment.

(d) A combination of fixed and variable rates will be allowed.

§ 4280.125 Terms of loan.

(a) The maximum loan term limits will be utilized only when the loan cannot reasonably be repaid over a shorter term. The repayment term for a loan for:

(1) Real estate must not exceed 30 years.

(2) Machinery and equipment must not exceed 15 years, or the useful life, whichever is less.

(3) Repayment for combined loans on real estate and equipment must occur before 20 years.

(4) Working capital must not exceed 7 years.

(b) The first installment of principal and interest will, if possible, be scheduled for payment after the project is operational and has begun to generate income.

(c) Only loans that require a periodic payment schedule that will fully retire the debt over the term of the loan without a balloon payment will be guaranteed.

(d) A loan's maturity will take into consideration the use of proceeds, the useful life of assets being financed, and the borrower's ability to repay the loan.

(e) All loans guaranteed through this program must be sound, with reasonably assured repayment.

§ 4280.126 Guarantee/annual renewal fee percentages.

(a) *Fee ceilings.* The maximum guarantee fee that may be charged is 1 percent. The maximum annual renewal fee that may be charged is 0.5 percent. The Agency will establish each year the guarantee fee and annual renewal fee and a notice will be published in the **Federal Register**.

(b) *Guarantee fee.* The guarantee fee will be paid to the Agency by the lender and is nonrefundable. The guarantee fee may be passed on to the borrower. The guarantee fee must be paid at the time the Loan Note Guarantee is issued.

(c) *Annual renewal fee.* The annual renewal fee will be calculated on the unpaid principal balance and billed to the lender in accordance with the **Federal Register** publication. The annual renewal fee may not be passed on to the borrower.

§ 4280.127 [Reserved]

§ 4280.128 Application and documentation.

The following requirements apply to all guaranteed loan applications under this subpart.

(a) *Applications.* Applications must be filed with the Agency by submitting the application information required in § 4280.111(a) (except for §§ 4280.111(a)(4)(iii)(A) and 4280.111(a)(4)(vi)).

(b) *Forms, certifications, and agreements.* Each application submitted under paragraph (a) of this section must contain, as applicable, the items described in § 4280.111(b)(7) through (15) and in paragraphs (b)(1) through (8) of this section.

(1) A completed Form 4279–1, "Application for Loan Guarantee."

(2) A personal credit report for the borrower, a proprietor (owner), each partner, officer, director, key employee, and stockholder owning 20 percent or more interest in the borrower's business from a credit reporting company acceptable to the Agency.

(3) Appraisals completed in accordance with § 4280.141. Completed appraisals should be submitted when the application is filed. If the appraisal has not been completed when the application is filed, the applicant must submit an estimated appraisal. In all cases, a completed appraisal must be submitted prior to the loan being closed.

(4) Lender's complete comprehensive written analysis in accordance with § 4280.139.

(5) Commercial credit reports obtained by the lender on the borrower and any parent, affiliate, and subsidiary firms.

(6) Current personal and corporate financial statements of any guarantors.

(7) A proposed Loan Agreement or a sample Loan Agreement with an attached list of the proposed Loan Agreement provisions. The following requirements must be addressed in the proposed or sample Loan Agreement:

(i) Prohibition against assuming liabilities or obligations of others.

(ii) Restriction on dividend payments.

(iii) Limitation on the purchase or sale of equipment and fixed assets.

(iv) Limitation on compensation of officers and owners.

(v) Minimum working capital or current ratio requirement.

(vi) Maximum debt-to-net worth ratio.

(vii) Restrictions concerning consolidations, mergers, or other circumstances.

(viii) Limitations on selling the business without the concurrence of the lender.

(ix) Repayment and amortization of the loan.

(x) List of collateral and lien priority for the loan including a list of persons and corporations guaranteeing the loan with a schedule for providing the lender with personal and corporate financial

statements. Financial statements on the corporate and personal guarantors must be updated at least annually.

(xi) Type and frequency of financial statements to be required for the duration of the loan.

(xii) The final Loan Agreement between the lender and borrower must contain any additional requirements imposed by the Agency in its Conditional Commitment (Form 4279–3).

(xiii) When submitting the proposed Loan Agreement, a section within the loan agreement reserved for the later insertion of any necessary measures by the borrower to avoid or reduce adverse environmental impacts from this proposal's construction or operation. Such measures, if necessary, will be determined by the Agency through the completion of the environmental review process.

(xiv) Allow the Agency access to the project and its performance information during its useful life and permit periodic inspection of the project by a representative of the Agency.

(8) A certification by the lender that it has completed a comprehensive written analysis of the proposal, the borrower is eligible, the loan is for authorized purposes, and there is reasonable assurance of repayment ability based on the borrower's history, projections and equity, and the collateral to be obtained.

(c) *Feasibility study for renewable energy systems.* Each applicant must submit the information required under § 4280.111(c), as applicable.

(d) *Technical requirements reports.* Each applicant must submit the information required under § 4280.111(d), as applicable.

§ 4280.129 Evaluation of guaranteed loan applications.

(a) *General review.* The Agency will evaluate each application and make a determination whether the borrower is eligible, the proposed loan is for an eligible project, there is reasonable assurance of repayment ability, there is sufficient collateral and equity, and the proposed loan complies with all applicable statutes and regulations. If the Agency determines it is unable to guarantee the loan, the lender will be informed in writing. Such notification will include the reasons for denial of the guarantee.

(b) *Ineligible or incomplete applications.* If either the borrower or the project is ineligible, the Agency will inform the lender in writing of the decision, reasons therefore, and any appeal rights, and no further evaluation of the application will occur. If the application is incomplete, the Agency will return it to the lender to provide the lender the opportunity to resubmit the application. The Agency will identify those parts of the application that are incomplete. Upon receipt of a complete application, the Agency will complete its evaluation of the application.

(c) *Evaluation criteria.* Agency personnel will score each application based on the evaluation criteria specified in § 4280.112(d) (except for the criteria specified in § 4280.112(d)(1)(v) and (d)(2)(iii)) and in paragraphs (c)(1) and (2) of this section:

(1) If the rate of the loan is below the Prime Rate (as published in The Wall Street Journal) plus 1.75 percent (5 points); and

(2) If the rate of the loan is below the Prime Rate (as published in The Wall Street Journal) plus 1 percent (an additional 5 points).

(d) *Technical feasibility determination.* The Agency's determination of a project's technical feasibility will be based on the information provided by the applicant and on other sources of information, such as recognized industry experts in the applicable technology field, as necessary, to determine technical feasibility of the proposed project.

§ 4280.130 Eligible lenders.

An eligible lender is any Federal or State chartered bank, Farm Credit Bank, other Farm Credit System institution with direct lending authority, Bank for Cooperatives, or Savings and Loan Association. These entities must be subject to credit examination and supervision by either an agency of the United States or a State. Eligible lenders will also include credit unions, provided they are subject to credit examination and supervision by either the National Credit Union Administration or a State agency, and insurance companies, provided they are regulated by a State or National insurance regulatory agency. Eligible lenders include the National Rural Utilities Cooperative Finance Corporation.

§ 4280.131 Lenders' functions and responsibilities.

(a) *General.* Lenders are responsible for implementing the guaranteed loan program under this subpart. All lenders requesting or obtaining a loan guarantee must perform the requirements specified in paragraphs (a)(1) through (9) in this section:

(1) Process applications for guaranteed loans;

(2) Develop and maintain adequately documented loan files;

(3) Recommend only loan proposals that are eligible and financially feasible;

(4) Obtain valid evidence of debt and collateral in accordance with sound lending practices;

(5) Supervise construction;

(6) Distribute loan funds; A lender that is considering advancing an interim loan is advised that the Agency assumes no responsibility or obligation to take out an interim loan advanced prior to the Conditional Commitment being issued;

(7) Service guaranteed loans in a reasonable and prudent manner; including liquidation, if necessary;

(8) Follow Agency regulations; and

(9) Obtain Agency approvals or concurrence as required.

(b) *Credit evaluation.* The lender must analyze all credit factors associated with each proposed loan and apply its professional judgment to determine that the credit factors, considered in combination, ensure loan repayment. The lender must have an adequate underwriting process to ensure that loans are reviewed by someone other than the originating officer. There must be good credit documentation procedures.

(c) *Environmental information.* Lenders must ensure that borrowers furnish all environmental information required under 7 CFR part 1940, subpart G. Lenders have a responsibility to become familiar with Federal environmental requirements; to consider, in consultation with the prospective borrower, the potential environmental impacts of their proposals at the earliest planning stages; and to develop proposals that minimize the potential to adversely impact the environment. Lenders must alert the Agency to any controversial environmental issues related to a proposed project or items that may require extensive environmental review. Lenders must help the borrower prepare Form RD 1940–20 (when required by 7 CFR part 1940, subpart G); assist in the collection of additional data when the Agency needs such data to complete its environmental review of the proposal; and assist in the resolution of environmental problems. Lenders must alert the Agency to any controversial environmental issues related to a proposed project or items that may require extensive environmental review.

(d) *Construction planning and performing development.*

(1) *Design policy.* The lender must ensure that all project facilities are designed utilizing accepted architectural and engineering practices

and must conform to applicable Federal, state, and local codes and requirements as well as all requirements of this regulation. The lender must also ensure that the project will be completed with available funds and, once completed, will be used for its intended purpose and produce products in the quality and quantity proposed in the completed application approved by the Agency.

(2) *Project control.* The lender must monitor the progress of construction and undertake the reviews and inspections necessary to ensure that construction conforms with applicable Federal, state, and local code requirements; proceeds are used in accordance with the approved plans, specifications, and contract documents; and that funds are used for eligible project costs.

(e) *Loan closing.* The lender must conduct loan closings.

§ 4280.132 Access to records.

Both the lender and borrower must permit representatives of the Agency (or other agencies of the United States) to inspect and make copies of any records of the lender or borrower pertaining to the Agency guaranteed loans during regular office hours of the lender or borrower or at any other time upon agreement between the lender, the borrower, and the Agency, as appropriate.

§ 4280.133 Conditions of guarantee.

A loan guarantee under this subpart will be evidenced by a Loan Note Guarantee issued by the Agency. Each lender must execute a Lender's Agreement (Form 4279–4). If a valid Lender's Agreement already exists, it is not necessary to execute a new Lender's Agreement with each loan guarantee. The provisions of this subpart apply to all outstanding guarantees. In the event of a conflict between the guarantee documents and this subpart as they exist at the time the documents are executed, this subpart will control.

(a) *Full faith and credit.* A guarantee under this subpart constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which a lender or holder has actual knowledge at the time it becomes such lender or holder or which a lender or holder participates in or condones. The guarantee will be unenforceable to the extent that any loss is occasioned by a provision for interest on interest. In addition, the guarantee will be unenforceable by the lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which the Agency acquires knowledge thereof. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by the Agency in its Conditional Commitment. The Agency will guarantee payment as follows:

(1) To any holder, 100 percent of any loss sustained by the holder on the guaranteed portion of the loan and on interest due on such portion.

(2) To the lender, the lesser of:

(i) Any loss sustained by the lender on the guaranteed portion, including principal and interest evidenced by the notes or assumption agreements and secured advances for protection and preservation of collateral made with the Agency's authorization; or

(ii) The guaranteed principal advanced to or assumed by the borrower and any interest due thereon.

(b) *Rights and liabilities.* When a guaranteed portion of a loan is sold to a holder, the holder will succeed to all rights of the lender under the Loan Note Guarantee to the extent of the portion purchased. The lender must remain bound to all obligations under the Loan Note Guarantee, Lender's Agreement, and the Agency program regulations. A guarantee and right to require purchase will be directly enforceable by a holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the guarantee by the lender, except for fraud or misrepresentation of which the holder had actual knowledge at the time it became the holder or in which the holder participates or condones. In the event of material fraud, negligence or misrepresentation by the lender or the lender's participation in or condoning of such material fraud, negligence or misrepresentation, the lender will be liable for payments made by the Agency to any holder.

(c) *Payments.* A lender will receive all payments of principal and interest on account of the entire loan and will promptly remit to the holder its pro rata share thereof, determined according to its respective interest in the loan, less only the lender's servicing fee.

§ 4280.134 Sale or assignment of guaranteed loan.

(a) The lender may sell all or part of the guaranteed portion of the loan on the secondary market or retain the entire loan. The lender must not sell or assign any amount of the guaranteed or unguaranteed portion of the loan to the borrower or members of the borrower's immediate families, officers, directors, stockholders, other owners, or a parent, subsidiary or affiliate. If the lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default. Loans made with the proceeds of any obligation, the interest on which is excludable from income under 26 U.S.C. § 103 (interest on State and local banks) or any successor section, will not be guaranteed.

(b) The entire loan must be evidenced by one note, and only one Loan Note Guarantee will be issued. The lender may assign all or part of the guaranteed portion of the loan to one or more holders only by using the Agency's Assignment Guarantee Agreement. The holder, upon written notice to the lender and the Agency, may reassign the unpaid guaranteed portion of the loan sold under the Assignment Guarantee Agreement. Upon notification and completion of the assignment, the assignee will succeed to all rights and obligations of the holder thereunder.

(c) The lender's servicing fee will stop when the Agency purchases the guaranteed portion of the loan from the secondary market. No such servicing fee may be charged to the Agency and all loan payments and collateral proceeds received will be applied first to the guaranteed loan and, when applied to the guaranteed loan, will be applied on a pro rata basis.

§ 4280.135 Participation.

The lender may obtain participation in the loan under its normal operating procedures; however, the lender must retain title to the note and retain its interest in the collateral.

§ 4280.136 Minimum retention.

The lender must hold in its own portfolio a minimum of 5 percent of the total loan amount. The amount required to be maintained must be of the unguaranteed portion of the loan and cannot be participated to another. The lender may sell the remaining amount of the unguaranteed portion of the loan only through participation.

§ 4280.137 Repurchase from holder.

(a) *Repurchase by lender.* A lender has the option to repurchase the unpaid guaranteed portion of the loan from a holder within 30 days of written demand by the holder when the borrower is in default not less than 60 days on principal or interest due on the loan; or the lender has failed to remit to the holder its pro rata share of any payment made by the borrower within 30 days of the lender's receipt thereof. The repurchase by the lender will be for an amount equal to the unpaid

guaranteed portion of principal and accrued interest less the lender's servicing fee. The holder must concurrently send a copy of the demand letter to the Agency. The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the demand letter to the lender requesting the repurchase. The lender will accept an assignment without recourse from the holder upon repurchase. The lender is encouraged to repurchase the loan to facilitate the accounting of funds, resolve the problem, and prevent default, where and when reasonable. The lender must notify, in writing, the holder and the Agency of its decision.

(b) *Agency repurchase.*

(1) If the lender does not repurchase the unpaid guaranteed portion of the loan as provided in paragraph (a) of this section, the Agency will purchase from the holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase, less the lender's servicing fee, within 30 days after written demand to the Agency from the holder. (This is in addition to the copy of the written demand on the lender.) The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the original demand letter of the holder to the lender requesting the repurchase.

(2) The holder's demand to the Agency must include a copy of the written demand made upon the lender. The holder must also include evidence of its right to require payment from the Agency. Such evidence must consist of either the original of the Loan Note Guarantee properly endorsed to the Agency or the original of the Assignment Guarantee Agreement properly assigned to the Agency without recourse including all rights, title, and interest in the loan. The holder must include in its demand the amount due including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date. The Agency will be subrogated to all rights of the holder.

(3) The Agency will notify, in writing, the lender of its receipt of the holder's demand for payment. The lender must promptly provide the Agency with the information necessary for the Agency to determine the appropriate amount due the holder. Upon request by the Agency, the lender will furnish a current statement certified by an appropriate, authorized officer of the lender of the unpaid principal and interest then owed by the borrower on the loan and the amount then owed to any holder. Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved between the lender and the holder before payment will be approved. Such conflict will suspend the running of the 30-day payment requirement.

(4) Purchase by the Agency neither changes, alters, nor modifies any of the lender's obligations to the Agency arising from the loan or guarantee nor does it waive any of the Agency's rights against the lender. The Agency has the right to set-off against the lender all rights inuring to the Agency as the holder of the instrument against the Agency's obligation to the lender under the guarantee.

(c) *Repurchase for servicing.* If, in the opinion of the lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the holder must sell the guaranteed portion of the loan to the lender for an amount equal to the unpaid principal and interest on such portion less the lender's servicing fee. The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the demand letter of the lender or the Agency to the holder requesting the holder to tender its guaranteed portion. The lender must not repurchase from the holder for arbitrage or other purposes to further its own financial gain. Any repurchase must be made only after the lender obtains the Agency's written approval. If the lender does not repurchase the portion from the holder, the Agency may, at its option, purchase such guaranteed portion for servicing purposes.

§ 4280.138 Replacement of document.

(a) The Agency may issue a replacement Loan Note Guarantee or Assignment Guarantee Agreement which was lost, stolen, destroyed, mutilated, or defaced to the lender or holder upon receipt of an acceptable certificate of loss and an indemnity bond.

(b) When a Loan Note Guarantee or Assignment Guarantee Agreement is lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender or holder, the lender must coordinate the activities of the party who seeks the replacement documents and will submit the required documents to the Agency for processing. The requirements for replacement are as follows:

(1) A certificate of loss, notarized and containing a jurat, which includes:

(i) Name and address of owner;

(ii) Name and address of the lender of record;

(iii) Capacity of person certifying;

(iv) Full identification of the Loan Note Guarantee or Assignment Guarantee Agreement including the name of the borrower, the Agency's case number, date of the Loan Note Guarantee or Assignment Guarantee Agreement, face amount of the evidence of debt purchased, date of evidence of debt, present balance of the loan, percentage of guarantee, and, if an Assignment Guarantee Agreement, the original named holder and the percentage of the guaranteed portion of the loan assigned to that holder. Any existing parts of the document to be replaced must be attached to the certificate;

(v) A full statement of circumstances of the loss, theft, mutilation, defacement, or destruction of the Loan Note Guarantee or Assignment Guarantee Agreement; and

(vi) For the holder, evidence demonstrating current ownership of the Loan Note Guarantee and Note or the Assignment Guarantee Agreement. If the present holder is not the same as the original holder, a copy of the endorsement of each successive holder in the chain of transfer from the initial holder to present holder must be included if in existence. If copies of the endorsement cannot be obtained, best available records of transfer must be submitted to the Agency (*e.g.*, order confirmation, canceled checks, etc.).

(2) An indemnity bond acceptable to the Agency must accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal corporation, a State or territory, or the District of Columbia. The bond must be with surety except when the outstanding principal balance and accrued interest due the present holder is less than $1 million, verified by the lender in writing in a letter of certification of balance due. The surety must be a qualified surety company holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 570.

(3) All indemnity bonds must be issued and payable to the United States of America acting through the USDA. The bond must be in an amount not less than the unpaid principal and interest. The bond must hold USDA harmless against any claim or demand which might arise or against any damage, loss, costs, or expenses which might be sustained or incurred by reasons of the loss or replacement of the instruments.

§ 4280.139 Credit quality.

The lender must determine credit quality and must address all of the elements of credit quality in a written credit analysis including adequacy of equity, cash flow, collateral, history, management, and the current status of the industry for which credit is to be extended.

(a) *Cash flow.* All efforts will be made to structure debt so that the business has adequate debt coverage and the ability to accommodate expansion.

(b) *Collateral.* Collateral must have documented value sufficient to protect the interest of the lender and the Agency and the discounted collateral value will normally be at least equal to the loan amount. Lenders will discount collateral consistent with sound loan-to-value policy.

(c) *Equity.* In determining the adequacy of equity, the lender must meet the criteria specified in paragraph (c)(1) of this section for loans over $600,000 and the criteria in paragraph (c)(2) of this section for loans of $600,000 or less.

(1) For loans over $600,000, borrowers shall demonstrate evidence of cash equity injection in the project of not less than 25 percent of eligible project costs. The fair market value of equity in real property that is to be pledged as collateral for the loan may be substituted in whole or in part to meet the cash equity requirement. However, the appraisal completed to establish the fair market value of the real property must not be more than one year old and must meet the Agency appraisal standards.

(2) For loans of $600,000 or less, borrowers shall demonstrate evidence of cash equity injection in the project of not less than 15 percent of eligible project costs. However, the appraisal completed to establish the fair market value of the real property must not be more than one year old and must meet the Agency appraisal standards.

(d) *Lien priorities.* The entire loan must be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will neither be paid first nor given any preference or priority over the guaranteed portion. A parity or junior position may be considered by the Agency provided discounted collateral values are adequate to secure the loan in accordance with paragraph (b) of this section after considering prior liens.

§ 4280.140 Financial statements.

(a) Except for the requirement to demonstrate financial need for the funding, the financial information required in § 4280.111(a)(4)(iii) is required for the guaranteed loan program.

(b) If the proposed guaranteed loan exceeds $3 million, the Agency will require annual audited financial statements.

§ 4280.141 Appraisals.

(a) *Loans of $600,000 or more.* A complete self-contained appraisal must be conducted. Lenders will be responsible for ensuring that appraisal values adequately reflect the actual value of the collateral. All real property appraisals associated with Agency guaranteed loanmaking and servicing transactions must meet the requirements contained in the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989 and the appropriate guidelines contained in Standards 1 and 2 of the Uniform Standards of Professional Appraisal Practices (USPAP). All appraisals will include consideration of the potential effects from a release of hazardous substances or petroleum products or other environmental hazards on the market value of the collateral. Lenders must complete at least a Transaction Screen Questionnaire environmental site assessment for any new sites and a Phase I environmental site assessment on existing business sites, which should be provided to the appraiser for completion of the self-contained appraisal. Chattels will be evaluated in accordance with normal banking practices and generally accepted methods of determining value.

(b) *Loans for less than $600,000.* A complete summary appraisal may be conducted in lieu of a complete self-contained appraisal as required under paragraph (a) of this section. Summary appraisals must be conducted in accordance with USPAP.

(c) *Specialized appraisers.* Specialized appraisers will be required to complete appraisals in accordance with paragraphs (a) and (b) of this section. The Agency may approve a waiver of this requirement only if a specialized appraiser does not exist in a specific industry or hiring one would cause an undue financial burden to the borrower.

§ 4280.142 Personal and corporate guarantees.

(a) Personal and corporate guarantees, when obtained, are part of the collateral for the loan. However, the value of such guarantee is not considered in determining whether a loan is adequately secured for loanmaking purposes.

(b) Unconditional personal and corporate guarantees for those owning or having a beneficial interest greater than 20 percent of the borrower will be required where legally permissible.

§ 4280.143 Loan approval and obligation of funds.

(a) Upon approval of a loan guarantee, the Agency will issue a Conditional Commitment to the lender containing conditions under which a Loan Note Guarantee will be issued

(b) If certain conditions of the Conditional Commitment cannot be met, the lender and/or borrower may propose alternate conditions. Within the requirements of the applicable regulations and instructions and reasonable and prudent lending practices, the Agency may negotiate with the lender and/or borrower regarding any proposed changes to the Conditional Commitment.

§ 4280.144 Transfer of lenders.

(a) The Agency may approve the substitution of a new eligible lender in place of a former lender who holds an outstanding Conditional Commitment when the Loan Note Guarantee has not yet been issued provided, that there are no changes in the borrower's ownership or control, loan purposes, or scope of project, and loan conditions in the Conditional Commitment and the Loan Agreement remain the same.

(b) The new lender's servicing capability, eligibility, and experience will be analyzed by the Agency prior to approval of the substitution. The original lender will provide the Agency with a letter stating the reasons it no longer desires to be a lender for the project. The substituted lender must execute a new part B of Form 4279–1, "Application for Loan Guarantee."

§ 4280.145 Changes in borrower.

Any changes in borrower ownership or organization prior to the issuance of the Loan Note Guarantee must meet the eligibility requirements of the program and be approved by the Agency loan approval official.

§ 4280.146 Conditions precedent to issuance of Loan Note Guarantee.

The Loan Note Guarantee will not be issued until the lender certifies to the following:

(a) No major changes have been made in the lender's loan conditions and requirements since the issuance of the Conditional Commitment, unless such changes have been approved by the Agency.

(b) All planned property acquisition has been completed, all development has been completed in accordance with

plans and specifications, conforms with applicable Federal, state, and local codes, performed at a steady state operating level in accordance with the technical requirements, and costs have not exceeded the amount approved by the lender and the Agency.

(c) Hazard, flood, liability, worker compensation, and personal life insurance, when required, are in effect.

(d) Truth-in-lending requirements have been met.

(e) All equal credit opportunity requirements have been met.

(f) The loan has been properly closed, and the required security instruments have been obtained.

(g) The borrower has marketable title to the collateral then owned by the borrower, subject to the instrument securing the loan to be guaranteed and to any other exceptions approved in writing by the Agency.

(h) When required, the entire amount of the loan for working capital has been disbursed except in cases where the Agency has approved disbursement over an extended period of time.

(i) When required, personal, partnership, or corporate guarantees have been obtained.

(j) All other requirements of the Conditional Commitment have been met.

(k) Lien priorities are consistent with the requirements of the Conditional Commitment. No claims or liens of laborers, subcontractors, suppliers of machinery and equipment, or other parties have been or will be filed against the collateral, and no suits are pending or threatened that would adversely affect the collateral when the security instruments are filed.

(l) The loan proceeds have been or will be disbursed for purposes and in amounts consistent with the Conditional Commitment and the Application for Loan Guarantee (Form 4279–1). A copy of the detailed loan settlement of the lender must be attached to support this certification.

(m) There has been neither any material adverse change in the borrower's financial condition nor any other material adverse change in the borrower, for any reason, during the period of time from the Agency's issuance of the Conditional Commitment to issuance of the Loan Note Guarantee, regardless of the cause or causes of the change and whether or not the change or causes of the change were within the lender's or borrower's control. The lender must address any assumptions or reservations in the requirement and must address all adverse changes of the borrower, any parent, affiliate, or subsidiary of the borrower, and guarantors.

(n) None of the lender's officers, directors, stockholders, or other owners (except stockholders in an institution that has normal stockshare requirements for participation) has a substantial financial interest in the borrower and neither the borrower nor its officers, directors, stockholders, or other owners has a substantial financial interest in the lender. If the borrower is a member of the board of directors or an officer of a Farm Credit System (FCS) institution that is the lender, the lender will certify that an FCS institution on the next highest level will independently process the loan request and act as the lender's agent in servicing the account.

(o) The Loan Agreement includes all measures identified in the Agency's environmental impact analysis for this proposal (measures with which the borrower must comply) for the purpose of avoiding or reducing adverse environmental impacts of the proposal's construction or operation.

§ 4280.147 Issuance of the guarantee.

(a) When loan closing plans are established, the lender must notify the Agency in writing. At the same time, or immediately after loan closing, the lender must provide the following to the Agency:

(1) Lender's certifications as required by § 4280.146,

(2) Executed Form 4279–4, "Lender's Agreement," and

(3) Executed Form RD 1980–19, "Guaranteed Loan Closing Report" and appropriate guarantee fee.

(b) When the Agency is satisfied that all conditions for the guarantee have been met, the Loan Note Guarantee and the following documents, as appropriate, will be issued:

(1) *Assignment Guarantee Agreement.* If the lender assigns the guaranteed portion of the loan to a holder, the lender, holder, and the Agency must execute the Assignment Guarantee Agreement;

(2) *Certificate of Incumbency.* If requested by the lender, the Agency will provide the lender with a copy of Form 4279–7, "Certificate of Incumbency and Signature," with the signature and title of the Agency official who signs the Loan Note Guarantee, Lender's Agreement, and Assignment Guarantee Agreement;

(3) Copies of legal loan documents; and

(4) Disbursement plan if working capital is a purpose of the project.

§ 4280.148 Refusal to execute Loan Note Guarantee.

If the Agency determines that it cannot execute the Loan Note Guarantee, the Agency will promptly inform the lender of the reasons and give the lender a reasonable period within which to satisfy the objections. If the lender requests additional time in writing and within the period allowed, the Agency may grant the request. If the lender satisfies the objections within the time allowed, the guarantee will be issued.

§ 4280.149 Requirements after project construction.

Once the project has been constructed, the lender must provide the Agency periodic reports from the borrower. The borrower's reports will include, but not be limited to, the information specified in paragraphs (a) and (b) of this section, as applicable.

(a) For renewable energy systems, commencing the first full calendar year following the year in which project construction was completed and continuing for 3 full years, provide a report detailing the following will be provided:

(1) Report the actual amount of energy produced in BTUs, kilowatts, or similar energy equivalents.

(2) If applicable, provide documentation that identified health and/or sanitation problem has been solved.

(3) Provide the annual income and/or energy savings of the renewable energy system.

(4) Summarize the cost of operating and maintaining the facility.

(5) Description of any maintenance or operational problems associated with the facility.

(6) Recommendations for development of future similar projects.

(b) For energy efficiency improvement projects, commencing the first full calendar year following the year in which project construction was completed and continuing for 2 full years, report the actual amount of energy saved due to the energy efficiency improvements.

§ 4280.150 Insurance requirements.

(a) Each borrower must obtain the insurance required in § 4280.113(a) through (c) and in paragraphs (b) and (c) in this section. The coverage required by this section must be maintained for the life of the loan unless this requirement is waived or modified by the Agency in writing.

(b) Hazard insurance with a standard mortgage clause naming the lender as beneficiary will be required on every

loan in an amount that is at least the lesser of the depreciated replacement value of the collateral or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk during construction by the business, and property damage.

(c) The lender may require life insurance on every loan to insure against the risk of death of persons critical to the success of the business. When required, coverage will be in amounts necessary to provide for management succession or to protect the business. The cost of insurance and its effect on the borrower's working capital must be considered as well as the amount of existing insurance which could be assigned without requiring additional expense.

§ 4280.151 Laws that contain other compliance requirements.

(a) Each applicant and borrower must comply with the requirements specified in § 4280.114(a), (b), and (d), as applicable, and with paragraph (b) of this section.

(b) *Equal Credit Opportunity Act.* In accordance with the Equal Credit Opportunity Act (Title V of Pub. L. 90–321, as amended), with respect to any aspect of a credit transaction, neither the lender nor the Agency will discriminate against any borrower on the basis of race, color, religion, national origin, sex, marital status or age (providing the borrower has the capacity to contract), or because all or part of the borrower's income derives from a public assistance program, or because the borrower has, in good faith, exercised any right under the Consumer Protection Act. The lender will comply with the requirements of the Equal Credit Opportunity Act as contained in the Federal Reserve Board's Regulation implementing that Act (see 12 CFR part 202). Such compliance will be accomplished prior to loan closing.

§ 4280.152 Servicing guaranteed loans.

The lender must service the entire loan and must remain mortgagee and secured party of record notwithstanding the fact that another party may hold a portion of the loan. The entire loan must be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of a loan will neither be paid first nor given any preference or priority over the guaranteed portion of the loan.

(a) *Servicing.* The lender is responsible for servicing the entire loan and for taking all servicing actions that a reasonable, prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The Loan Note Guarantee is unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, use of loan funds for unauthorized purposes, negligent servicing, or failure to obtain the required security interest regardless of the time at which the Agency acquires knowledge of the foregoing. This responsibility includes but is not limited to the collection of payments, obtaining compliance with the covenants and provisions in the Loan Agreement, obtaining and analyzing financial statements, checking on payment of taxes and insurance premiums, and maintaining liens on collateral.

(1) *Lender reports.* The lender must report the outstanding principal and interest balance on each guaranteed loan semiannually using Form RD 1980–41, "Guaranteed Loan Status Report."

(2) *Loan classification.* Within 90 days of receipt of the Loan Note Guarantee, the lender must notify the Agency, in writing, of the loan's classification or rating under its regulatory standards. Should the classification be changed at a future time, the lender must notify, in writing, the Agency immediately.

(3) *Agency and lender conference.* At the Agency's request, the lender must meet with the Agency to ascertain how the guaranteed loan is being serviced and that the conditions and covenants of the Loan Agreement are being enforced.

(4) *Financial reports.* The lender must obtain and forward to the Agency the financial statements required by the Loan Agreement. The lender must submit annual financial statements to the Agency within 120 days of the end of the borrower's fiscal year. The lender must analyze the financial statements and provide the Agency with a written summary of the lender's analysis and conclusions, including trends, strengths, weaknesses, extraordinary transactions, and other indications of the financial condition of the borrower. Spreadsheets of the new financial statements must also be included.

(5) *Additional expenditures.* The lender must not make additional loans to the borrower without first obtaining the prior written approval of the Agency, even though such loans will not be guaranteed.

(b) *Interest rate adjustments.* The lender must use the procedures described in paragraphs (b)(1) and (2) of this section when adjusting the interest rate on a guaranteed loan.

(1) *Reductions.* The borrower, lender, and holder (if any) may collectively initiate a permanent or temporary reduction in the interest rate of the guaranteed loan at any time during the life of the loan upon written agreement among these parties. The lender must notify the Agency, in writing, within 10 calendar days of the change. If any of the guaranteed portion has been purchased by the Agency, then the Agency will affirm or reject interest rate change proposals in writing. The Agency will concur in such interest-rate changes only when it is demonstrated to the Agency that the change is a more viable alternative than initiating or proceeding with liquidation of the loan or continuing with the loan in its present state.

(i) Fixed rates can be changed to variable rates to reduce the borrower's interest rate only when the variable rate has a ceiling which is less than or equal to the original fixed rate.

(ii) Variable rates can be changed to a fixed rate which is at or below the current variable rate.

(iii) The interest rates, after adjustments, must comply with the requirements for interest rates on new loans as established by § 4280.124.

(iv) The lender is responsible for the legal documentation of interest-rate changes by an endorsement or any other legally effective amendment to the promissory note; however, no new notes may be issued. Copies of all legal documents must be provided to the Agency.

(2) *Increases.* No increases in interest rates will be permitted except the normal fluctuations in approved variable interest rates unless a temporary interest-rate reduction occurred.

(c) *Release of collateral.* The lender must use the procedures described in paragraphs (c)(1) through (3) of this section in order to release collateral associated with the guaranteed loan.

(1) All releases of collateral with a value exceeding $100,000 must be supported by a current appraisal on the collateral released. The appraisal will be at the expense of the borrower and must meet the requirements of § 4280.141. The remaining collateral must be sufficient to provide for repayment of the Agency's guaranteed loan. The Agency may, at its discretion, require an appraisal of the remaining collateral in cases where it is determined that the Agency may be adversely affected by the release of collateral. Sale or release of collateral must be based on an arm's-length transaction and adequate consideration.

(2) Within the parameters of paragraph (c)(1) of this section, lenders may, over the life of the loan, release collateral (other than personal and corporate guarantees) with a cumulative value of up to 20 percent of the original loan amount without Agency concurrence, if the proceeds generated are used to reduce the guaranteed loan or to buy replacement collateral or buy real estate equal to or greater than the collateral being replaced.

(3) Within the parameters of paragraph (c)(1) of this section, release of collateral with a cumulative value in excess of 20 percent of the original loan or when the proceeds will not be used to reduce the guaranteed loan or to buy replacement collateral must be requested in writing by the lender and concurred in by the Agency in writing in advance of the release. A written evaluation will be completed by the lender to justify the release.

(d) *Subordination of lien position.* A subordination of the lender's lien position must be requested in writing by the lender and concurred by the Agency in writing in advance of the subordination. The Agency will only consider a parity or junior lien position. After the subordination, collateral must be adequate to secure the loan. The lien to which the guaranteed loan is subordinated must be for a fixed dollar limit. The subordination must be for a fixed period of time, after which the guaranteed loan lien priority will be restored. Subordination to a revolving line of credit will not exceed 1 year. There must be adequate consideration for the subordination.

(e) *Alterations of loan instruments.* The lender must not alter or approve any alterations of any loan instrument without the prior written approval of the Agency.

(f) *Loan transfer and assumption.* When a loan is transferred and assumed, the procedures described in paragraphs (f)(1) through (11) of this section must be followed.

(1) *Documentation of request.* All transfers and assumptions must be approved in writing by the Agency and must be to eligible borrowers in accordance with § 4280.121. An individual credit report must be provided for transferee proprietors, partners, officers, directors, and stockholders with 20 percent or more interest in the business, along with such other documentation as the Agency may request to determine eligibility.

(2) *Terms.* Loan terms must not be changed unless the change is approved in writing by the Agency with the concurrence of any holder and the transferor (including guarantors) if they have not been or will not be released from liability. Any new loan terms must be within the terms authorized by § 4280.125. The lender's request for approval of new loan terms will be supported by an explanation of the reasons for the proposed change in loan terms.

(3) *Release of liability.* The transferor, including any guarantor, may be released from liability only with prior Agency written concurrence and only when the value of the collateral being transferred is at least equal to the amount of the loan being assumed and is supported by a current appraisal and a current financial statement. The Agency will not pay for the appraisal. If the transfer is for less than the debt, the lender must demonstrate to the Agency that the transferor and guarantors have no reasonable debt-paying ability considering their assets and income in the foreseeable future.

(4) *Proceeds.* Any proceeds received from the sale of collateral before a transfer and assumption will be credited to the transferor's guaranteed loan debt in inverse order of maturity before the transfer and assumption are closed.

(5) *Additional loans.* Loans to provide additional funds in connection with a transfer and assumption must be considered as a new loan application under § 4280.128.

(6) *Credit quality.* The lender must make a complete credit analysis which is subject to Agency review and approval.

(7) *Documents.* Prior to Agency approval, the lender must advise the Agency, in writing, that the transaction can be properly and legally transferred, and the conveyance instruments will be filed, registered, or recorded as appropriate.

(i) The assumption will be done on the lender's assumption agreement and will contain the Agency case number of the transferor and transferee. The lender must provide the Agency with a copy of the transfer and assumption agreement. The lender must ensure that the transfer and assumption is noted on the original Loan Note Guarantee.

(ii) A new Loan Agreement, consistent in principle with the original Loan Agreement, must be executed to establish the terms and conditions of the loan being assumed. An assumption agreement can be used to establish the loan covenants.

(iii) The lender must provide to the Agency a written certification that the transfer and assumption is valid, enforceable, and complies with all Agency regulations.

(8) *Loss resulting from transfer.* If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor (including personal guarantors) is released from liability, the lender, if it holds the guaranteed portion, may file an estimated report of loss, using Form RD 449–30, "Loan Note Guaranteed Loss Report," to recover its pro rata share of the actual loss. If a holder owns any of the guaranteed portion, such portion must be repurchased by the lender or the Agency in accordance with § 4280.137(c). In completing the report of loss, the amount of the debt assumed will be entered as net collateral (recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption must be included in the calculations.

(9) *Related party.* If the transferor and transferee are affiliated or related parties, any transfer and assumption must be for the full amount of the debt.

(10) *Payment requests.* Requests for a loan guarantee to provide equity for a transfer and assumption must be considered as a new loan under this subpart.

(11) *Cash down payment.* When the transferee will be making a cash down payment as part of the transfer and assumption:

(i) The lender must have an appropriate appraiser, acceptable to both the transferee and transferor and currently authorized to perform appraisals to determine the value of the collateral securing the loan. The Agency will not pay the appraisal fee or any other costs.

(ii) The market value of the collateral, plus any additional property the transferee proposes to offer as collateral, must be adequate to secure the balance of the guaranteed loans.

(iii) Cash down payments may be paid directly to the transferor provided:

(A) The lender recommends that the cash be released, and the Agency concurs prior to the transaction being completed. The lender may wish to require that an amount be retained for a defined period of time as a reserve against future defaults. Interest on such account may be paid periodically to the transferor or transferee as agreed;

(B) The lender determines that the transferee has the repayment ability to meet the obligations of the assumed guaranteed loan as well as any other indebtedness;

(C) Any payments by the transferee to the transferor will not suspend the transferee's obligations to continue to meet the guaranteed loan payments as they come due under the terms of the assumption; and

(D) The transferor agrees not to take any action against the transferee in connection with the assumption without prior written approval of the lender and the Agency.

§ 4280.153 Substitution of lender.

After the issuance of a Loan Note Guarantee, the lender must not sell or transfer the entire loan without the prior written approval of the Agency. The Agency will not pay any loss or share in any costs (i.e., appraisal fees, environmental studies, or other costs associated with servicing or liquidating the loan) with a new lender unless a relationship is established through a substitution of lender in accordance with paragraph (a) of this section. This includes cases where the lender has failed and been taken over by a regulatory agency such as the Federal Deposit Insurance Corporation (FDIC) and the loan is subsequently sold to another lender.

(a) The Agency may approve the substitution of a new lender if:

(1) The proposed substitute lender:

(i) Is an eligible lender in accordance with § 4280.130;

(ii) Is able to service the loan in accordance with the original loan documents; and

(iii) Agrees in writing to acquire and must acquire title to the unguaranteed portion of the loan held by the original lender and assumes all original loan requirements, including liabilities and servicing responsibilities.

(2) The substitution of the lender is requested in writing by the borrower, the proposed substitute lender, and the original lender if still in existence.

(b) Where the lender has failed and been taken over by FDIC and the guaranteed loan is liquidated by FDIC rather than being sold to another lender, the Agency will pay losses and share in costs as if FDIC were an approved substitute lender.

§ 4280.154 Default by borrower.

(a) The lender must notify the Agency, in writing, when a borrower is 30 days past due on a payment or is otherwise in default of the Loan Agreement. Form RD 1980–44, "Guaranteed Loan Borrower Default Status" must be used and the lender must continue to submit this form bi-monthly until such time as the loan is no longer in default. If a monetary default exceeds 60 days, the lender must arrange a meeting with the Agency and the borrower to resolve the problem.

(b) In considering options, the prospects for providing a permanent cure without adversely affecting the risk to the Agency and the lender is the paramount objective.

(1) Curative actions include but are not limited to:

(i) Deferment of principal (subject to rights of any holder);

(ii) An additional unguaranteed temporary loan by the lender to bring the account current;

(iii) Reamortization of or rescheduling the payments on the loan (subject to rights of any holder);

(iv) Transfer and assumption of the loan in accordance with § 4280.152(f);

(v) Reorganization;

(vi) Liquidation;

(vii) Subsequent loan guarantees; and

(viii) Changes in interest rates with the Agency's, the lender's, and the holder's approval, provided that the interest rate is adjusted proportionately between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

(2) In the event a deferment, rescheduling, reamortization, or moratorium is accomplished, it will be limited to the remaining life of the collateral or loan terms, whichever is less.

§ 4280.155 Protective advances.

Protective advances are advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to, will not, or cannot meet its obligations. Sound judgment must be exercised in determining that the protective advance preserves collateral and recovery is actually enhanced by making the advance. Protective advances will not be made in lieu of additional loans.

(a) The maximum loss to be paid by the Agency will never exceed the original principal plus accrued interest regardless of any protective advances made.

(b) Protective advances and interest thereon at the note rate will be guaranteed at the same percentage of loss as provided in the Loan Note Guarantee.

(c) Protective advances must constitute an indebtedness of the borrower to the lender and be secured by the security instruments. Agency written authorization is required when cumulative protective advances exceed $5,000.

§ 4280.156 Liquidation.

In the event of one or more incidents of default or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, liquidation of the loan may be considered by the lender. If the lender concludes that liquidation is necessary, it must request the Agency's concurrence. The lender will liquidate the loan unless the Agency, at its option, carries out liquidation. When the decision to liquidate is made, if the loan has not already been repurchased, provisions will be made for repurchase in accordance with § 4280.137.

(a) *Decision to liquidate.* A decision to liquidate must be made when it is determined that the default cannot be cured through actions contained in § 4280.154 or it has been determined that it is in the best interest of the Agency and the lender to liquidate. The decision to liquidate or continue with the borrower must be made as soon as possible when any of the following exist:

(1) A loan has been delinquent 90 days and the lender and borrower have not been able to cure the delinquency through one of the actions contained in § 4280.154;

(2) It has been determined that delaying liquidation will jeopardize full recovery on the loan; and

(3) The borrower or lender has been uncooperative in resolving the problem and the Agency or the lender has reason to believe the borrower is not acting in good faith, and it would enhance the position of the guarantee to liquidate immediately.

(b) *Liquidation by the Agency.* The Agency may require the lender to assign the security instruments to the Agency if the Agency, at its option, decides to liquidate the loan. When the Agency liquidates, reasonable liquidation expenses will be assessed against the proceeds derived from the sale of the collateral.

(c) *Submission of liquidation plan.* The lender must, within 30 days after a decision to liquidate, submit to the Agency in writing its proposed detailed method of liquidation. Upon approval by the Agency of the liquidation plan, the lender will commence liquidation.

(d) *Lender's liquidation plan.* The liquidation plan must include, but is not limited to, the following:

(1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan promissory note and related security instruments and a copy of the payment ledger, if available, which reflects the current loan balance and accrued interest to date and the method of computing the interest;

(2) A full and complete list of all collateral including any personal and corporate guarantees;

(3) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended action:

(i) For acquiring and disposing of all collateral; and

(ii) To collect from guarantors;

(4) Necessary steps for preservation of the collateral;

(5) Copies of the borrower's latest available financial statements;

(6) Copies of the guarantor's latest available financial statements;

(7) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense;

(8) A schedule to periodically report to the Agency on the progress of liquidation;

(9) Estimated protective advance amounts with justification;

(10) Proposed protective bid amounts on collateral to be sold at auction and a breakdown to show how the amounts were determined;

(11) A voluntary conveyance, if one is considered, including the proposed amount to be credited to the guaranteed debt;

(12) Legal opinions, if needed; and

(13) If the outstanding balance of principal and accrued interest is less than $100,000, the lender will obtain an estimate of fair market and potential liquidation value of the collateral. If the outstanding balance of principal and accrued interest is $100,000 or more, the lender will obtain an independent appraisal report meeting the requirements of § 4280.141 on all collateral securing the loan that will reflect the fair market value and potential liquidation value. In order to formulate a liquidation plan which maximizes recovery, collateral must be evaluated for the release of hazardous substances, petroleum products, or other environmental hazards which may adversely impact the market value of the collateral. Both the estimate and the appraisal must consider this aspect. The independent appraiser's fee, including the cost of the environmental site assessment, will be shared equally by the Agency and the lender.

(e) *Approval of liquidation plan.* The Agency will inform the lender in writing whether it concurs in the lender's liquidation plan. Should the Agency and the lender not agree on the liquidation plan, negotiations will take place between the Agency and the lender to resolve the disagreement. When the liquidation plan is approved by the Agency, the lender must proceed expeditiously with liquidation.

(1) A transfer and assumption of the borrower's operation can be accomplished before or after the loan goes into liquidation. However, if the collateral has been purchased through foreclosure or the borrower has conveyed title to the lender, no transfer and assumption is permitted.

(2) A protective bid may be made by the lender, with prior Agency written approval, at a foreclosure sale to protect the lender's and the Agency's interest. The protective bid must not exceed the amount of the loan, including expenses of foreclosure, and should be based on the liquidation value considering estimated expenses for holding and reselling the property. These expenses include, but are not limited to, expenses for resale, interest accrual, length of time necessary for resale, maintenance, guard service, weatherization, and prior liens.

(f) *Acceleration.* The lender, or the Agency if it liquidates, will proceed to accelerate the indebtedness as expeditiously as possible when acceleration is necessary including giving any notices and taking any other legal actions required. A copy of the acceleration notice or other acceleration document will be sent to the Agency (or lender if the Agency liquidates). The guaranteed loan will be considered in liquidation once the loan has been accelerated and a demand for payment has been made upon the borrower.

(g) *Filing an estimated loss claim.* When the lender is conducting the liquidation and owns any or all of the guaranteed portion of the loan, the lender must file an estimated loss claim once a decision has been made to liquidate if the liquidation will exceed 90 days. The estimated loss payment will be based on the liquidation value of the collateral. For the purpose of reporting and loss claim computation, the lender will discontinue interest accrual on the defaulted loan in accordance with Agency procedures, and the loss claim will be promptly processed in accordance with applicable Agency regulations.

(h) *Accounting and reports.* When the lender conducts liquidation, it must account for funds during the period of liquidation and must provide the Agency with reports at least quarterly on the progress of liquidation including disposition of collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.

(i) *Transmitting payments and proceeds to the Agency.* When the Agency is the holder of a portion of the guaranteed loan, the lender must transmit to the Agency its pro rata share of any payments received from the borrower, liquidation payments, or payments of other proceeds, using Form RD 1980–43, "Lender's Guaranteed Loan Payment to USDA."

(j) *Abandonment of collateral.* There may be instances when the cost of liquidation would exceed the potential recovery value of the collection. The lender, with proper documentation and concurrence of the Agency, may abandon the collateral in lieu of liquidation. A proposed abandonment will be considered a servicing action requiring an environmental review by the Agency. Examples where abandonment may be considered include, but are not limited to:

(1) The cost of liquidation is increased or the value of the collateral is decreased by environmental issues;

(2) The collateral is functionally or economically obsolete;

(3) There are superior liens held by other parties in excess of the value of the collateral;

(4) The collateral has deteriorated; or

(5) The collateral is specialized and there is little or no demand for it.

(k) *Disposition of personal or corporate guarantees.* The lender must take action to maximize recovery from all collateral, including personal and corporate guarantees. The lender must seek a deficiency judgment when there is a reasonable chance of future collection of the judgment. The lender must make a decision whether or not to seek a deficiency judgment when:

(1) A borrower voluntarily liquidates the collateral, but the sale fails to pay the guaranteed indebtedness;

(2) The collateral is voluntarily conveyed to the lender, but the borrower and personal and corporate guarantors are not released from liability; or

(3) A liquidation plan is being developed for forced liquidation.

(l) *Compromise settlement.* A compromise settlement may be considered at any time.

(1) The lender and the Agency must receive complete financial information on all parties obligated for the loan and must be satisfied that the statements reflect the true and correct financial position of the debtor including all assets. Adequate consideration must be received before a release from liability is issued. Adequate consideration includes money, additional security, or other benefit to the goals and objectives of the Agency.

(2) Before a personal guarantor can be released from liability, the following factors must be considered.

(i) Cash, either lump sum or over a period of time, or other consideration offered by the guarantor;

(ii) Age and health of the guarantor;

(iii) Potential income of the guarantor;

(iv) Inheritance prospects of the guarantor;

(v) Availability of the guarantor's assets.

(vi) Possibility that the guarantor's assets have been concealed or improperly transferred; and

(vii) Effect of other guarantors on the loan.

(3) Once the Agency and the lender agree on a reasonable amount that is fair and adequate, the lender can proceed to effect the settlement compromise.

(4) A compromise will only be accepted if it is in the best interest of the Agency.

§ 4280.157 Determination of loss and payment.

In all liquidation cases, final settlement will be made with the lender after the collateral is liquidated, unless otherwise designated as a future recovery or after settlement and compromise of all parties has been completed. The Agency will have the right to recover losses paid under the guarantee from any party that may be liable.

(a) *Report of loss form.* Loan Note Guarantee Report of Loss will be used for calculations of all estimated and final loss determinations. Estimated loss payments may only be approved by the Agency after the Agency has approved a liquidation plan.

(b) *Estimated loss.* In accordance with the requirements of § 4280.156(g), an estimated loss claim based on liquidation appraisal value may be prepared and submitted by the lender.

(1) The estimated loss payment must be applied as of the date of such payment. The total amount of the loss payment remitted by the Agency will be applied by the lender on the guaranteed portion of the loan debt. Such application does not release the borrower from liability.

(2) An estimated loss will be applied first to reduce the principal balance on the guaranteed loan and the balance, if any, to accrued interest. Interest accrual on the defaulted loan will be discontinued.

(3) A protective advance claim will be paid only at the time of the final report of loss payment except in certain transfer and assumption situations as specified in § 4280.152(f).

(c) *Final loss.* Within 30 days after liquidation of all collateral, except for certain unsecured personal or corporate guarantees as provided for in this section, is completed, a final report of loss must be prepared and submitted by the lender to the Agency. The Agency will not guarantee interest beyond this 30-day period other than for the period of time it takes the Agency to process the loss claim. Before approval by the Agency of any final loss report, the lender must account for all funds during the period of liquidation, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and report of loss, the Agency may audit all applicable documentation to determine the final loss. The lender must make its records available and otherwise assist the Agency in making any investigation. The documentation accompanying the report of loss must support the amounts shown on the Loan Note Guarantee Report of Loss.

(1) A determination must be made regarding the collectibility of unsecured personal and corporate guarantees. If reasonably possible, such guarantees should be promptly collected or otherwise disposed of in accordance with § 4280.156(k) prior to completion of the final loss report. However, in the event that collection from the guarantors appears unlikely or will require a prolonged period of time, the report of loss will be filed when all other collateral has been liquidated, and unsecured personal or corporate guarantees will be treated as a future recovery with the net proceeds to be shared on a pro rata basis by the lender and the Agency.

(2) The lender must document that all of the collateral has been accounted for and properly liquidated and that liquidation proceeds have been properly accounted for and applied correctly to the loan.

(3) The lender must show a breakdown of any protective advance amount as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made.

(4) The lender will show a breakdown of liquidation expenses as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made. Liquidation expenses are recoverable only from collateral proceeds. Attorney fees may be approved as liquidation expenses provided the fees are reasonable and cover legal issues pertaining to the liquidation that could not be properly handled by the lender and its in-house counsel.

(5) Accrued interest must be supported by documentation as to how the amount was accrued. If the interest rate was a variable rate, the lender must include documentation of changes in both the selected base rate and the loan rate.

(6) Loss payments will be paid by the Agency within 60 days after the review of the final loss report and accounting of the collateral.

(d) *Loss limit.* The amount payable by the Agency to the lender cannot exceed the limits set forth in the Loan Note Guarantee.

(e) *Rent.* Any net rental or other income that has been received by the lender from the collateral will be applied on the guaranteed loan debt.

(f) *Liquidation costs.* Liquidation costs must be deducted from the proceeds of the disposition of collateral. If changed circumstances after submission of the liquidation plan require a substantial revision of liquidation costs, the lender will procure the Agency's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the lender will be allowed. In-house expenses include, but are not limited to, employee's salaries, staff lawyers, travel, and overhead.

(g) *Payment.* When the Agency finds the final report of loss to be proper in all respects, it will approve Form RD 449–30, "Loan Note Guaranteed Report of Loss," and proceeds as follows:

(1) If the loss is greater than any estimated loss payment, the Agency will pay the additional amount owed by the Agency to the lender.

(2) If the loss is less than the estimated loss payment, the lender must reimburse the Agency for the overpayment plus interest at the note rate from the date of payment.

(3) If the Agency has conducted the liquidation, it will pay the lender in accordance with the Loan Note Guarantee.

§ 4280.158 Future recovery.

After a loan has been liquidated and a final loss has been paid by the Agency, any future funds which may be recovered by the lender must be pro rated between the Agency and the lender based on the original percentage of guarantee.

§ 4280.159 Bankruptcy.

The lender must protect the guaranteed loan and all collateral securing the loan in bankruptcy proceedings.

(a) *Lender's responsibilities.* It is the lender's responsibility to protect the guaranteed loan debt and all of the collateral securing it in bankruptcy proceedings. These responsibilities include, but are not limited to the following:

(1) The lender must file a proof of claim where necessary and all the necessary papers and pleadings concerning the case;

(2) The lender must attend and, where necessary, participate in meetings of the creditors and all court proceedings;

(3) When permitted by the Bankruptcy Code, the lender must request modification of any plan of reorganization whenever it appears that additional recoveries are likely;

(4) The Agency must be kept informed on a regular basis in writing of all aspects of the proceedings; and

(5) In a Chapter 11 reorganization, if an independent appraisal of collateral is necessary in the Agency's opinion, the Agency and the lender will share such appraisal fee equally.

(b) *Reports of loss during bankruptcy.* When the loan is involved in reorganization proceedings, payment of loss claims may be made as provided in this section. For a liquidation proceeding, only paragraphs (b)(3) and (5) of this section are applicable.

(1) Estimated loss payments.

(i) If a borrower has filed for protection under Chapter 11 of Title 11 of the United States Code for a reorganization (but not Chapter 13) and all or a portion of the debt has been discharged, the lender must request an estimated loss payment of the guaranteed portion of the accrued interest and principal discharged by the court. Only one estimated loss payment is allowed during the reorganization. All subsequent claims of the lender during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by the Agency, at its option, in accordance with any court-approved changes in the reorganization plan. Once the reorganization plan has been completed, the lender is responsible for submitting the documentation necessary for the Agency to review and adjust the estimated loss claim to reflect any actual discharge of principal and interest and to reimburse the lender for any court-ordered interest-rate reduction under the terms of then reorganization plan.

(ii) The lender must use the Loan Note of Guarantee Report of Loss to request an estimated loss payment and to revise any estimated loss payments during the course of the reorganization plan. The estimated loss claim, as well as any revisions to this claim, will be accompanied by documentation to support the claim.

(iii) Upon completion of a reorganization plan, the lender must complete and forward Form RD 1980–44, "Guaranteed Loan Borrower Default Status," to the Agency.

(2) Interest loss payments.

(i) Interest losses sustained during the period of the reorganization plan will be processed in accordance with paragraph (b)(1) of this section.

(ii) Interest losses sustained after the reorganization plan is completed will be processed annually when the lender sustains a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

(iii) If an estimated loss claim is paid during the operation of the Chapter 11 reorganization plan and the borrower repays in full the remaining balance without an additional loss sustained by the lender, a final report of loss is not necessary.

(3) Final loss payments. Final loss payments will be processed when the loan is liquidated.

(4) Payment application. The lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event a bankruptcy court attempts to direct the payments to be applied in a different manner, the lender will immediately notify the Agency servicing office in writing.

(5) Overpayments. Upon completion of the reorganization plan, the lender will provide the Agency with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained as a result of the reorganization is less than the estimated loss, the lender must reimburse the Agency for the overpayment plus interest at the note rate from the date of payment of the estimated loss. If the actual loss is greater than the estimated loss payment, the lender must submit a revised estimated loss in order to obtain payment of the additional amount owed by the Agency to the lender.

(6) Protective advances. If approved protective advances were made prior to the borrower having filed bankruptcy, these protective advances and accrued interest will be considered in the loss calculations.

(c) *Legal expenses during bankruptcy proceedings.* The lender must follow the procedures described in paragraphs (c)(1) and (2) of this section for handling legal expenses during bankruptcy proceedings.

(1) When a bankruptcy proceeding results in a liquidation of the borrower by a trustee, legal expenses will be handled as directed by the court.

(2) Chapter 11 generally pertains to a reorganization of a business contemplating an ongoing business, rather than a termination and dissolution of the business, where legal protection is afforded to the business as defined under Chapter 11 of the Bankruptcy Code. Consequently, expenses incurred by the lender in a Chapter 11 reorganization can never be liquidation expenses unless the proceeding becomes a Chapter 11 liquidation. If the proceeding should become a liquidating Chapter 11, reasonable and customary liquidation expenses may be deducted from proceeds of collateral as provided in Form 4279–4, "Lender's Agreement." Chapter 7 pertains to a liquidation of the borrower's assets. If, and when, liquidation of the borrower's assets under Chapter 7 is conducted by the bankruptcy trustee, then the lender cannot claim expenses.

§ 4280.160 Termination of guarantee.

A guarantee under this part will terminate automatically when any of the circumstances specified in paragraphs (a) through (c) of this section occurs.

(a) Upon full payment of the guaranteed loan;

(b) Upon full payment of any loss obligation; or

(c) Upon written notice from the lender to the Agency that the guarantee will terminate 30 days after the date of notice, provided that the lender holds all of the guaranteed portion and the Loan Note Guarantee is returned to the Agency to be canceled.

Direct Loans

§ 4280.161 Direct loan process.

(a) The Agency will determine each year whether or not direct loan funds are available. For each year in which direct loan funds are available, the Agency will publish a Notice of Funds Availability (NOFA) in the **Federal Register**.

(b) In each direct loan NOFA, the Agency will identify the following:

(1) the amount of funds available for direct loans;

(2) applicant and project eligibility criteria;

(3) minimum and maximum loan amounts;

(4) interest rates;

(5) terms of loan;

(6) application and documentation requirements;

(7) evaluation of applications;

(8) actions required of the applicant/borrower (*e.g.*, appraisals, land and property acquisition);

(9) insurance requirements;

(10) laws that contain other compliance requirements;

(11) construction planning and performing development;

(12) requirements after project construction;

(13) letter of conditions, loan agreement, and loan closing process;

(14) processing and servicing of direct loans by the Agency; and

(15) any applicable definitions.

§ 4280.162—4280.192 [Reserved]

Combined Funding

§ 4280.193 Combined funding.

This section identifies the requirements for a project for which an applicant is seeking a combined grant and guaranteed loan.

(a) *Eligibility.* Applicants must meet the applicability requirements specified in §§ 4280.107 and 4280.121. Projects must meet the applicability requirements specified in §§ 4280.108 and 4280.122.

(b) *Funding.* Funding provided under this section is subject to the limits described in paragraphs (b)(1) and (2) of this section.

(1) The amount of any combined grant and guaranteed loan must not exceed 50 percent of eligible project costs. For purposes of combined funding requests, total eligible project costs are based on the total costs associated with those items specified in §§ 4280.109(a) and 4280.123(a). The applicant must provide the remaining total funds needed to complete the project.

(2) Third-party, in-kind contributions will be limited to 10 percent of the matching fund requirement of the grantee/borrower.

(c) *Application and documentation.* When applying for a combined funding request, the applicant must submit applications as specified in paragraph (c)(1) of this section and documentation as specified in paragraph (c)(2) of this section.

(1) Separate applications for both types of assistance (grant and guaranteed loan) are required. Each application must meet the requirements specified in §§ 4280.111 and 4280.128. The separate applications must be submitted simultaneously.

(2) The documentation required for grants and guaranteed loans, as specified in §§ 4280.111 and 4280.128, respectively, must be submitted, as applicable, with the applications specified in paragraph (c) of this section. The applicant must submit at least one set of documentation.

(d) *Evaluation of combined funding requests.* The Agency will evaluate each application according to applicable procedures specified in §§ 4280.112 and 4280.129.

(e) *Interest rates and terms of loan.* The interest rate and terms of loan for the loan portion of the combined funding request will be determined based on the procedures specified in §§ 4280.124 and 4280.125 for guaranteed loans.

(f) *Other provisions.* In addition to the requirements specified in paragraphs (a) through (e) of this section, the combined funding request shall be subject to the other requirements specified in this subpart, including, but not limited to, the processing and servicing requirements, as applicable and as described in paragraphs (f)(1) and (2) of this section.

(1) All other provisions of Section A of this subpart shall apply to the grant portion of the combined funding request.

(2) All other provisions of Section B of this subpart shall apply to the guaranteed loan portion of the combined funding request.

§§ 4280.194—4280.199 [Reserved]

§ 4280.200 OMB control number. [Reserved]

Dated: September 23, 2004.

Gilbert G. Gonzalez, Jr.,

Acting Under Secretary.

[FR Doc. 04–22093 Filed 10–4–04; 8:45 am]

BILLING CODE 3410–XY–P

Federal Register

Tuesday,
October 5, 2004

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1 et al.
Federal Acquisition Circular 2001–25; Introduction; Final and Interim Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001–25; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules, and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–25. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.acqnet.gov/far.*

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001–25 and specific FAR case number(s). Interested parties may also visit our Web site at *http://www.acqnet.gov/far.*

Item	Subject	FAR case	Analyst
I	Elimination of the Standard Form 1417	2002–017	Davis.
II	Free Trade Agreements—Chile and Singapore, and Trade Agreements Thresholds	2003–016	Davis.
III	Telecommuting for Federal Contractors (Interim)	2003–035	Zaffos.
IV	Section 508 Micropurchase Exemption (Interim)	2004–020	Nelson.
V	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2001–25 amends the FAR as specified below:

Item I—Elimination of the Standard Form 1417 (FAR Case 2002–017)

This final rule eliminates the use of the Standard Form 1417, Pre-Solicitation Notice (Construction Contract), in contracts for construction, alteration or repair, dismantling, demolition, or removal of improvements. The use of this form has become unnecessary because contracting officers provide access to presolicitation notices through the Governmentwide point of entry (GPE) via the Internet at *http://www.fedbizopps.gov* pursuant to FAR 5.204. Elimination of the form increases reliance on electronic business practices and reduces the estimated information collection requirement burden hours imposed on offerors.

Item II—Free Trade Agreements—Chile and Singapore, and Trade Agreements Thresholds (FAR Case 2003–016)

The interim rule to implement new Free Trade Agreements with Chile and Singapore, published in the **Federal Register** at 69 FR 1050, January 7, 2004, is converted to a final rule with changes. The interim rule included in each Trade Agreements clause the statement that United States law will apply to resolve any claim of breach of contract. At the request of the Department of Justice, the final rule relocates this statement into a separate clause to be included in all contracts. All contracting officers must be aware of this new requirement.

Item III—Telecommuting for Federal Contractors (FAR Case 2003–025) (Interim)

This interim rule addresses telecommuting by employees of Federal contractors. This rule implements Section 1428 of the Services Acquisition Reform Act of 2003 (Title XIV of Public Law 108–136), which prohibits agencies from including a requirement in a solicitation that precludes an offeror from permitting its employees to telecommute or, when telecommuting is not precluded, from unfavorably evaluating an offeror's proposal that includes telecommuting unless it would adversely affect agency requirements, such as security. Contracting officers awarding service contracts should familiarize themselves with this rule.

Item IV—Section 508 Micropurchase Exemption (FAR Case 2004–020) (Interim)

This interim rule extends from October 1, 2004, to April 1, 2005, the micropurchase exception from the requirement to purchase electronic and information technology that provides individuals with disabilities better access to and use of information and data, as required by Section 508 of the Rehabilitation Act of 1973. The extension will provide agencies time to update their purchase card training modules on the 508 requirements and train their personnel. This rule is of special interest to contracting officers who purchase electronic and information technology.

Item V—Technical Amendments

Editorial changes are made at FAR 14.403(c), 52.212–5(b)(34)(ii), 52.215–15(b)(2), 52.217–5, and 52.219–4(d)(3) to update various references.

Dated: September 28, 2004.

Ralph J. De Stefano,

Acting Director, Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–25 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–25 is effective October 5, 2004, except for Item I, which is effective November 4, 2004.

Dated: September 22, 2004.

Vincent J. Feck,

Lt Col USAF, Acting Director, Defense Procurement and Acquisition Policy.

Dated: September 8, 2004.

David A. Drabkin,

Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

Dated: September 7, 2004.

Tom Luedtke,

Deputy Chief Acquisition Officer, National Aeronautics and Space Administration.

[FR Doc. 04–22243 Filed 10–4–04; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 13, 19, 36 and 53

[FAC 2001–25; FAR Case 2002–017; Item I]

RIN 9000–AJ73

Federal Acquisition Regulation; Elimination of Standard Form 1417

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to eliminate the use of the Standard Form (SF) 1417, Pre–Solicitation Notice (Construction Contract).

DATES: *Effective Date:* November 4, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–25, FAR case 2002–017.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR parts 1, 13, 19, 36, and 53, deleting the prescription for the use of the SF 1417. This final rule eliminates the use of this form in contracts for construction, alteration or repair, dismantling, demolition, or removal of improvements. The use of the form has become unnecessary because contracting officers are required to provide access to presolicitation notices through the Governmentwide point of entry (GPE) via the Internet at *http://www.fedbizopps.gov* pursuant to FAR 5.204. This FAR change to eliminate the SF 1417 complements the efforts to increase reliance on electronic business practices in procurement in furtherance of the Administration's commitment to create a citizen–centric E–Government, as outlined in the President's Management Agenda. DOD, GSA, and NASA published a proposed rule in the *Federal Register* at 68 FR 54294, September 16, 2003. No public comments were received. The Councils agree to convert this proposed rule to a final rule with technical editorial changes.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the changes are not imposing any additional burden on small business. Small businesses are already aware of the publicizing medium the Government uses via the Internet and have made the necessary adaptation to keep abreast of business opportunities disseminated therein.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0037. This change has reduced the paperwork burden and no additional approval from OMB is required. The collection will be revised to reflect this reduction.

This final rule eliminates the use of Standard Form 1417 in contracts for construction, alteration or repair, dismantling, demolition, or removal of improvements but not the requirement for contracting officers to provide access to presolicitation notices through the Governmentwide point of entry via the Internet at *http://www.fedbizopps.gov*.

Requester may obtain a copy of the information collection from the General Services Administration, FAR Secretariat (V), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0037, Presolicitation Notice and Response, Standard Form 1417, in all correspondence.

List of Subjects in 48 CFR Parts 1, 13, 19, 36 and 53

Government procurement.

Dated: September 28, 2004.

Ralph J. De Stefano,

Acting Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 13, 19, 36, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 13, 19, 36, and 53 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 in the table following the introductory paragraph by removing FAR segment "36.701" and its corresponding OMB Control Number "9000–0037" removing FAR segment "53.236–1(a)" and its corresponding OMB Control Number "9000–0037"; and removing FAR segment "SF 1417" and its corresponding OMB Control Number "9000–0037".

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.003 [Amended]

■ 3. Amend section 13.003 in paragraph (g)(1) by removing "36.701(b)" and adding "36.701(a)" in its place.

PART 19—SMALL BUSINESS PROGRAMS

19.811–1 [Amended]

■ 4. Amend section 19.811–1 in the last sentence of paragraph (a) by removing "36.701(b)" and adding "36.701(a)" in its place.

PART 36—CONSTRUCTION AND ARCHITECT ENGINEER CONTRACTS

36.213–2 [Amended]

■ 5. Amend section 36.213–2—

■ a. In the first sentence of paragraph (a) by removing "send" and adding "issue" in its place; and removing "to prospective bidders";

■ b. By removing paragraph (b)(6) and redesignating paragraphs (b)(7), (b)(8), and (b)(9) as (b)(6), (b)(7), and (b)(8), respectively.

36.701 [Amended]

■ 6. Amend section 36.701 by removing paragraph (a) and redesignating paragraphs (b), (c), (d), and (e) as (a), (b), (c), and (d), respectively.

PART 53—FORMS

53.213 [Amended]

■ 7. Amend section 53.213 in paragraph (f)(4) by removing "36.701(c)" and adding "36.701(b)" in its place.

53.236–1 [Amended]

■ 8. Amend section 53.236–1 by removing paragraph (a) and redesignating paragraphs (b), (c), (d), (e), (f), and (g) as (a), (b), (c), (d), (e), and (f), respectively; in newly redesignated paragraph (a) by removing "36.701(e)" and adding "36.701(d)" in its place; in newly redesignated paragraph (d)(2) by removing "36.701(b)" and adding "36.701(a)" in its place; in newly redesignated paragraph (e)(2) by removing "36.701(c)" and adding "36.701(b)" in its place; and in newly redesignated paragraph (f) by removing "36.701(d)" and adding "36.701(c)" in its place.

53.301–1417 [Removed]

■ 9. Remove section 53.301–1417.

[FR Doc. 04–22244 Filed 10–4–04; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 12, 13, 14, 17, 19, 22, 25, 33, and 52

[FAC 2001–25; FAR Case 2003–016; Item II]

RIN 9000–AJ87

Federal Acquisition Regulation; Free Trade Agreements-Chile and Singapore, and Trade Agreements Thresholds

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to convert to a final rule, with changes, an interim rule amending the Federal Acquisition Regulation (FAR). The interim rule implemented new Free Trade Agreements with Chile and Singapore, as approved by Congress (Public Laws 108–77 and 108–78). The interim rule also implemented new dollar thresholds for application of trade agreements.

DATES: *Effective Date:* October 5, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–25, FAR case 2003–016.

SUPPLEMENTARY INFORMATION:

A. Background

The Free Trade Agreements with Chile and Singapore waive the applicability of the Buy American Act for some foreign supplies and construction materials from Chile and Singapore, and specify procurement procedures designed to ensure fairness, applicable to the acquisition of supplies and services (see the Government Procurement provisions at Chapters 9 and 13, respectively, of the trade agreements). The interim rule was published in the **Federal Register** at 69 FR 1050, January 7, 2004. One public comment was received. To implement Section 106 of the authorizing acts, the interim rule added the statement "United States law will apply to resolve any claim of breach of contract." to the Buy American Act/Trade Agreements clauses at FAR 52.225–3, 52.225–5, and 52.225–11. The Department of Justice noted that Section 106 of each authorizing act applies to all contracts entered into by any agency of the United States. Therefore, the Department of Justice recommended that the statement be a separate clause, included in every contract. The Councils concur. The final rule removes the statement of applicability of U.S. law from FAR clauses 52.225–3, 52.225–5, and 52.225–11, and creates a new clause at FAR 52.233–4, Applicable Law for Breach of Contract Claim, to include the statement of applicability of U.S. law in every contract subject to the FAR.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Although the interim rule opened up Government procurement to the products of Chile, there will not be any significant economic impact on U.S. small businesses. The Department of Defense only applies the trade agreements to the non-defense items listed at DFARS 225.401–70, and acquisitions under $100,000 that are set aside for small businesses are exempt. We did not receive any comments on this issue from small business concerns or other interested parties.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Numbers 9000–0130, 9000–0025, and 9000–0141, respectively.

List of Subjects in 48 CFR Parts 5, 12, 13, 14, 17, 19, 22, 25, 33, and 52

Government procurement.

Dated: September 28, 2004.

Ralph J. De Stefano,

Acting Director, Contract Policy Division.

Interim Rule Adopted as Final with Changes

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 5, 12, 13, 14, 17, 19, 22, 25, and 52, which was published in the **Federal Register** at 69 FR 1050, January 7, 2004, as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 5, 12, 13, 14, 17, 19, 22, 25, 33, and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 33—PROTESTS, DISPUTES, AND APPEALS

■ 2. Revise the section heading and text of section 33.215 to read as follows:

33.215 Contract clauses.

(a) Insert the clause at 52.233–1, Disputes, in solicitations and contracts, unless the conditions in 33.203(b) apply. If it is determined under agency procedures that continued performance is necessary pending resolution of any claim arising under or relating to the contract, the contracting officer shall use the clause with its Alternate I.

(b) Insert the clause at 52.233–4 in all solicitations and contracts.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.212–5 by-

■ a. Revising the date of the clause and paragraph (a); and

■ b. Removing "(Jan 2004)" from paragraph (b)(23)(i) of the clause and adding "(OCT 2004)" in its place; and removing "(June 2004)" from paragraph (b)(24) of the clause and adding "(OCT 2004)" in its place. The revised text reads as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS-COMMERCIAL ITEMS (OCT 2004)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.233–3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(2) 52.233–4, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108–77, 108–78).

* * * * *

■ 4. Amend section 52.213–4 by revising the date of the clause; and by adding paragraph (a)(1)(vi) to read as follows:

52.213–4 Terms and Conditions-Simplified Acquisitions (Other Than Commercial Items).

* * * * *

TERMS AND CONDITIONS-SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (OCT 2004)

(a) * * *

(1) * * *

(vi) 52.233–4, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108–77, 108–78).

* * * * *

52.225–3 [Amended]

■ 5. Amend section 52.225–3 by revising the date of the clause to read "(OCT 2004)"; and removing paragraph (d) of the clause.

52.225–5 [Amended]

■ 6. Amend section 52.225–5 by revising the date of the clause to read "(OCT 2004)"; and removing paragraph (c) of the clause.

52.225–11 [Amended]

■ 7. Amend section 52.225–11 by revising the date of the clause to read "(OCT 2004)"; and removing paragraph (e) of the clause.

■ 8. Add section 52.233–4 to read as follows:

52.233–4 Applicable Law for Breach of Contract Claim.

As prescribed in 33.215(b), insert the following clause:

APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)

United States law will apply to resolve any claim of breach of this contract.

(End of clause)

[FR Doc. 04–22245 Filed 10–4–04; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7, 11, 13, 15

[FAC 2001–25; FAR Case 2003–025; Item III]

RIN 9000—AK03

Federal Acquisition Regulation; Telecommuting for Federal Contractors

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 1428 of the Services Acquisition Reform Act of 2003, Title XIV of Public Law 108–136, Authorization of Telecommuting for Federal Contractors.

DATES: *Effective Date*: October 5, 2004.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before December 6, 2004 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2001–25, FAR case 2003–025, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR Case number to submit comments.
- E-mail: *farcase.2003–025@gsa.gov*. Include FAC 2001–25, FAR case 2003–025, in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (V), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2001–25, FAR case 2003–025, in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208–6091. Please cite FAC 2001–25, FAR case 2003–025.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Section 1428 of the Services Acquisition Reform Act of 2003 (Title XIV of Public Law 108–136). Section 1428 requires the amendment of the FAR to permit telecommuting by employees of Federal Government contractors in the performance of contracts entered into with executive agencies. Specifically, Section 1428 states that solicitations for the acquisition of property or services may not include any requirement or evaluation criteria that would render an offeror ineligible to enter into a contract because it proposes to permit its employees to telecommute, unless the contracting officer determines that the requirements of the agency, including security requirements, cannot be met if telecommuting is permitted. The contracting officer must document in writing the basis for the determination. Also, the solicitation cannot contain any evaluation criteria that would reduce the scoring of an offer because the offeror proposes to permit its employees to telecommute, unless the contracting officer determines that the requirements of the agency, including security requirements, would be adversely impacted if telecommuting is allowed. The contracting officer must document in writing the basis for this determination as well.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because by not automatically prohibiting telecommuting, the Government will be making it easier for small businesses to recruit and maintain employees for work on Government contracts. Until now, there has been no Governmentwide policy or practice concerning contractor employee telecommuting. This rule will not be a major change, but instead a small

positive benefit to small businesses. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 7, 11, 13, and 15 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2001–25, FAR case 2003–025), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this statute requires that the FAR be amended no later than 180 days after enactment. The statute was enacted on November 24, 2003, which required amending the FAR by May 22, 2004. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 7, 11, 13, and 15

Government procurement.

Dated: September 28, 2004.

Ralph J. De Stefano,

Acting Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 7, 11, 13, and 15 as set forth below:

■ 1. The authority citation for 48 CFR parts 7, 11, 13, and 15 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 7—ACQUISITION PLANNING

■ 2. Add section 7.108 to read as follows:

7.108 Additional requirements for telecommuting.

In accordance with section 1428 of Public Law 108–136, an agency shall generally not discourage a contractor from allowing its employees to telecommute in the performance of Government contracts. Therefore, agencies shall not—

(a) Include in a solicitation a requirement that prohibits an offeror from permitting its employees to telecommute unless the contracting officer first determines that the requirements of the agency, including security requirements, cannot be met if telecommuting is permitted. The contracting officer shall document the basis for the determination in writing and specify the prohibition in the solicitation; or

(b) When telecommuting is not prohibited, unfavorably evaluate an offer because it includes telecommuting, unless the contracting officer first determines that the requirements of the agency, including security requirements, would be adversely impacted if telecommuting is permitted. The contracting officer shall document the basis for the determination in writing and address the evaluation procedures in the solicitation.

PART 11—DESCRIBING AGENCY NEEDS

■ 3. Amend section 11.002 by adding paragraph (g) to read as follows:

11.002 Policy.

* * * * *

(g) Agencies shall not include in a solicitation a requirement that prohibits an offeror from permitting its employees to telecommute unless the contracting officer executes a written determination in accordance with FAR 7.108(a).

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 4. Amend section 13.106–2 by redesignating paragraphs (b)(2) and (b)(3) as (b)(3) and (b)(4), respectively, and adding a new paragraph (b)(2) to read as follows:

13.106–2 Evaluation of quotations or offers.

* * * * *

(b) * * *

(2) If telecommuting is not prohibited, agencies shall not unfavorably evaluate an offer because it includes telecommuting unless the contracting officer executes a written determination in accordance with FAR 7.108(b).

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

■ 5. Amend section 15.304 by adding paragraph (c)(6) to read as follows:

15.304 Evaluation factors and significant subfactors.

* * * * *

(c) * * *

(6) If telecommuting is not prohibited, agencies shall not unfavorably evaluate an offer that includes telecommuting unless the contracting officer executes a written determination in accordance with FAR 7.108(b).

* * * * *

[FR Doc. 04–22246 Filed 10–4–04; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 39

[FAC 2001–25; FAR Case 2004–020; Item IV]

RIN 9000–AK05

Federal Acquisition Regulations; Section 508 Micropurchase Exemption

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to extend the micro-purchase exemption for purchasing electronic and information technology (EIT) that conforms to the requirements of Section 508 of the Rehabilitation Act of 1973 from October 1, 2004, to April 1, 2005. No further extensions will be granted. The extension until April 1, 2005, will provide agencies time to update their purchase card training modules on the 508 requirements and train their personnel.

DATES: *Effective Date:* October 5, 2004.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before December 6, 2004 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2001–25, FAR case 2004–020 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.
- E-mail: *farcase.2004–020@gsa.gov*. Include FAC 2001–25, FAR case 2004–020 in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (V), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2001–25, FAR case 2004–020, in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 2001–25, FAR case 2004–020.

SUPPLEMENTARY INFORMATION:

A. Background

Section 508 of the Rehabilitation Act of 1973 requires that the Electronic and Information Technology (EIT) developed, procured, maintained, or used by the Federal Government provide individuals with disabilities access to and use of information and data that is comparable to the access and use of information and data by individuals without disabilities. The law was implemented first through standards developed by the Architectural and Transportation Barriers Compliance Board, ("Access Board") and then incorporated into the FAR.

Initially, the FAR exempted micropurchases from the 508 requirements until January 1, 2003. (See FAR Case 1999–607, 66 FR 20894, April 25, 2001.) The rule's preamble gave notice that the Government would revisit the issue prior to the sunset date. This deadline was extended (FAR Case 2002–012, 67 FR 80321, December 31, 2002 and 68 FR 43872, July 24, 2003) and is due to expire October 1, 2004.

The FAR Council is extending the micropurchase exception from October 1, 2004, to April 1, 2005, and no additional extensions will be granted. Agencies have had three years of experience with Section 508, and industry continues to make investments in accessible technology to support the requirements. The extension until April 1, 2005, will provide agencies time to update their purchase card training modules on the 508 requirements and train their personnel. Free, online training developed by GSA, in collaboration with the Section 508 Executive Steering Committee, is available at *http://www.section508.gov*.

The FAR Council received public comments on the first extension to October 1, 2004. None of the comments received took issue with extending the micropurchase exception. Extending the micropurchase exemption will not cause a significant impact on the disability community or industry.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed rule continues the status quo for another six months. When the FAR Council last extended the exception through October 1, 2004, none of the comments received took issue with extending the micropurchase exception. Also, extending the micropurchase exception will not cause a significant impact on the disability community or industry.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Part 39 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2001–25, FAR case 2004–020), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the rule extends an exception that would otherwise impose training burdens that the acquisition community may be challenged to meet by October 1, 2004. The extension until April 1, 2005, will provide agencies time to update their purchase card training modules on the 508 requirements and train their personnel. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 39

Government procurement.

Dated: September 28, 2004.

Ralph J. De Stefano,

Acting Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 39 as set forth below:

PART 39—ACQUISTION OF INFORMATION TECHNOLOGY

■ 1. The authority citation for 48 CFR part 39 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

39.204 [Amended]

■ 2. Amend section 39.204 in the first sentence of paragraph (a) by removing "October 1, 2004" and adding "April 1, 2005 "in its place.

[FR Doc. 04–22247 Filed 10–4–04; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 14 and 52

[FAC 2001-25; Item V]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make editorial changes.

DATES: *Effective Date:* October 5, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. Please cite FAC 2001-25, Technical Amendments.

List of Subjects in 48 CFR Parts 14 and 52

Government procurement.

Dated: September 28, 2004.

Ralph J. De Stefano,

Acting Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 14 and 52 as set forth below:

■ 1. The authority citations for 48 CFR parts 14 and 52 are revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 14—SEALED BIDDING

■ 2. In section 14.403, revise paragraph (c) to read as follows:

14.403 Recording of Bids.

* * * * *

(c) The forms identified in paragraph (a) of this section need not be used by the Defense Energy Support Center for acquisitions of coal or petroleum products or by the Defense Supply Center Philadelphia for perishable subsistence items.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212-5 [Amended]

■ 3. Amend section 52.212-5 in paragraph (b)(34)(ii) by removing "(Apr 1984)" and adding "(Apr 2003)" in its place.

52.215-15 [Amended]

■ 4. Amend section 52.215-15 by revising the date of the clause to read "(OCT 2004)".

52.217-5 [Amended]

■ 5. Amend section 52.217-5 in the introductory paragraph by removing "17.208(c)(1)" and adding "17.208(c)" in its place.

52.219-4 [Amended]

■ 6. Amend section 52.219-4 by revising the date of the clause to read "(OCT 2004)"; and removing "will be will be" from paragraph (d)(3) of the clause and adding "will be" in its place.

[FR Doc. 04-22248 Filed 10-4-04; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This Small Entity Compliance Guide has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001–25 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2001–25 which precedes this document. These documents are also available via the Internet at *http://www.acqnet.gov/far.*

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2001–25

Item	Subject	FAR case	Analyst
I	Elimination of the Standard Form 1417	2002–017	Davis.
II	Free Trade Agreements—Chile and Singapore, and Trade Agreements Thresholds	2003–016	Davis.
III	Telecommuting for Federal Contractors (Interim)	2003–025	Zaffos.
IV	Section 508 Micropurchase Exemption (Interim)	2004–020	Nelson.
V	Technical Amendments.		

Item I—Elimination of the Standard Form 1417 (FAR Case 2002–017)

This final rule eliminates the use of the Standard Form 1417, Pre-Solicitation Notice (Construction Contract), in contracts for construction, alteration or repair, dismantling, demolition, or removal of improvements. The use of this form has become unnecessary because contracting officers provide access to presolicitation notices through the Governmentwide point of entry (GPE) via the Internet at *http://www.fedbizopps.gov* pursuant to FAR 5.204. Elimination of the form increases reliance on electronic business practices and reduces the estimated information collection requirement burden hours imposed on offerors.

Item II—Free Trade Agreements—Chile and Singapore, and Trade Agreements Thresholds (FAR Case 2003–016)

The interim rule to implement new Free Trade Agreements with Chile and Singapore, published in the **Federal Register** at 69 FR 1050, January 7, 2004, is converted to a final rule with changes. The interim rule included in each Trade Agreements clause the statement that United States law will apply to resolve any claim of breach of contract. At the request of the Department of Justice, the final rule relocates this statement into a separate clause to be included in all contracts. All contracting officers must be aware of this new requirement.

Item III—Telecommuting for Federal Contractors (FAR Case 2003–025) (Interim)

This interim rule addresses telecommuting by employees of Federal contractors. This rule implements Section 1428 of the Services Acquisition Reform Act of 2003 (Title XIV of Public Law 108–136), which prohibits agencies from including a requirement in a solicitation that precludes an offeror from permitting its employees to telecommute or, when telecommuting is not precluded, from unfavorably evaluating an offeror's proposal that includes telecommuting unless it would adversely affect agency requirements, such as security. Contracting officers awarding service contracts should familiarize themselves with this rule.

Item IV—Section 508 Micropurchase Exemption (FAR Case 2004–020) (Interim)

This interim rule extends from October 1, 2004, to April 1, 2005, the micropurchase exception from the requirement to purchase electronic and information technology that provides individuals with disabilities better access to and use of information and data, as required by Section 508 of the Rehabilitation Act of 1973. The extension will provide agencies time to update their purchase card training modules on the 508 requirements and train their personnel. This rule is of special interest to contracting officers who purchase electronic and information technology.

Item V—Technical Amendments

Editorial changes are made at FAR 14.403(c), 52.212–5(b)(34)(ii), 52.215–15(b)(2), 52.217–5, and 52.219–4(d)(3) to update various references.

Dated: September 28, 2004.

Ralph J. De Stefano,

Acting Director, Contract Policy Division.

[FR Doc. 04–22249 Filed 10–4–04; 8:45 am]

BILLING CODE 6820–EP–S

Federal Register

Tuesday,
October 5, 2004

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 60

Mandatory Country of Origin Labeling of Fish and Shellfish; Interim Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 60

[No. LS–03–04]

RIN 0581–AC26

Mandatory Country of Origin Labeling of Fish and Shellfish

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Farm Security and Rural Investment Act of 2002 (Farm Bill) and the 2002 Supplemental Appropriations Act (2002 Appropriations) amended the Agricultural Marketing Act of 1946 (Act) to direct the Secretary of Agriculture to promulgate regulations by September 30, 2004, requiring retailers to notify their customers of the country of origin of covered commodities. Covered commodities include muscle cuts of beef (including veal), lamb, and pork; ground beef, ground lamb, and ground pork; farm-raised fish and shellfish; wild fish and shellfish; perishable agricultural commodities; and peanuts. The FY 2004 Consolidated Appropriations Act (2004 Appropriations) (Public Law 108–199) delayed the applicability of mandatory country of origin labeling (COOL) for all covered commodities except wild and farm-raised fish and shellfish until September 30, 2006. After issuance of a proposed rule, the Department has decided to provide further opportunity to comment due to the changes made as a result of comments received and the costs associated with this rule. This interim final rule contains definitions, the requirements for consumer notification and product marking, and the recordkeeping responsibilities of both retailers and suppliers for fish and shellfish covered commodities. Regulatory provisions for the other covered commodities will be provided in a separate regulatory action as appropriate.

DATES: This interim final rule is effective April 4, 2005. The requirements of this rule do not apply to frozen fish or shellfish caught or harvested before December 6, 2004. Comments must be submitted on or before January 3, 2005, to be assured of consideration.

ADDRESSES: Send written comments to: Country of Origin Labeling Program, Room 2092–S; Agricultural Marketing Service (AMS), USDA; STOP 0249; 1400 Independence Avenue, SW., Washington, DC 20250–0249, or by facsimile to (202) 720–3499, or by e-mail to *cool@usda.gov*. State that your comments refer to Docket No. LS–03–04. Comments may also be submitted electronically through *http://www.regulations.gov*. All comments received will be posted to the AMS Web site at: *http://www.ams.usda.gov/cool/*. Comments may also be inspected at the above location between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments sent to the above location that specifically pertain to the information collection and recordkeeping requirements of this action should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: William Sessions, Associate Deputy Administrator, Livestock and Seed Program, AMS, USDA, by telephone on 202/720–5705, or via e-mail at: *william.sessions@usda.gov*.

SUPPLEMENTARY INFORMATION: The information that follows has been divided into three sections. The first section provides background information including questions and answers about this interim final rule, a summary of the history of this rulemaking, and a general overview of the law. The second section provides a discussion of the rule's requirements, including a summary of the comments received in response to the proposed rule published in the October 30, 2003, **Federal Register** (68 FR 61944) and the Agency's responses to these comments. The last section provides for the required impact analyses including the Regulatory Flexibility Act, the Paperwork Reduction Act, Civil Rights Analysis, and the relevant Executive Orders.

I. Background

Questions and Answers Concerning This Interim Final Rule

What Are the General Requirements of Country of Origin Labeling?

The Farm Bill (Public Law 107–171) amended the Act (7 U.S.C. 1621 *et seq.*) to direct the Secretary of Agriculture to issue regulations by September 30, 2004, to require retailers to notify their customers of the country of origin of beef (including veal), lamb, pork, fish, shellfish, perishable agricultural commodities, and peanuts beginning September 30, 2004. The 2004 Appropriations Act (Public Law 107–206) delayed the applicability of mandatory COOL for all covered commodities except wild and farm-raised fish and shellfish until September 30, 2006. The law defines the terms "retailer" and "perishable agricultural commodity" as having the meanings given those terms in section 1(b) of the Perishable Agricultural Commodities Act of 1930 (PACA)(7 U.S.C. 499 *et seq.*). Food service establishments are specifically excluded as are covered commodities that are ingredients in a processed food item. In addition, the law specifically outlines the criteria a covered commodity must meet to bear a "United States country of origin" label.

How Do I Find Out if My Product Is Considered a Covered Commodity or if It Is Labeled Accurately Under the COOL Law?

Questions regarding whether a product is considered a covered commodity or is labeled accurately under this regulation may be e-mailed to *cool@usda.gov*.

What Is the Definition of a Processed Food Item and What Types of Products Are Considered Processed Food Items?

Fish and shellfish covered commodities are exempt from COOL under this rule if they are an ingredient in a processed food item. An ingredient is a component either in part or in full of a finished retail food product. A processed food item is a retail item derived from fish or shellfish that has undergone specific processing resulting in a change in the character of the covered commodity, or that has been combined with at least one other covered commodity or other substantive food components (*e.g.*, breading, tomato sauce), except that the addition of a component (such as water, salt, or sugar) that enhances or represents a further step in the preparation of the product for consumption, would not in itself result in a processed food item. Specific processing that results in a change in the character of the covered commodity includes cooking (*e.g.*, frying, broiling, grilling, boiling, steaming, baking, roasting), curing (*e.g.*, salt curing, sugar curing, drying), smoking (cold or hot), and restructuring (*e.g.*, emulsifying and extruding, compressing into blocks and cutting into portions). Examples of fish and shellfish combined with different covered commodities or other substantive food components include scallops and shrimp in a seafood medley, breaded shrimp, breaded fish fillets, coated shrimp, and marinated fish fillets.

What Requirements Must Be Met for a Retailer To Label a Covered Commodity as Being of U.S. Origin?

The law prescribes specific criteria that must be met for a covered commodity to bear a "United States country of origin" declaration. The specific requirements for fish and shellfish covered commodities are as follows: Farm-raised fish and shellfish—covered commodities must be derived exclusively from fish or shellfish hatched, raised, harvested, and processed in the United States, and that has not undergone a substantial transformation (as established by U.S. Customs and Border Protection) outside of the United States; wild fish and shellfish—covered commodities must be derived exclusively from fish or shellfish either harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel, and that has not undergone a substantial transformation (as established by U.S. Customs and Border Protection) outside of the United States.

How Should I Label a Retail Product That Contains a Covered Commodity (Such as a Bag of Shrimp) Commingled From More Than One Country of Origin?

For imported covered commodities that have not subsequently been substantially transformed in the United States that are commingled with other imported and/or U.S. origin commodities, the declaration shall indicate the countries of origin for all covered commodities in accordance with existing Federal legal requirements. For imported covered commodities that have subsequently undergone substantial transformation in the United States that are commingled with other imported covered commodities that have subsequently undergone substantial transformation in the United States (either prior to or following substantial transformation in the United States) and/or U.S. origin covered commodities, the declaration shall indicate the countries of origin contained therein or that may be contained therein.

What Are the Requirements for Maintaining Country of Origin Information for Blended Covered Commodities That Contain Products From More Than One Country of Origin?

The labeling requirements are consistent with other Federal legal requirements under which facilities are not required to separately track throughout the process, and ultimately into each individual retail package, the country source of the commodities that are found within each individual retail package. Rather, the declaration of the retail product can indicate the several countries of origin that are represented in the overall blending process, without being required to verify which specific countries of origin are found within each individual retail package.

Why Can't the Department of Agriculture (USDA) Track Only Imported Products and Consider All Other Products To Be of "U.S. Origin?"

The COOL provision of the Farm Bill applies to all covered commodities. Moreover, the law specifically identifies the criteria that products of U.S. origin must meet. The law further states that "*Any* person engaged in the business of supplying a covered commodity to a retailer shall provide information to the retailer indicating the country of origin of the covered commodity." And, the law does not provide authority to control the movement of product. In fact, the use of a mandatory identification system that would be required to track controlled product through the entire chain of commerce is specifically prohibited.

When Will the Requirements of This Regulation Be Enforced?

The effective date of this regulation is six months following the date of publication of this interim final rule. The requirements of this rule do not apply to frozen fish or shellfish caught or harvested before December 6, 2004. The country of origin statute provides that "not later than September 30, 2004, the Secretary shall promulgate such regulations as are necessary to implement this subtitle." Many of the covered commodities sold at retail are in a frozen or otherwise preserved state (*i.e.*, not sold as "fresh"). Thus, many of these products would already be in the chain of commerce prior to September 30, 2004, and the origin/production information may not be known. Therefore, it is reasonable to delay the effective date of this interim final rule for six months to allow existing inventories to clear through the channels of commerce and to allow affected industry members to conform their operations to the requirements of this rule. During this time period, AMS will conduct an industry education and outreach program concerning the provisions and requirements of this rule. AMS also will focus its resources for the six months immediately following the effective date of this interim final rule on industry education and outreach. After a careful review of all its implications, AMS has determined that its allocation of enforcement resources will ensure that the rule is effectively and rationally implemented. This AMS plan of outreach and education, conducted over a period of one year, should significantly aid the industry in achieving compliance with the requirements of this rule.

How Will the Requirements of This Regulation Be Enforced?

USDA will seek to enter into partnerships with States having existing enforcement infrastructure to assist in the administration of this law. USDA will determine the scheduling and procedures for the compliance reviews. Only USDA will be able to initiate enforcement actions against a person found to be in violation of the law. USDA may also conduct investigations of complaints made by any person alleging violations of these regulations when the Secretary determines that reasonable grounds for such investigation exist. In addition, the Agency plans to publish a compliance guide that will provide the industry with information on compliance and the phasing in of active enforcement.

What Are the Recordkeeping Requirements of This Regulation?

Any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly, must maintain records to establish and identify the immediate previous source (if applicable) and immediate subsequent recipient of a covered commodity, in such a way that identifies the product unique to that transaction by means of a lot number or other unique identifier, for a period of 1 year from the date of the transaction. For retailers, records and other documentary evidence relied upon at the point of sale by the retailer to establish a product's country(ies) of origin and method(s) of production (wild and/or farm-raised) must be available during normal business hours to any duly authorized representatives of USDA for as long as the product is on hand. For pre-labeled products, the label itself is sufficient evidence on which the retailer may rely to establish a product's origin and method(s) of production (wild and/or farm-raised). Records that identify the supplier, the product unique to that transaction by means of a lot number or other unique identifier, and for products that are not pre-labeled, the country of origin and method of production (wild and/or farm-raised) information must be

maintained for a period of 1 year from the date the origin and production designations are made at retail.

How Does This Regulation Impact Existing State Country of Origin Labeling Programs?

To the extent that State country of origin labeling programs encompass commodities which are not governed by this regulation, the States may continue to operate them. For those State country of origin labeling programs that encompass commodities that are governed by this regulation, these programs are preempted.

Can Food Products That Are Not Covered by This Regulation Be Voluntarily Labeled With COOL Information?

Yes. Such voluntary claims must be truthful and accurate and adhere to existing Federal labeling regulations.

Prior Documents in This Proceeding

This interim final rule is issued pursuant to the Farm Bill, the 2002 Appropriations, and the 2004 Appropriations, which amended the Act.

On October 11, 2002, AMS published Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts (67 FR 63367) providing interested parties with 180 days to comment on the utility of the voluntary guidelines.

On November 21, 2002, AMS published a notice requesting emergency approval of a new information collection (67 FR 70205) providing interested parties with a 60-day period to comment on AMS' burden estimates associated with the recordkeeping requirements as required by the Paperwork Reduction Act of 1995 (PRA). On January 22, 2003, AMS published a notice extending this comment period (68 FR 3006) an additional 30 days.

On October 30, 2003, AMS published the proposed rule for the mandatory COOL program (68 FR 61944) with a 60-day comment period. On December 22, 2003, AMS published a notice extending the comment period (68 FR 71039) an additional 60 days.

Overview of the Law

Section 10816 of Public Law 107–171 (7 U.S.C. 1638–1638d) amended the Act (7 U.S.C. 1621 *et seq.*) to require retailers to inform consumers of the country of origin of covered commodities beginning September 30, 2004.

The intent of this law is to provide consumers with additional information on which to base their purchasing decisions. COOL is a retail labeling program and as such does not provide a basis for addressing food safety. Seafood products, both imported and domestic, must meet the food safety standards of the Food and Drug Administration (FDA). The law defines the term "covered commodity" as muscle cuts of beef (including veal), lamb, and pork; ground beef, ground lamb, and ground pork; farm-raised fish and shellfish; wild fish and shellfish; perishable agricultural commodities; and peanuts. The law excludes items from needing to bear a country of origin declaration when a covered commodity is an "ingredient in a processed food item." The law defines the terms "retailer" and "perishable agricultural commodity" as having the meanings given those terms in PACA. The law defines the term "wild fish" as naturally-born or hatchery-raised fish and shellfish harvested in the wild and excludes net-pen aquacultural or other farm-raised fish.

The law specifically outlines the criteria a covered commodity must meet in order to bear a "United States country of origin" declaration. In the case of farm-raised fish and shellfish, the covered commodity must be derived from fish or shellfish hatched, raised, harvested, and processed in the United States. In the case of wild fish and shellfish, the covered commodity must be derived from fish or shellfish harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel. In addition, the law also requires that fish and shellfish covered commodities be labeled to indicate whether they are wild or farm-raised.

To convey the country of origin information, the law states that retailers may use a label, stamp, mark, placard, or other clear and visible sign on the covered commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to consumers. Food service establishments, such as restaurants, cafeterias, food stands, and other similar facilities are exempt from these labeling requirements.

The law makes reference to the definition of "retailer" in section 1(b) of PACA as the meaning of "retailer" for the application of the labeling requirements under the COOL law. Under this interim final rule, a retailer is any person engaged in the business of selling any perishable agricultural commodity at retail. Retailers are required to be licensed when the invoice cost of all purchases of produce exceeds $230,000 during a calendar year. Since fish markets and similar specialty shops do not generally sell fruits and vegetables, they do not meet the PACA definition of a retailer and therefore are not covered by this rule.

The law requires any person engaged in the business of supplying a covered commodity to a retailer to provide the retailer with the product's country of origin information. In addition, the law states the Secretary of Agriculture may require that any person that prepares, stores, handles, or distributes a covered commodity for retail sale maintain a verifiable recordkeeping audit trail. The law prohibits the Secretary from using a mandatory identification system to verify the country of origin of a covered commodity and provides examples of existing certification programs that may be used to certify the country of origin of a covered commodity. The law contains enforcement provisions for both retailers and suppliers that include civil penalties of up to $10,000 for each violation. The law also encourages the Secretary to enter into partnerships with States with enforcement infrastructure to the extent possible to assist in the program's administration.

II. Highlights of This Interim Final Rule

Covered Commodities

The term "covered commodity" includes: farm-raised fish and shellfish (including fillets, steaks, nuggets, and any other flesh) and wild fish and shellfish (including fillets, steaks, nuggets, and any other flesh).

Exclusion for Ingredient in a Processed Food Item

Items are excluded from labeling under this regulation when a covered commodity is an ingredient in a processed food item. Under this interim final rule, a "processed food item" is defined as: a retail item derived from fish or shellfish that has undergone specific processing resulting in a change in the character of the covered commodity, or that has been combined with at least one other covered commodity or other substantive food component (breading, tomato sauce), except that the addition of a component (such as water, salt, or sugar) that enhances or represents a further step in the preparation of the product for consumption, would not in itself result in a processed food item. Specific processing that results in a change in the character of the covered commodity includes cooking (*e.g.*, frying, broiling, grilling, boiling, steaming, baking,

roasting), curing (*e.g.*, salt curing, sugar curing, drying), smoking (cold or hot), and restructuring (*e.g.*, emulsifying and extruding, compressing into blocks and cutting into portions). Examples of items excluded include fish sticks, surimi, mussels in tomato sauce, seafood medley, coconut shrimp, soups; stews, and chowders, sauces, pates, salmon that has been smoked, marinated fish fillets, canned tuna, canned sardines, canned salmon, crab salad, shrimp cocktail, gefilte fish, sushi, and breaded shrimp.

Labeling Covered Commodities of United States Origin

The law prescribes specific criteria that must be met for a covered commodity to bear a "United States country of origin" declaration. The specific requirements for each commodity are as follows:

(a) Farm-raised Fish and Shellfish—covered commodities must be derived exclusively from fish or shellfish hatched, raised, harvested, and processed in the United States, and that has not undergone a substantial transformation (as established by U.S. Customs and Border Protection) outside of the United States.

(b) Wild Fish and Shellfish—covered commodities must be derived exclusively from fish or shellfish either harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel, and that has not undergone a substantial transformation (as established by U.S. Customs and Border Protection) outside of the United States.

Labeling Country of Origin for Imported Products That Have Not Been Substantially Transformed in the United States

Under this interim final rule, an imported covered commodity shall retain its origin as declared to U.S. Customs and Border Protection at the time the product enters the United States, through retail sale, provided it has not undergone a substantial transformation (as established by U.S. Customs and Border Protection) in the United States.

Covered commodities imported in consumer-ready packages are currently required to bear a country of origin declaration on each individual package under the Tariff Act of 1930 (Tariff Act). This interim final rule does not change these requirements.

Labeling Imported Products That Have Been Substantially Transformed in the United States

Under this interim final rule, in the case of wild fish and shellfish, if a covered commodity was imported from country X and substantially transformed (as established by U.S. Customs and Border Protection guidelines and policies) in the United States or aboard a U.S. flagged vessel, the product shall be labeled at retail as "From [country X], processed in the United States." The covered commodity must also be labeled to indicate that it was derived from wild fish or shellfish.

In the case of farm-raised fish, if a covered commodity was imported from country X at any stage of production and substantially transformed (as established by U.S. Customs and Border Protection guidelines and policies) in the United States, the product shall be labeled at retail as "From [country X], processed in the United States." The covered commodity shall also be labeled to indicate that it was derived from farm-raised fish or shellfish.

Defining Country of Origin for Blended Products

Under this interim final rule, the country of origin declaration of blended or commingled retail food items comprised of the same covered commodity (*e.g.*, bag of shrimp) having different origins, shall indicate the countries of origin for covered commodities in accordance with existing Federal legal requirements when the commingled product contains imported covered commodities that have not subsequently been substantially transformed in the United States. When the retail product contains imported covered commodities that have subsequently undergone substantial transformation in the United States commingled with other imported covered commodities that have subsequently undergone substantial transformation in the United States (either prior to or following substantial transformation in the United States) and/or U.S. origin covered commodities, the declaration shall indicate the countries of origin contained therein or that may be contained therein.

Remotely Purchased Products

For sales of a covered commodity in which the customer purchases a covered commodity prior to having an opportunity to observe the final package (*e.g.*, Internet sales, home delivery sales, etc.) the retailer may provide the country of origin and method of production information (wild and/or farm-raised), either on the sales vehicle or at the time the product is delivered to the consumer.

Markings

Under this interim final rule, the country of origin declaration and method of production (wild and/or farm-raised) designation may be provided to consumers by means of a label, stamp, mark, placard, band, twist tie, pin tag, or other clear and visible sign on the covered commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to consumers. The country of origin declaration and method of production (wild and/or farm-raised) designation may be combined or made separately. Except as provided in § 60.200(g) and § 60.200 (h)(2) of this regulation, the declaration of the country(ies) of origin of a product shall be listed according to existing Federal legal requirements. Abbreviations and variant spellings that unmistakably indicate the country of origin, such as "U.K." for "The United Kingdom of Great Britain and Northern Ireland" are acceptable. The adjectival form of the name of a country may be used as proper notification of the country(ies) of origin of imported commodities provided the adjectival form of the name does not appear with other words so as to refer to a kind or species of product. Symbols or flags alone may not be used to denote country of origin.

With respect to the production designation, various forms of the production designation are acceptable, including "wild caught," "wild," "farm-raised," "farmed," or a combination of these terms for blended products that contain both wild and farm-raised fish or shellfish provided it can be readily understood by the consumer and is in conformance with other Federal labeling laws. Designations such as "ocean caught," "caught at sea", "line caught," "cultivated," or "cultured" do not meet the requirements of this regulation. Alternatively, the method of production (wild and/or farm-raised) designation may also be in the form of a check box. However, the labeling requirements under this rule do not supersede any existing Federal legal requirements, unless otherwise specified, and any such country of origin and method of production (wild and/or farm-raised) notification must not obscure or intervene with other labeling information required by existing regulatory requirements.

In order to provide the industry with as much flexibility as possible, this rule does not contain specific requirements

as to the exact placement or size of the country of origin or method of production (wild and/or farm-raised) declaration. However, such declarations must be conspicuous and allow consumers to determine the country(ies) of origin and method(s) of production (wild and/or farm-raised) when making their purchases and provided that existing Federal labeling requirements must be followed. For example, under FDA labeling regulations (21 CFR 101.2) it is not permissible to include the method of production (wild and/or farm-raised) designation in either the ingredient statement or as part of the common or usual name of a product.

Recordkeeping Requirements and Responsibilities

The law states that the Secretary may require any person that prepares, stores, handles, or distributes a covered commodity for retail sale to maintain a verifiable recordkeeping audit trail that will permit the Secretary to verify compliance. As such, records and other documentary evidence to substantiate origin declarations and designations of wild and/or farm-raised are necessary in order to provide retailers with credible information on which to base origin declarations.

Under this interim final rule, any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly (*i.e.*, harvesters, producers, distributors, handlers, etc.), must make available information to the subsequent purchaser about the country(ies) of origin and method(s) of production (wild and/or farm-raised) of the covered commodity. This information may be provided either on the product itself, on the master shipping container, or in a document that accompanies the product through retail sale provided it identifies the product and its country(ies) of origin and method(s) of production, unique to that transaction by means of a lot number or other unique identifier. If after October 6, 2005, a frozen fish or shellfish covered commodity caught or harvested before December 6, 2004, is offered for retail sale and for which origin and/or method of production information is not known, the supplier must possess records to substantiate the date of harvest or capture of the fish or shellfish.

Any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly, must maintain records to establish and identify the immediate previous source (if applicable) and immediate subsequent recipient of a covered commodity, in such a way that identifies the product unique to that transaction by means of a lot number or other unique identifier, for a period of 1 year from the date of the transaction.

In addition, the supplier of a covered commodity that is responsible for initiating a country of origin declaration and method of production (wild and/or farm-raised) designation must possess records necessary to substantiate the claim.

For an imported covered commodity, the importer of record as determined by CBP, must ensure that records: provide clear product tracking from the U.S. port of entry to the immediate subsequent recipient and accurately reflect the country(ies) of origin and method(s) of production (wild and/or farm-raised) of the item as identified in relevant CBP entry documents and information systems; and maintain such records for a period of 1 year from the date of the transaction.

Any intermediary supplier (*i.e.*, not the supplier responsible for initiating a country of origin declaration and method of production (wild and/or farm-raised) designation) handling a covered commodity that is found to be designated incorrectly for country of origin and/or method of production (wild and/or farm-raised) shall not be held liable for a violation of the Act by reason of the conduct of another if the intermediary supplier could not have been reasonably expected to have had knowledge of the violation.

Under this interim final rule, retailers also have recordkeeping responsibilities. Records and other documentary evidence relied upon at the point of sale by the retailer to establish a product's country(ies) of origin and method(s) of production (wild and/or farm-raised), or, if applicable, date of harvest or capture designation, must be available during normal business hours to any duly authorized representatives of USDA for as long as the product is on hand. For pre-labeled products (*i.e.*, labeled by the manufacturer/first handler) the label itself is sufficient evidence on which the retailer may rely to establish a product's origin and method(s) of production (wild and/or farm-raised). Records that identify the retail supplier, the product unique to that transaction by means of a lot number or other unique identifier, and for products that are not pre-labeled, the country of origin and method of production (wild and/or farm-raised) information must be maintained for a period of 1 year from the date the origin declaration is made at retail. Such records may be located at the retailer's point of distribution, warehouse, central offices, or other off-site location.

Any retailer handling a covered commodity that is found to be designated incorrectly as to country of origin and/or the method of production (wild and/or farm-raised) shall not be held liable by reason of the conduct of another if the retailer could not have been reasonably expected to have had knowledge of the violation.

Enforcement

The law encourages the Secretary to enter into partnerships with States to the extent practicable to assist in the administration of this program. As such, USDA will seek to enter into partnerships with States that have enforcement infrastructure to conduct retail compliance reviews.

Routine compliance reviews may be conducted at retail establishments and associated administrative offices, and at supplier establishments subject to these regulations. USDA will coordinate the scheduling and determine the procedures for compliance reviews. Only USDA will be able to initiate enforcement actions against a person found to be in violation of the law. USDA may also conduct investigations of complaints made by any person alleging violations of these regulations when the Secretary determines that reasonable grounds for such investigation exist.

Retailers and suppliers, upon being notified of the commencement of a compliance review, must make all records or other documentary evidence material to this review available to USDA representatives in a timely manner during normal hours of business and provide any necessary facilities for such inspections.

The law contains enforcement provisions for both retailers and suppliers that include civil penalties of up to $10,000 for each violation. For retailers, the law states that if the Secretary determines that a retailer is in violation of the Act, the Secretary must notify the retailer of the determination and provide the retailer with a 30-day period during which the retailer may take necessary steps to comply. If upon completion of the 30-day period the Secretary determines the retailer has willfully violated the Act, after providing notice and an opportunity for a hearing, the retailer may be fined not more than $10,000 for each violation.

For suppliers, the law states that section 253 of the Act shall apply to a violation of this subpart. This section states in part that in determining the amount of a civil penalty to be assessed for violations of this subpart, the

Secretary must consider the gravity of the offense, the size of the business involved, and the effect of the penalty on the ability of the person that has committed the violation to continue in business. The Act also states that the Secretary shall consider whether there has been a pattern of errors in the violation of this subtitle in determining whether to assess a civil penalty. This section also provides that in addition to or in lieu of a civil penalty, the Secretary may issue a cease and desist order from continuing any violation. In addition, section 253 also contains the administrative process that must be followed in assessing a civil penalty or cease and desist order. As with retailers, if the Secretary determines that a supplier is in violation of the Act, the Secretary will notify the supplier of the determination and provide the supplier with a 30-day period during which the supplier may take necessary steps to comply.

In addition to the enforcement provisions contained in the Act, statements regarding a product's origin must also comply with other existing Federal statutes. For example, the Federal Food, Drug, and Cosmetic Act prohibits labeling that is false or misleading. Thus, inaccurate country of origin labeling of covered commodities may lead to additional penalties under this statute as well.

In order to provide regulated parties with additional information relative to the enforcement of this program, AMS will issue a compliance guide. This compliance guide will contain additional information about the audit process, the types of records that may be useful in verifying compliance with this regulation, examples of instances that would be considered violations, as well as other information that may be useful in complying with this regulation.

Comments and Responses

On October 30, 2003, AMS published the proposed rule for the mandatory COOL program (68 FR 61944) with a 60-day comment period. On December 22, 2003, AMS published a notice extending the comment period (68 FR 71039) an additional 60 days. AMS received over 5,600 timely comments from consumers, retailers, foreign governments, producers, wholesalers, manufacturers, distributors, members of Congress, trade associations and other interested parties. The majority of the comments received were from consumers expressing support for the requirement to label the method of production of fish and shellfish as either wild and/or farm-raised. Numerous other comments related to the definition of a processed food item, the recordkeeping requirements for both retailers and suppliers, and the enforcement of the program. In addition, over 100 late comments were received which generally reflected the substance of the timely comments received. Specific comments are discussed in detail below. As this interim final rule contains the requirements for labeling fish and shellfish covered commodities, to the extent practicable, only those comments that pertain to fish and shellfish covered commodities and to the general requirements of this regulation are discussed herein. In some cases, the summary of comments and Agency response encompass both fish and shellfish covered commodities and other covered commodities. These comments and the Agency response are included in this interim final rule in cases where their inclusion facilitates the reader's understanding of the changes that were made in this rule based on the commenters' recommendations.

Definitions

Covered Commodity

Summary of Comments: Numerous commenters suggested that the definition of covered commodity should be amended to include poultry.

Agency Response: Section 281(2)(A) of the Act defines the term "covered commodity" as "muscle cuts of beef, lamb, and pork; ground beef, ground lamb, ground pork; farm-raised fish; wild fish; a perishable agricultural commodity; and peanuts." Accordingly, this recommendation is not adopted.

Processed (for Fish and Shellfish)

Summary of Comments: One commenter recommended that USDA adopt a clearer definition of determining a country of origin's location of processing if USDA is unable to clearly articulate what substantial transformation means in this rule. Other commenters recommended that the definition of processed be modified so that imported products subjected to processing beyond repackaging but less than substantial transformation should be eligible to voluntarily be labeled as processed in the United States.

Agency Response: Because of changes made by the Agency in the regulatory text in § 60.200(g) to simplify the labeling of imported products that have been substantially transformed in the United States, the Agency no longer believes that a separate definition of processed is necessary. With respect to allowing imported products that have been subjected to processing beyond repackaging but less than substantial transformation to voluntarily be labeled as processed in the United States, such labeling would not conform to U.S. Customs and Border Protection requirements. Accordingly, because the definition of processed has been deleted no changes have been made as a result of these comments.

Processed Food Item

Summary of Comments: AMS received numerous comments on the definition of a processed food item. Some commenters offered specific recommendations as to what should be considered a processed food item such as canned fish, breaded products, all products that have been substantially transformed, and all seafood products made from block derivatives. Other commenters offered specific recommendations as to what products should not be considered a processed food item such as smoked fish, cured products, and simple mixtures of covered commodities. Several commenters recommended that the first alternative definition provided in the proposed rule should be utilized which would exclude any product that bears an ingredient statement. Several other commenters recommended that the second alternative definition provided in the proposed rule should be utilized which would exclude any covered commodity that has undergone processing as defined by other existing Federal regulations. Other commenters recommended that the third alternative definition provided in the proposed rule should be utilized which would only exclude a covered commodity if it is mixed with other commodities to create a distinct food item such as a pizza or TV dinner. Another commenter recommended that a processed food item be defined as "transformation of a covered commodity that results in a finished product that has a distinct character from the covered commodity so that consumers do not use the item in the same fashion as they would use the covered commodity itself." Another commenter stated his belief that Congress intended for COOL to cover only those products not currently covered under existing tariff laws. Other commenters expressed general concern about the proposed definition, but did not offer any alternatives. Some commenters stated that the definition as proposed will result in USDA deciding on a case by case basis which food products must be labeled. Other commenters expressed concern that the concept of substantial transformation which is the basis for determining origin under both CBP regulations and the

World Trade Organization's Rules of Origin is being overwritten.

Agency Response: In an effort to make the definition of a processed food item clearer, the Agency has modified the language in the proposed rule to provide specific examples of the types of processing that would result in a product being considered a processed food item. In addition, the Agency has determined that the application of the definition and thus the scope of covered commodities should be modified. Accordingly, under this interim final rule, all cooked (*e.g.*, canned fish, cooked shrimp) and breaded products, which in the case of shrimp can account for up to 50 percent of the finished product, are considered processed food items and are excluded from labeling under this regulation. In addition, retail items that have been given a distinct flavor (*e.g.*, Cajun marinated catfish) are also considered processed food items. Further, to provide additional guidance to the industry, the Agency has added additional examples of the types of products that would be excluded in the Questions and Answers section of this rule. With respect to the issue of substantial transformation, the law specifically defines the criteria for a covered commodity to be labeled as having a United States country of origin. Thus, under this regulation, imported products that have been subsequently substantially transformed in the United States are not eligible to bear a "product of the U.S." declaration.

Raised

Summary of comments: One commenter recommended that the definition of raised for farm-raised fish and shellfish be modified to include farm-raised fish and shellfish originally obtained from the wild.

Agency Response: The Agency defined "raised" in the case of farm-raised fish and shellfish in the context of defining the production steps contemplated by the law for this commodity (hatched, raised, harvested, and processed). The Agency separately defined the term "farm-raised fish" to include farm-raised fish and shellfish originally obtained from the wild. However, the Agency has modified the definition of "raised" to clarify that it is defined in context of the production steps defined by the law (hatched, raised, harvested, and processed).

Retailer

Summary of comments: Numerous commenters recommended that the definition of retailer be modified to include specialty shops such as fish markets.

Agency Response: The law specifically defines the term retailer as having the meaning given that term in section 1(b) of PACA. Accordingly, fish markets or any other retail entities that either invoice fruits and vegetables at a level below the $230,000 threshold or do not sell any fruits and vegetables at all are not included. Therefore, this recommendation is not adopted.

United States Country of Origin

Summary of comments: One commenter expressed concern that the definition of United States country of origin departs from the relevant international standard in which the country of origin is defined as the country where substantial transformation occurred.

Agency Response: The law specifically defines the criteria a covered commodity must meet to bear a United States country of origin declaration. As such, the Agency is unable to modify this definition in the manner recommended by the commenter. However, the Agency has modified the definition to clarify that products otherwise meeting the definition of U.S. origin that are subsequently substantially transformed outside of the United States are not eligible to bear a U.S. origin declaration.

Country of Origin Notification

General

Summary of comments: One commenter recommended that § 60.200(a) of the proposed rule should be deleted as it could be construed as requiring each individual commodity to bear a label indicating its country of origin.

Agency Response: The Agency agrees with the commenter that the language could be interpreted as requiring each individual covered commodity to bear a label. However, the Agency does not agree that this section should be deleted. The Agency has modified the language in this section to clarify that the regulation does not require each covered commodity to be individually labeled.

Designation of Wild Fish and Farm-Raised Fish

Summary of Comments: Several commenters recommended the Agency clarify that the designation of the method of production for fish and shellfish as either wild or farm-raised is a separate requirement from the requirement to provide notice of a covered commodity's country of origin.

Agency Response: The Agency agrees with the commenters' recommendation and has modified § 60.200(d) accordingly.

Labeling Covered Commodities When the Product Has Entered the United States During the Production Process

Summary of Comments: Several commenters recommended alternative methods of labeling products that have entered the United States during the production process. Several commenters recommended that mixed origin products should be labeled to reflect each country involved in the production process (*e.g.*, capture/farming country, processing country). Other commenters recommended that the Agency should delete any requirement to display the origin where processing occurred for any of the covered commodities. Several other commenters expressed support for the provisions contained in the proposed rule. Another commenter recommended that all countries involved in the production of a covered commodity be listed alphabetically. In addition, one commenter recommended that the words "by a vessel other than a U.S. flagged vessel" be inserted after the phrase "was harvested in country X" in § 60.200(2)(ii).

Agency Response: The Agency has made modifications to § 60.200(g) in order to harmonize the requirements of this regulation with current Federal legal requirements. No additional changes have been made as a result of these comments.

Blended Products

Summary of Comments: Numerous commenters recommended alternative methods for labeling products comprised of the same commodity that are prepared from raw material sources having different origins. Several commenters recommended that companies should be allowed to list the countries either alphabetically or by weight. Numerous other commenters recommended that companies be allowed to use labels that indicate what countries may be contained within the package. Several commenters recommended that AMS consider using general rather than specific labels for products involving more than one country such as "mixed origin." Another commenter recommended that labels should list all of the countries but in no particular order. Another commenter recommended that the label should indicate the percentage of each country contained within the package (*e.g.*, 65% country Y, 35% country X). Finally, one commenter expressed concern as to whether listing the countries alphabetically is acceptable under FDA and CBP regulations.

Agency Response: The law requires all covered commodities to be labeled with country of origin information. As such, the use of "mixed origin" labels does not provide consumers with the required information and are therefore unacceptable. However, USDA is concerned about the burden imposed by the rule on facilities that produce a blended retail product. The proposed rule would have required such facilities to document that the origin of a product was separately tracked, while in their control, during production and packaging. The proposed rule also would have required that the labeling of all blended products specify precisely the countries of origin represented within each individually-packaged retail product. In this interim final rule, the provision to separately track the product has been removed, and the labeling requirements have been made consistent with other Federal legal requirements. Therefore, this interim final rule does not impose any additional burden with respect to the labeling of blended products for which labeling is also required under U.S. Customs and Border Protection legal requirements. For imported covered commodities that have not subsequently been substantially transformed in the United States that are commingled with other imported or U.S. origin covered commodities, the declaration shall indicate the countries of origin for all covered commodities in accordance with existing Federal legal requirements. For imported covered commodities that have subsequently undergone substantial transformation in the United States that are commingled with other imported covered commodities that have subsequently undergone substantial transformation in the United States (either prior to or following substantial transformation in the United States) and/or U.S. origin covered commodities, the declaration shall indicate the countries of origin contained therein or that may be contained therein.

Remotely Purchased Products

Summary of Comments: Some commenters recommended that consumers be notified of a product's country of origin prior to the purchase being made. Other commenters recommended that the country of origin notification should be allowed to be made either on the sales vehicle or at the time the product is delivered to the consumer.

Agency Response: The Agency believes that companies should be allowed flexibility in providing the notice of country of origin and method of production (wild and/or farm-raised). As such, under this interim final rule, companies can provide the required notification either on the sales vehicle or at the time the product is delivered to the consumer.

Markings

Section 60.300(a)

Summary of Comments: Several commenters recommended that the method of production (wild and/or farm-raised) designation should be allowed to be made separately from the country of origin declaration. Another commenter requested flexibility in labeling commingled similar wild and farm-raised products. Several other commenters recommended that the Agency specifically allow the use of check boxes to convey both the country of origin and method of production (wild and/or farm-raised) information.

Agency Response: The Agency believes that the law provides the same flexibility in providing the method of production (wild and/or farm-raised) designation as it does the country of origin notification. As such, § 60.300(a) has been modified to clarify that various forms of the method of production (wild and/or farm-raised) designation are permissible and that the country of origin declaration and method of production (wild and/or farm-raised) designation can be combined or made separately. In addition, § 60.300(d) has been modified to clarify that a bulk container used at the retail level to present product to consumers may contain products comprised of both wild and farm-raised fish or shellfish provided all possible origins and/or method(s) of production are listed. In addition, § 60.300(a) has been modified to clarify that products may contain both wild and farm-fish provided the label identifies both methods of production. With respect to check boxes, the Agency has added language in § 60.300(a) to specifically authorize the use of check boxes as an acceptable method of notification.

Section 60.300(b)

Summary of Comments: Several commenters recommended that the conspicuous location requirement should include any place on the package or product. Another commenter recommended that the preamble recognize that conspicuous may be provided in a broad number of ways, including signs adjacent to a bulk display, pin tags for seafood, etc.

Agency Response: The Agency believes the current explanation of a conspicuous location as being likely to be read and understood by a customer under normal conditions of purchase is sufficient. In addition, the proposed rule adequately clarified that the country of origin and method of production (wild and/or farm-raised) declarations can be made in a multitude of ways (*e.g.*, placard, sign, label, sticker, band, twist tie, etc.). However, the Agency will add pin tags as a specific example. Accordingly, these recommendations have been adopted in part.

Section 60.300(d)

Summary of Comments: One commenter recommended that bulk commodities should be allowed to be commingled in bins as long as the signage indicates the countries of origin of the contents of the bin. Another commenter requested that the words "that a substantial amount of" be inserted after the word provided. Another commenter expressed concern that requiring individual stickering may result in the elimination of bulk displays and in packaged products displacing fresh displays.

Agency Response: The Agency has modified § 60.300(d) such that a bulk container used at the retail level may contain a covered commodity from more than one origin and/or method of production provided that all possible origins and/or methods of production are listed. No additional changes have been made as a result of these comments.

Section 60.300(e)

Summary of Comments: Several commenters recommended that the Agency define acceptable standard country abbreviations. One commenter recommended that the three letter format accepted by the International Olympic Committee be used while the other commenter expressed concern that if the International Organization for Standardization country codes were utilized, abbreviations for many of the countries exporting to the United States will not be recognized by consumers. Another commenter requested clarification on whether "Brazilian product" would be accepted as proper country of origin notification. Another commenter recommended that the language allowing the use of the adjectival form of the name of a country be modified to delete the reference to "region/city" since the Agency expressly prohibited the use of State or regional label designations in lieu of country of origin notification.

Agency Response: The Agency believes that the language regarding abbreviations as proposed that allows abbreviations and variant spellings that

unmistakably indicate the country of origin is appropriate. This is the same language contained in U.S. Customs and Border Protection laws and regulations, which will minimize the burden on the industry by allowing them to continue to follow existing regulations. With respect to the clarification on the use of "Brazilian product" as country of origin notification, the adjectival form of the name of a country is specifically authorized as long as it does not refer to a kind or species of product (*e.g.*, Brazil nuts). With respect to the commenter's recommendation to delete the reference to "region/city," the Agency agrees with the commenter's recommendation and has deleted the reference to "region/city." Accordingly, these recommendations have been adopted in part.

Section 60.300(f)

Summary of Comments: Numerous commenters recommended that the Agency accept State and regional label designations in lieu of country of origin labeling.

Agency Response: The Act specifically requires that all covered commodities be labeled with country of origin information. Thus, allowing State and regional label designations in lieu of country designations would not meet the requirements of the statute. Accordingly, this recommendation is not adopted.

Recordkeeping

General

Summary of Comments: Several commenters recommended that the Agency list the specific records that it will use to determine the validity of origin claims. Other commenters recommended that the Agency cite the examples of records that can be used to substantiate origin and method of production (wild and/or farm-raised) claims that the Agency has posted on its website in the preamble of the final rule. Other commenters recommended that the Agency require no additional records beyond those mandated by the Tariff Act, PACA, and FDA. Several other commenters requested that the Agency provide guidance on what records could be used to substantiate method of production (wild and/or farm-raised) claims for imported products and asked what AMS would require of foreign suppliers. Another commenter expressed concern that the preamble provides no explanation of the records that would be necessary to establish the chain of custody of a product. The commenter further contends that this requirement is higher than the standard set forth in FDA's recordkeeping authority under the Bioterrorism Act and suggested that it be deleted.

Agency Response: With regard to identifying records that may be useful in verifying origin and method of production (wild and/or farm-raised) claims, the Agency has included some examples of records in the regulation and additional examples will be included in the compliance guide. In addition § 60.400(b)(4) has been modified to clarify the responsibilities of importers. With respect to using existing records mandated by the Tariff Act, PACA, and FDA to verify compliance with this regulation, it is not necessary that additional records be created to comply with this regulation to the extent that existing records contain the necessary information. With respect to establishing the chain of custody of a product, the Agency has deleted this language from this rule. The requirement in the interim final rule that retail suppliers maintain records to establish and identify the immediate previous source and immediate subsequent recipient of a covered commodity, in such a way that identifies the product unique to that transaction by means of a lot number or other unique identifier, is sufficient documentation to allow the Agency to track a product back through the marketing chain in order to verify compliance with this regulation.

Recordkeeping Retention

Summary of Comments: The Agency received numerous comments regarding the recordkeeping retention requirement. The majority of commenters recommended a shorter record retention time for both retailers and suppliers. Specifically, most commenters recommended that a one-year record retention requirement for suppliers and for the centrally-located retail records. Several other commenters recommended alternate retention times including, for the reasonable life of the product (and that for most perishable items 30 days would be sufficient), six months for perishable items, and 90 days for both retailers and slaughter facilities. Other commenters suggested various recordkeeping retention requirements at the store level including, limiting it to the time that the products are located at the store, lengthening it to 30 days, reducing it to 2 days or eliminating it all together. Another commenter requested that the preamble include language specifying that the "date the origin declaration was made at retail" with respect to retaining the centrally located retail records that identify the retail supplier is the date that the product is received at the retail store. Another commenter expressed concern that it may be impossible for retailers to determine when the proposed recordkeeping retention requirement of 7 days after retail sale has elapsed. One commenter recommended that the regulations should expressly recognize that a document that identifies the country of origin and method of production (wild and/or farm-raised) of a covered commodity provided by the supplier that accompanies the product from the supplier all the way to the retail store would serve as an adequate record upon which the retailer could justifiably rely at the point of retail sale to establish a covered commodity's origin and method of production (wild and/or farm-raised). The commenter also recommended that pre-labeled products should not require additional documentation at the retail level as the label itself is the documentary evidence on which the retailer is relying.

Agency Response: The Agency believes that a 1-year record retention requirement for suppliers and centrally located retail records as recommended by many of the commenters is appropriate. This requirement would be consistent with the recordkeeping retention time proposed by FDA under the Bioterrorism Act and would allow the Agency ample time to conduct enforcement reviews to verify compliance with this regulation. With respect to the recordkeeping retention requirement for store-level records, the Agency agrees with the commenters' recommendation that records only need to be available while the product is on hand. As one commenter pointed out, it would be difficult for the retail facility to determine when the 7 day time period after retail sale had elapsed. In addition, generally retail enforcement activities would not encompass products that have already been sold. With respect to a commenter's request to clarify that the date the origin declaration is made at retail is the date the product is received at the retail store, the Agency does not believe such a clarification is appropriate. In the case of nonperishable products, the retailer may receive products at the store that are not actually displayed for sale for some time. Accordingly, this recommendation is not adopted. With respect to the commenter's recommendation that pre-labeled products should not require any additional documentation at the retail level and that a document containing country of origin and method of

production (wild and/or farm-raised) information that accompanies the product through retail sale should be adequate documentation on which a retailer can rely, the Agency agrees and has modified § 60.400(b)(1) and § 60.400(c)(1) accordingly.

Responsibilities of Suppliers and Retailers

Summary of Comments: One commenter recommended that the final rule should clarify that only USDA has the authority to verify, audit, and administer the labeling program. Another commenter recommended that the Agency clarify that suppliers of covered seafood products must also separately track and document the method of production (wild and/or farm-raised). The commenter also recommended that the preamble should expressly state that suppliers such as wholesalers who simply distribute pre-packaged product are not required to document that the product was separately tracked. Another commenter recommended that importers be required to maintain adequate records to reconcile purchase, inventories, and sales of imported and domestic commodities. One commenter stated their belief that the safe harbor provision for retailers and intermediary suppliers does not have a specific statutory basis in the Act and expressed an interest in understanding the application of the PACA standard to claims required under the Act. The commenter also recommended that the safe harbor provision for retailers should also extend to misstatements of the method of production (wild and/or farm-raised). The commenter also requested that the preamble should articulate that retailers can accept information provided by suppliers without liability and without obligations to investigate the declarations or systems put in place to ensure the accuracy of declarations. Several commenters requested that the "reasonable knowledge" language contained in the safe harbor provision be deleted as the commenters contend it is difficult to determine what someone should have been reasonably expected to be known.

Agency Response: With respect to clarifying that only USDA has the authority to verify, audit, and administer the labeling program, the Enforcement section of the preamble states that only USDA may initiate enforcement actions against a person found to be in violation of the law. Thus, the Agency believes no further clarification is necessary. With respect to clarifying that suppliers of covered seafood products must also separately track and document the method of production (wild and/or farm-raised), the Agency has deleted § 60.400(b)(5) as it is duplicative and unnecessary given the requirement in the regulation that suppliers provide country of origin and method of production information for all covered commodities. No additional changes as a result of these comments have been made. With respect to the recommendation to require importers to maintain adequate records to reconcile purchases, inventories, and sales of imported and domestic commodities, the law does not provide the Agency with the authority to require such detailed information nor is such information necessary to substantiate origin and method of production claims. Accordingly, this recommendation is not adopted. With respect to the safe harbor provision, the Agency agrees with the commenters' recommendations to extend the safe harbor to misstatements of the method of production (wild and/or farm-raised) and has modified § 60.400(b)(2) accordingly. With respect to the statutory basis for the "safe harbor" provision, the basis for providing regulatory protection for retailers in instances where they receive inaccurate COOL information and/or method of production (wild and/or farm-raised) information is based on the language contained in sections 253 and 283 of the Act. Section 283 speaks of specific enforcement procedures and penalties for retailers, while enforcement procedures and penalties as to other persons are found in section 253. Because the penalty as to retailers requires a willful violation, where a retailer acting in good faith relies on statements or records given by others, we do not believe it was Congress' intent to hold retailers responsible for violations when they relied upon false and/or inaccurate information provided by a supplier. However, the Agency believes the "reasonable knowledge" language is necessary as there are instances in which a retailer would likely have had knowledge that the country of origin information provided to them by the supplier was not correct and should be held accountable. For example, a retailer that receives fresh wild salmon from Alaska in January labeled as product of the U.S. should have known that such a declaration was inaccurate. With respect to the issue of retailers accepting information provided by suppliers without liability and without requiring third-party verification of the information, the Agency believes that because the penalty as to retailers specifically requires a willful violation and the final regulation contains a safe harbor provision, there is no additional language needed.

Use of Affidavits and Self-Certification

Summary of Comments: In the proposed rule, the Agency invited comment on the practicality of requiring suppliers to provide an affidavit for each transaction to the immediate subsequent recipient certifying that the country of origin claims and, if applicable, designations of wild or farm-raised, being made are truthful and that the required records are being maintained. Numerous commenters recommended that such affidavits not be required as they believe it would be expensive, onerous, unnecessary, and does nothing to alleviate knowing violations of the law. Another commenter supported the use of affidavits as they believe it would provide a level of insurance that the retailer can rely on the information provided by the supplier. One commenter suggested that providing an affidavit with each transaction would be helpful, but legal requirements for such a legally binding document may vary by State. Numerous other commenters interpreted allowing the use of affidavits as allowing self-certification. These commenters recommended that suppliers should be allowed to self-certify the origin of their product.

Agency Response: Self-certification documents or affidavits may play a role in assuring that auditable records are available throughout the marketing chain, but the auditable records must themselves also be available to ensure credibility of country of origin labeling claims. However, in view of the marketing practices of the fish and shellfish industries and the probable cost impacts, the Agency has concluded that requiring affidavits is not practicable or necessary.

Enforcement

Summary of Comments: The Agency received numerous comments on the issue of enforcement. Several commenters recommended that the Agency incorporate a grace period in which enforcement of this regulation would be delayed and implement a program emphasizing compliance rather than enforcement for the first year. Numerous other commenters requested that the Agency clearly define the process of enforcement including recognizing the circumstances under which retailers will be considered to have willfully violated the statute. Several commenters suggested that

retailers should not be found in willful violation of the statute unless the retailer intentionally removed or changed the information provided by the supplier. Another commenter recommended that willful be defined as any act resulting in misinformation that was a deliberate and intentional act for the purpose of misstating the COOL label. Several other commenters recommended that the Agency should expressly recognize that if the majority of covered commodity items bear a label, the retailer has met their obligation. Several commenters requested additional information on the process the Agency will employ to fulfill the mandate to partner with States. Other commenters recommended that the Agency expressly prohibit third-party audits from being required of any party subject to this regulation. Another commenter expressed concern that the Agency does not define what type of information will be sufficient to withstand third-party audits which the commenter believes will lead to a lack of uniformity exposing all participants to unnecessary legal liability. Another commenter recommended that the final regulation clearly describe or at least reiterate the statutory standards for non-retailers. Another commenter recommended that AMS establish a sliding scale for penalties.

Agency Response: Many of the covered commodities sold at retail are in a frozen or otherwise preserved state (*i.e.*, not sold as "fresh"). Thus, many of these products would already be in the chain of commerce prior to September 30, 2004, and the origin/production information may not be known. Accordingly, the effective date of this regulation is six months following the date of publication of this interim final rule. The requirements of this rule do not apply to frozen fish or shellfish caught or harvested before December 6, 2004. Further, AMS will focus its activities on industry education and outreach for an additional six months from the effective date of this interim final rule. This will allow a total of 12 months for AMS to conduct an industry education and outreach program concerning the provisions contained within this rulemaking. With respect to the issue of acts that will constitute "willful" violations of this subpart, determinations will be made on a case by case basis. However, the Agency will take into consideration the facts and circumstances regarding the situation before initiating an enforcement action. In addition, the Agency will issue a compliance guide similar to the guide published by FDA in promulgating regulations under the Bioterrorism Act of 2002 to provide the industry with further information on compliance and enforcement. With respect to partnerships with States, following publication of the interim final rule, USDA will seek to enter into cooperative agreements with States that have existing infrastructure to conduct audits at the retail level. USDA will provide States with a schedule identifying the stores that should be audited and with what frequency, identify the products to be audited, and outline the audit procedures that will be followed. If a noncompliance is identified by the State, the State will notify USDA. USDA will then proceed with the appropriate enforcement action. With regard to third-party audits, the law does not require third-party audits of any party subject to these regulations. However, the law does not prohibit any party subject to this regulation from requiring a third-party audit of another party as part of their contractual arrangement if they so choose. With respect to penalties for non-retailers, the Farm Bill incorporates by reference section 253 of the Act as applying to violations of this subpart by non-retailers. This section details the penalties that may be assessed as well as other enforcement mechanisms (*e.g.*, cease and desist orders) and the administrative process that must be followed. Therefore, it is not necessary to fully restate the penalties for non-retailers. However, the Agency has added additional information regarding enforcement of non-retailers to the provisions regarding enforcement in the Highlights of the Interim Final Rule section. With respect to establishing a sliding scale for penalties, the Agency will determine the appropriate penalty on a case by case basis depending on the circumstances surrounding the violation.

Existing State Programs

Summary of Comments: The Agency invited comment on the proposed rule as it relates to existing State programs. One commenter recommended that the Agency reiterate the conclusion that this regulation preempts State law. No comments from States were received on this issue.

Agency Response: In the discussion on Executive Order 13132, Federalism, the Agency has added additional language clarifying that State programs that encompass commodities that are subject to this regulation are preempted.

Miscellaneous

Summary of Comments: Numerous commenters recommended that mandatory COOL be repealed and replaced with a voluntary program and recommended that USDA seek administrative relief from Congress. Another commenter requested that USDA promulgate an interim final regulation instead of a final rule. Other commenters stated their belief that COOL is a nontariff trade barrier intended to discriminate against imported products and questioned whether this regulation is in conformance with various WTO agreements.

Agency Response: The Agency could not implement a voluntary program without legislative changes. With respect to promulgating an interim final regulation, the Agency believes that because of the changes made as a result of comments received and the costs associated with this rule, additional public input should be obtained and is issuing this regulation as an interim final rule. However, the Agency is not making final provisions that concern other covered commodities at this time. With respect to the commenters' concern regarding WTO agreements, the Agency has considered these obligations throughout the rulemaking process and concludes that this regulation is consistent with these international obligations.

Preliminary Economic Impact Analysis (Executive Order 12866)

Summary of Comments: A commenter stated that USDA did not consider any of its alternative approaches viable and that AMS failed to consider an array of obvious alternatives. The commenter suggested that AMS could reduce the recordkeeping requirement for retailers from 7 days to 2 days at the point of sale and reduce the overall recordkeeping requirement from 2 years to 1 year. The commenter also suggested that AMS could consider using general rather than specific labels for products involving more than one country (*e.g.*, "mixed origin").

Agency Response: The proposed rule identified limited discretionary authority for alternative regulatory approaches, but alternative approaches were considered. The preliminary economic impact assessment considered alternative definitions of the term "processed food item," which change the scope of commodities required to be labeled with country of origin and method of production (wild and/or farm-raised) information. This interim final rule includes a revised definition of a processed food item that leads to lower costs of implementation for the affected industries. The Agency also considered the impacts of the use of

affidavits to transmit country of origin information along the food production and marketing chain.

The interim final rule reduces the recordkeeping burden at the retailer's point of sale from 7 days following retail sale of the product to the length of time the product is on hand. The interim final rule also reduces the recordkeeping burden for suppliers and retailers of covered commodities from 2 years to 1 year.

The Agency disagrees that the law provides discretionary authority to use general rather than specific labels for products involving more than one country. The law requires a retailer of a covered commodity to inform consumers of the country of origin of a covered commodity. A label such as "mixed origin" does not fulfill this requirement because it provides no information regarding the country of origin of the commodity, other than the fact that the origin involves more than one country.

Summary of Comments: A commenter observed that AMS argued in the proposed rule that if COOL was really desirable to consumers, the marketplace would provide the information on a voluntary basis. The commenter further noted that some retailers do label seafood as to its source. In addition, the commenter noted that such labeling is erratic and can be inconsistent, and said that seafood is far less likely to be labeled for foreign than domestic origin. On this basis, the commenter concluded that mandatory COOL requirements are essential.

Agency Response: The Agency concluded in its preliminary economic impact assessment that there was no compelling market failure argument regarding the provision of country of origin information. This conclusion stemmed from a lack of evidence of barriers to private provision of voluntary COOL should consumer demand support the increased costs of such labeling. The fact that some retailers already label seafood as to its source indicates that market participants will provide country of origin information in response to market demand.

Summary of Comments: A commenter stated that the preliminary economic impact analysis depended heavily on a study, Umberger, *et al.*, concerning beef labeling. The commenter said that Umberger *et al.*'s and other analyses may not apply to seafood, which the commenter noted is far more likely than beef to be imported from other countries—and, unlike beef, comes from two distinct types of production systems (wild capture and fish farming).

Agency Response: The Umberger, *et al.* study was referenced as one of the available studies on consumer response to country of origin labeling. The Agency agrees that there are differences in terms of consumer demand characteristics for beef versus seafood products. Therefore, the transfer of estimates from Umberger, *et al.* may be a source of uncertainty. Based on the numerous comments received on the issue, the Agency also concludes that wild capture versus farm-raised is an important distinction for many seafood consumers.

Summary of Comments: A commenter said that when determining the actual value of COOL regulations, USDA needs to consider the importance of consumer education, small U.S. based producers and their inability to mount extensive lobbying campaigns, the importance of progressive regulations, and discouraging fraudulent information in the marketplace.

Agency Response: The Agency agrees that consumer education will be vital to firms' abilities to derive benefits from mandatory COOL. While the Agency will make available to the public information about the requirements of this rule, industry will need to undertake any initiatives to educate consumers with an eye toward using COOL as a promotional tool. The Agency also recognizes the importance of discouraging fraudulent information in the marketplace, which underlies the rationale for much of this rule. That is, this rule is designed to ensure that mandatory country of origin claims made at retail are credible and verifiable back through the supply chain.

Summary of Comments: A number of commenters expressed concern about USDA's preliminary analysis of benefits for the proposed rule, and many claimed that USDA failed to identify or acknowledge any benefits of the COOL law. One commenter noted results of a poll of 900 people conducted in January 2004—82 percent of respondents said that food should be labeled with country of origin information, 85 percent would be more inclined to buy food produced in U.S., and 81 percent said they would be willing to pay a few cents more for food products of U.S. origin. Another commenter reported results of a survey conducted by Fresh Trends in 2002, in which 86 percent of respondents favored the concept of COOL. This commenter also cited a study by North Carolina State University, in which 68 percent of respondents indicated willingness to pay more for U.S. food products. Another commenter said that there is little factual support for USDA's finding that there is "little evidence that consumers are willing to pay a price premium for country of origin labeling."

Agency Response: In the preliminary economic impact analysis, the Agency did identify and acknowledge benefits from the proposed rule. The Agency noted that surveys show that a majority of consumers state at least some interest in knowing where their food was produced, and a smaller but significant number indicate a strong desire to know where their food was produced. The Agency also cited results of studies that found substantial degrees of willingness-to-pay for country of origin information by consumers. The comment period did not elicit additional evidence sufficient to change the Agency's conclusion that such professed interest in country of origin labels would result in increased demands or higher prices for U.S.-origin covered commodities.

The January 2004 poll commissioned by the National Farmers Union reconfirms that consumers, when prompted, indicate an interest in country of origin information for food. The poll also indicates that respondents would be "willing to pay a few cents more" for food products grown and/or raised in the U.S. This poll does not overcome limitations of previous surveys and willingness-to-pay studies, namely, that there is little basis to support the notion that these prompted responses will carry over into actual purchasing behavior. No comments brought forth evidence that there are barriers to the voluntary provision of country of origin information by firms that produce and market the covered commodities. In addition, the Agency did not receive any information that indicated an increased demand for U.S.-origin products in States that currently require country of origin labeling for some of the covered commodities. Therefore, the Agency continues to conclude that in the presence of demand for U.S.-origin products, food companies would respond by sourcing such products and providing consumers with the information.

Summary of Comments: One commenter believes there are a number of scenarios where consumer preference would shift to U.S. products, creating a one to five percent shift in consumer demand, thus recovering implementation costs of the proposed rule.

Agency Response: This commenter did not specify the scenarios under which consumer preference would shift to U.S. products. Neither this commenter nor other commenters provided evidence sufficient to

conclude that there would be a shift in consumer demand for U.S.-origin products of one to five percent.

Summary of Comments: One commenter stated that USDA needs to address the direct cost of administering this program and where the funds would come from (not from user fees).

Agency Response: The Agency intends to use funds that may be appropriated for administration of this program. The Agency estimates the costs for a minimal level of enforcement to be $2.8 million per year. About five percent of covered retailers would be audited each year under this scenario.

Summary of Comments: A commenter stated that the preliminary economic impact assessment is inadequate due to the broad range of implementation costs presented.

Agency Response: In its preliminary economic impact assessment, the Agency estimated a range of direct, incremental costs to reflect uncertainty about steps that affected entities would need to take to implement the proposed rule. Comments on the voluntary country of origin labeling guidelines (67 FR 63367) and feedback that the Agency received through its outreach efforts during development of the proposed rule painted two very different pictures of the costs and difficulty of implementing mandatory COOL. One viewpoint suggested that implementation and operational costs would be relatively low and would consist of primarily additional recordkeeping costs. The other viewpoint suggested that implementation and operational costs would be relatively high and would consist of not only additional recordkeeping, but would entail substantial changes to operations, systems development, and capital expenditures. Thus, the Agency's estimated range of direct costs reflected the different viewpoints expressed about costs of implementing mandatory COOL.

Taking into account comments received on the proposed rule, the Agency concludes in its interim final economic impact assessment that implementation costs will exceed the lower range estimates presented in the preliminary economic impact assessment published with the proposed rule. Affected firms and trade associations noted that implementation costs will involve costs and operational changes beyond recordkeeping practices alone. Therefore, in its interim final economic impact assessment, the Agency no longer presents a range of costs.

Summary of Comments: A commenter said that the preliminary economic impact assessment is incomplete because it fails to explain in detail the components underlying each of the cost estimates. The commenter said that the analysis should have included cost estimate subcategories for each type of covered commodity.

Agency Response: As described in the preliminary economic impact assessment, the Agency derived its direct, incremental cost estimates from publicly available sources of data and studies. These sources are fully referenced in the proposed rule. The Agency presented details about cost components to the extent that such information was provided in the available studies. Lack of available information precludes further sub-categorization of costs.

Summary of Comments: One commenter stated that USDA's preliminary cost estimates do not take into account industry infrastructure and current labeling practices and do not consider existing regulations such as PACA. Similarly, another commenter stated that the preliminary regulatory impact assessment fails to net out the cost of complying with existing regulations such as the Tariff Act and PACA and does not take into account existing signage.

Agency Response: The Agency's preliminary cost estimates did take into account existing industry infrastructure, labeling practices, and statutes such as PACA. The Agency sought to estimate the incremental cost of implementing the proposed rule. The Agency assumed that incremental changes would be made to affected firms' operations and recordkeeping systems to implement the requirements of the rule. The Agency's assumptions recognized the existence of existing Federal regulations such as those promulgated under PACA. PACA does not require that retailers provide country of origin information to consumers, or that producers, processors, dealers, and other industry participants provide country of origin information to their customers. Instead, PACA would require records to substantiate any transaction or product claim made by entities subject to PACA, such as a claim that a perishable agricultural commodity had a certain country of origin.

PACA requires maintenance of records and firms subject to PACA have developed recordkeeping systems to comply with the requirements of PACA. The existence of such infrastructure and recordkeeping systems reduces the incremental costs of additional informational requirements, including mandatory COOL. The Agency's preliminary cost estimates reflected these existing conditions, which is one reason that per-unit costs were estimated generally to be less for perishable agricultural commodities than for other covered commodities not covered by PACA, its regulations, and recordkeeping requirements.

Summary of Comments: A commenter noted that the preliminary economic impact assessment does not consider or discuss similar voluntary State labeling programs, such as the "Buy California" or "Go Texan" programs.

Agency Response: Voluntary State labeling programs have limited application to the analysis of the impacts of the rule. First and foremost, State labeling programs are voluntary, while this rule is mandatory. Under these types of voluntary State programs, there is no requirement for any firms to participate, and firms will not choose to participate unless it is in their economic interest to do so. Even when firms do participate in these types of voluntary State programs, they are not required to label everything that they sell. Conversely, this rule is mandatory, and retailers and their suppliers must adhere to the requirements of the rule for 100 percent of the sales of the covered commodities that must be labeled at retail. Second, these voluntary State programs do not have the same types of requirements for recordkeeping and tracking as contained in this mandatory rule. Third, State labeling programs such as "Buy California" and "Go Texan" generally involve a more comprehensive program of marketing and promotional tools beyond just labeling, while this mandatory rule addresses labeling but does not address marketing and promotional activities. For example, some State programs require certain minimum quality standards for participation in the program. Most State programs also include promotional and marketing activities by the State. Such voluntary quality standards and promotional activities imply different market effects compared to this rule, which addresses only labeling requirements.

Summary of Comments: A commenter said that seafood labeling should not be costly because the National Oceanic and Atmospheric Administration (NOAA) already has recordkeeping requirements for fishing vessels that are pertinent to COOL.

Agency Response: The Agency believes that costs for seafood producers (wild fish harvesters and fish farmers) will be relatively low. The Agency's interim final regulatory impact analysis estimates first-year implementation

costs for fish producers at $241 per producer. The difficulty, however, lies in passing the relevant information along through the food production and marketing chain so that credible and verifiable information is made available to consumers at retail. The additional costs throughout the production and marketing chain are not embodied in current NOAA recordkeeping requirements for fishing vessels.

Summary of Comments: A commenter noted that potential costs include additional equipment for printing codes, significant computer programming, and complete label review and redesign.

Agency Response: The Agency believes that these types of costs will be incurred to implement the rule. Both the preliminary upper-range cost estimates published with the proposed rule and the interim final economic impact assessment reflect these added costs.

Summary of Comments: A commenter said that USDA's cost estimates are substantially understated because they fail to recognize complexity of the industry, and that USDA's upper-range cost estimates are too low.

Agency Response: The Agency disagrees with this comment. The upper-range estimates presented in the preliminary economic impact assessment sought to reflect the full range of direct, incremental costs that affected entities would incur during the first year of implementation. Likewise in this interim final rule, the Agency's cost estimates seek to reflect the full implementation costs that will be faced by industry.

Summary of Comments: One commenter observed that the proposed rule will impact the canned seafood production process by requiring the segregation of both raw materials and frozen stock, requiring multiple lids, and requiring the processing line to be shut down to switch to another origin.

Agency Response: Although canned seafood is exempt from the interim final rule, the Agency believes that these types of adjustments to operational procedures will be incurred by affected firms to comply with the rule. The estimated implementation costs presented in the interim final economic impact assessment reflect these types of costs.

Summary of Comments: A commenter noted that about three-fourths of fish and shellfish consumed in the U.S. is imported and about one-fourth is farmed-raised.

Agency Response: The greater the potential number of countries of origin from which to source a given product, the more complicated will be the task of making, maintaining, and transferring country of origin claims as the product moves through the production and marketing chain. For example, a product that is sourced from only one country would require only one production line along with a sufficient recordkeeping trail. A product that is sourced from more than one country likely would require some type of segregation plan, additional storage, and perhaps additional production lines along with the requisite recordkeeping requirements. The fact that fish must also be labeled as wild caught or farm-raised represents another piece of information that must be maintained and transferred throughout the system.

Summary of Comments: Several commenters noted the anticipated costs of the proposed rule for their businesses. For example, one grower-cooperative estimated that costs for its growers alone would exceed $3.5 million. A grocery store chain noted that the proposed rule would cost its company $3.5 million per year.

Agency Response: These comments confirm the Agency's conclusion that implementation of this regulation is a complex matter for the affected industries and that costs will be substantial for many affected entities. In these examples, the retailer estimate appears to be consistent with the upper range cost estimates presented in the preliminary economic impact assessment. The grower-cooperative estimate appears to be lower than the Agency's upper range cost estimate per pound, although the comment does not provide much detail about how the total was computed and whether the total includes both grower costs and intermediary costs.

Summary of Comments: A seafood processor noted that it already includes country of origin information on all imported canned crabmeat as required by U.S. Customs and Border Protection, and said that to indicate whether it is wild or farm-raised will impose huge financial and administrative burden. This commenter stated that it already has a substantial amount of inventory of cans that will be unusable and to make design changes to the packaging will take about 1 year, and that it will not have time to implement by September 30, 2004.

Agency Response: Canned seafood products are exempt from the interim final rule. Nevertheless, the Agency recognizes that labeling of wild versus farm-raised fish and fish products will entail additional costs, even in cases in which country of origin information is already maintained. In addition, many of the covered commodities sold at retail are in a frozen or otherwise preserved state (*i.e.*, not sold as "fresh"). Thus, many of these products would already be in the chain of commerce prior to September 30, 2004, and the origin/production information may not be known. Accordingly, the effective date of this regulation is six months following the date of publication of this interim final rule. Further, AMS will focus its activities for the six months immediately following the effective date of this interim final rule on industry education and outreach. This will allow a total of 12 months for existing product to clear through the channels of commerce and for AMS to conduct an industry education and outreach program concerning the provisions contained within this rulemaking. Additionally, this will permit existing inventories of labels and packaging materials to be exhausted.

Summary of Comments: A commenter observed that the preliminary economic impact analysis of costs on the fish and seafood sector derive from the findings of one study, namely Sparks/CBW. This commenter stated that in the proposed rule, USDA argues that the Sparks/CBW estimates are too low without providing detailed rationale.

Agency Response: For fish and seafood producers, the Agency estimates costs per pound of $0.0025 per pound for a total of $19 million, compared to the Sparks/CBW total estimate of $1 million. Fish harvesters and farmers already maintain many of the types of records sufficient to substantiate country of origin and wild caught versus farm-raised claims. For example, it is USDA's expectation that the information contained in records typically kept by fish and shellfish harvesters and farmers will provide the necessary information to substantiate these claims. These records include but are not limited to hatching records, site maps, feeding records, vessel records, a U.S. vessel identification number, spawning records, and import permits. Additional examples of the types of records that may be used to substantiate origin and method of production claims will appear in the compliance guide. However, the basis for arguing higher costs is that systems need to be implemented to ensure that this information is transferred from producers to the next buyers of their products, and that the information is maintained for the required amount of time. Currently, this type of information exchange does not necessarily take place. The Agency believes that its estimated first-year implementation costs of $241 per producer are within reason.

In the case of fish and seafood intermediaries and retailers, the Agency adopted the upper range of the Sparks/CBW estimated costs per pound. However, the Agency estimated that greater total units of fish and seafood production would be affected by mandatory COOL. In the case of both intermediaries and retailers, the Agency's preliminary estimates for fish and seafood intermediaries included canned product, while the Sparks/CBW estimates included only fresh and frozen product. The Agency's revised estimates exclude canned product, as well as fish sticks, fish portions, and breaded shrimp, due to the change in the definition of a processed food item. In addition, Sparks/CBW estimated that one-third of fish and seafood products would move through retail, compared to the Agency's estimate that 41.4 percent of the domestic disappearance of the covered commodities would be sold through retailers covered by this rule. The Agency received no comments to refute its initial estimated share of production that would be sold through retailers covered by this rule, but the share estimates are revised to reflect the lower proportion of fish and shellfish consumed at home relative to other food products.

Summary of Comments: A commenter observed that USDA did not provide a cost comparison for development of a compliance system with the new FDA recordkeeping requirement under the Bioterrorism Act.

Agency Response: There are several reasons that the Agency did not take into consideration the requirements of the FDA rules being promulgated under the Bioterrorism Act. Of the rules proposed by FDA, only the rule relating to the establishment and maintenance of records likely would have much, if any, impact on firms' initiatives to comply with mandatory COOL. FDA's proposed rule on records maintenance is not yet final, and the Agency cannot anticipate how the final rule may differ from the proposed rule. Also, the covered commodities beef, pork, and lamb are exempt from the FDA rulemaking as the FDA rules do not cover food regulated exclusively by USDA. Finally, as with PACA's regulations and similar existing Federal rules, the FDA rules would not require that country of origin information be provided to consumers by retailers, or that firms' in the supply chain provide country of origin information.

Summary of Comments: A commenter said that U.S. farmers will be required to absorb a majority of the costs, marginalizing any profits attributed to increased demand for U.S. commodities.

Agency Response: The Agency assumes that in the longer run, higher costs will be passed onto consumers in the form of higher prices for the covered commodities. In the short run, however, increased costs incurred by intermediaries and retailers may lead to lower demand at the farm level. Lower market demand may in turn translate into lower farm-level prices for producers.

Summary of Comments: Several commenters pointed out potential trade-restricting impacts of the proposed rule, especially for ground beef processing. One commenter noted that a meat grinder looking for product of least cost would tend to seek domestic U.S. product at the disadvantage of imported product. Another commenter stated that the increased cost of mandatory COOL will cause suppliers to cease selling to customers in the U.S, as the cost associated with multiple sources will force distributors to source from a single country. Another commenter said that mandatory COOL will restrict trade by restricting flexibility of ground beef processors.

Agency Response: Both importers and domestic suppliers will be required to meet the requirements of the rule. In the long run, the Agency believes that firms will find efficient ways to comply with the requirements of the rule. Resulting small trade impacts as estimated by the Economic Research Service (ERS) computable general equilibrium (CGE) model stem from general increases in production costs for the covered commodities, rather than any provision of the rule.

Summary of Comments: A number of commenters stated that mandatory COOL will restrict trade. One commenter said that COOL is a nontariff trade barrier intended to discriminate against imported products on the basis of nationality.

Agency Response: As previously mentioned, both importers and domestic suppliers will be required to meet the requirements of the rule, which is meant to provide accurate information to consumers with respect to the country of origin and the method of production of the fish and shellfish products they purchase. The Agency estimates that exports of fish and shellfish will decline slightly and imports will increase slightly after 10 years of adjustment to the rule. This is a result of increased production costs for the covered fish and shellfish commodities regardless of origin, rather than any provision of the rule.

Summary of Comments: A commenter noted that the proposed rule will make domestic seafood canners less competitive with foreign producers of low-priced imports by increasing production costs and complicating the production process. The commenter said that plants must regularly use herring that are caught in both the U.S. and Canada to provide enough supplies, and that the rule will make processing sardines in Maine less competitive.

Agency Response: Because the interim final rule does not require labeling of canned fish and seafood products, these concerns have been addressed.

Summary of Comments: A commenter stated that mandatory COOL will add costs and reduce the abilities of U.S. industries to compete in international markets.

Agency Response: The Agency agrees that mandatory country of origin labeling will add costs to the covered commodities. The Agency assumes that producers and processors of the covered commodities will seek to maintain flexibility in marketing decisions. Thus, the Agency assumes that producers and processors will incur recordkeeping and associated operational costs to make and substantiate country of origin claims for most, if not all, of their production even though most of the product ultimately will enter channels of distribution not covered by this rule. Higher costs will be passed forward in the form of higher prices, with the result that U.S. exports of the covered commodities are expected to decline slightly after 10 years of adjustment to the rule.

Summary of Comments: A commenter observed that implementation of mandatory COOL will add costs and complexities to all covered commodities regardless of where they are marketed.

Agency Response: The Agency agrees that mandatory COOL will add costs and complexities to the covered commodities regardless of where the products ultimately are marketed. First, the Agency expects that producers and intermediaries will seek to keep their marketing options flexible, and thus will take the steps necessary to implement COOL to allow their products to be labeled and sold at retail establishments covered by this rule. Second, covered commodities for which there is no verifiable country of origin information will no longer be fully fungible. That is, these products will not be able to be sold at retail establishments covered by this rule. These products will need to be segregated in the production and marketing chain, resulting in reduced system wide efficiency and higher costs.

Preliminary Regulatory Flexibility Analysis

Summary of Comments: A commenter said that recordkeeping and other costs of compliance will fall disproportionately on smaller, independent farmers. Another commenter noted that the position of small, independent farmers may be weakened.

Agency Response: In the initial regulatory flexibility analysis, the Agency noted that costs of implementation may be proportionately higher for smaller versus larger firms given the potential scale economies associated with the operation of systems to comply with the requirements of mandatory country of origin labeling. In particular, larger firms would have the ability to spread fixed costs of implementation over a greater number of units of production, thereby incurring lower average costs per unit. Conversely, smaller farmers and other firms may have some implementation cost advantages over larger firms. Smaller farms and firms likely have simpler recordkeeping systems, and thus would incur lower development costs relative to larger firms. The rule does not prescribe a particular recordkeeping system; so for example, a small fishing operation likely would be able to maintain records in hardcopy form rather than developing a complicated electronic recordkeeping system.

Summary of Comments: A commenter stated that USDA's suggestion that a supplier could market covered commodities to other channels illustrates that mandatory COOL is an attempt to affect some supplier market preference with a discriminatory effect against the supermarket industry.

Agency Response: The intent of mandatory COOL is not to discriminate against the retailers subject to the law and the rule. Nonetheless, some retailers are required to provide country of origin information for the covered commodities, while foodservice establishments and other retailers not subject to the rule are not required to provide such information. The Agency's suggestion makes the point that producers and intermediaries could seek regulatory relief by selling their products through alternative marketing channels. As explained in the economic impact assessment, however, the Agency assumes that producers and intermediaries will seek to provide country of origin information for virtually all of their production so as to maintain maximum marketing flexibility.

Summary of Comments: A commenter said that requiring only PACA-licensed retailers to label may provide economic incentive for retailers not to be PACA licensed. Another commenter said that the exclusion of fish markets creates an un-level playing field.

Agency Response: PACA licensing is mandatory for retailers that purchase perishable agricultural commodities with an invoice value in excess of $230,000 in a calendar year at retail. Adoption of this definition will assure that the vast majority of covered commodities will be subject to this rule without unduly burdening small businesses.

Fish markets and other retailers not subject to mandatory COOL may have a cost advantage over retailers subject to the rule, but the law defines explicitly which retailers are required to provide country of origin information.

Summary of Comments: A commenter said that the preliminary regulatory flexibility analysis is inadequate as the proposed alternatives will not decrease the burden on small entities. Another commenter said that AMS should further study its economic analysis and consider alternatives to minimize impacts on small entities.

Agency Response: The Agency's initial regulatory flexibility analysis examined potential viable alternatives for small entities, but found relatively little discretionary authority to provide additional regulatory relief. This interim final rule decreases the length of time that records are required to be kept, providing some relief to affected entities both large and small. The number of products required to be labeled is reduced because the definition of a processed food item has been broadened, thus providing additional regulatory relief. The Agency will prepare a compliance guide to assist firms, both small and large, to comply with the requirements of the rule.

Summary of Comments: A commenter said that it is not reasonable for market participants to sell their products through other channels not subject to the proposed rule.

Agency Response: The Agency assumes that most entities will seek to maintain maximum marketing flexibility by complying with the requirements of this rule. Nonetheless, the Agency disagrees with the assertion that it would not be reasonable for some market participants to sell their products through channels other than retailers expressly required to provide country of origin information. As detailed in the economic impact assessment, the Agency estimates that 58 percent of fresh and frozen fish and 38 percent of shellfish are eaten at home, and that 65.8 percent of that at-home consumption of the covered commodities would be sold by retailers subject to the rule. Hence, most of the domestic market (62 percent for fish and 75 percent for shellfish) does not require country of origin information for the covered commodities, which includes retailers not subject to the rule and foodservice establishments. In addition, fish and shellfish defined as ingredients in a processed food item and export sales are not subject to the requirements of this rule.

Summary of Comments: A commenter said that the notion is flawed that the proposed rule offers flexibility because it is a performance standard rather than a design standard.

Agency Response: The Agency's conclusion is based on the notion that each firm will be able to develop its own least-cost solution for complying with the rule, rather than having to meet a rigid design standard. This continues to be the case in this interim final rule, and the Agency continues to conclude that the performance standards of the rule allow firms to comply in the most cost effective way for their operations. Nonetheless, retailers, processors, and other affected firms may develop differing requirements for their suppliers. The Agency will issue a compliance guide to assist market participants in complying with the requirements of the rule.

Summary of Comments: A commenter questioned the assertion in the preliminary regulatory flexibility analysis that number of affected small entities is significantly reduced by the PACA definition of retailer.

Agency Response: The Agency disagrees with this comment. As detailed in the preliminary regulatory flexibility analysis, there were 67,916 food stores, warehouse clubs, and superstores operated the entire year according to the 1997 Economic Census, and 66,868 of these firms are small. Based on PACA data, the Agency estimates that 4,512 retailers would be subject to this rule, with 3,464 of these being small. Thus, 63,404 smaller retailers, or 94.8 percent of all small food store retailers would not be affected. These are estimates of the number of firms and not the number of establishments. The Small Business Administration defines size standards based on the size of the business or firm, not the size of the establishments operated by the firm.

The Agency recognizes that all producers and intermediaries choosing to sell through marketing channels supplying the covered retailers would

need to meet the requirements of the rule. The Agency did not assert that the number of small entities in these sectors would be reduced by the definition of a retailer. As noted previously, however, the majority of the sales of the covered commodities are through channels not affected by this rule, which provides substantial marketing opportunities for product without verifiable country of origin claims.

Summary of Comments: A commenter questioned the Agency's conclusion that costs for producers will be limited and will generally include costs involved in establishing and maintaining a recordkeeping system.

Agency Response: In its preliminary regulatory impact analysis, the Agency estimated a range of implementation costs. The lower-range estimates reflected the costs of implementing and maintaining a recordkeeping system. The upper-range costs reflected additional operational costs that would be incurred to comply with the rule. In the preliminary analysis, the Agency concluded that direct incremental costs likely would fall in the middle to upper end of the estimated range. In the interim final regulatory impact analysis, the Agency presents a single cost estimate to reflect its conclusion that costs for affected entities will be higher than the preliminary lower-range costs for recordkeeping activities alone.

Summary of Comments: A commenter said that the Agency should expand its analysis to take into consideration that the rule will likely impact all entities along the supply chain, not just those PACA licensed retailers.

Agency Response: The Agency's initial regulatory impact and regulatory flexibility analyses considered all potentially affected firms, from producer through intermediaries through retailers subject to this rule.

Summary of Comments: A commenter stated that the flexibility provided is not particularly helpful to small entities.

Agency Response: The Agency has provided as much regulatory relief for small entities as possible, within the limits of the discretionary authority provided by the law. The requirements of the rule flow from the law that requires retailers to inform consumers of the country of origin of the covered commodities. Information must flow throughout the supply chain to enable retailers to provide the required information to consumers, regardless of the size of the businesses participating in the supply chain. To ensure compliance and integrity of the program, the Agency has determined that these claims must be supported by a recordkeeping trail that can be audited.

Summary of Comments: A commenter noted that the Small Business Regulatory Enforcement Fairness Act requires publication of a compliance guide that explains the rule, provides compliance scenarios to illustrate and clarify any complexities, lessens small businesses' anxiety about complying with the rule, and provides suggestions on how to structure data collection and recordkeeping systems.

Agency Response: The Agency will develop a compliance guide to assist firms in complying with the rule.

Preliminary Paperwork Reduction Act

Summary of Comments: A commenter stated that wholesalers will have to develop new recordkeeping systems and that substantial labor costs will be incurred because wholesalers are responsible for tracking the identity of both the prior seller and the subsequent buyer.

Agency Response: In the proposed rule, the Agency estimated the initial costs associated with recordkeeping, which includes the costs of maintaining country of origin information of the covered commodities purchased and subsequently furnishing that information to the next participant in the supply chain. For products that are not pre-labeled, this action would require adding information to a firm's bills of lading, invoices, or other records associated with movement of covered commodities from purchase to sale. The Agency believes that most wholesalers already have functioning recordkeeping systems and will require only modification of existing recordkeeping systems rather than the development of new systems. The Label Cost Model developed for FDA is used to estimate the cost of including additional country of origin information to an operation's records. The costs of labor in establishing and maintaining these records are included in these cost estimates. The Agency concludes that these costs will be substantial and will involve substantial labor costs.

Summary of Comments: A commenter strongly disagrees with the assumption that the recordkeeping for retailers and others will be accomplished primarily by electronic means. According to the commenter's survey, 75 percent of retailers and wholesalers would have to keep manual records.

Agency Response: The Agency has made a number of visits to retailer and wholesaler facilities. Retailers covered by this rule must meet the definition of a retailer as defined by PACA. The PACA definition of a retailer includes only those retailers handling fresh and frozen fruits and vegetables with an invoice value of at least $230,000 annually. Most small food store firms, which may keep manual records, have been excluded from mandatory COOL based on the PACA definition of a retailer. The Agency believes that most wholesalers and retailers covered by mandatory COOL already have established electronic recordkeeping systems and will only require the modification of existing recordkeeping systems rather than the development of new systems. Conceptually, the task of modifying a paper-based recordkeeping system is no different than the task of modifying an electronic recordkeeping system. Therefore, the Agency believes that its estimation represents a reasonable approximation of the variety of solutions that firms will undertake to comply with the rule.

Summary of Comments: A commenter said that if USDA is using the "FDA one pager" as a model, USDA should make it public and publish it in the **Federal Register**.

Agency Response: A more complete discussion of the Label Cost Model is available in the FDA proposed rule on "Establishment and Maintenance of Records Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002" (68 FR 25187).

Summary of Comments: A commenter noted that USDA uses contradictory assumptions—on the one hand USDA says industry will do electronic recordkeeping and on the other it bases cost estimates on a paper-based system.

Agency Response: As noted previously, the Agency believes that the task of modifying a recordkeeping system is similar conceptually regardless of whether the system is electronic or paper based. Therefore, the Agency believes that its approach to estimating costs adequately represents the variety of recordkeeping systems currently in place.

Summary of Comments: A commenter said that USDA has wrongly decreased the estimated recordkeeping costs for intermediaries like wholesalers (from the recordkeeping burden estimated for the voluntary guidelines).

Agency Response: In response to the estimated PRA burden published for the voluntary country of origin labeling guidelines, the Agency received numerous comments on its estimated costs and the number of enterprises impacted by the guidelines. As a result, the Agency carefully reconsidered its estimates in preparing the preliminary paperwork burden estimate for the proposed rule. As a result of these

revisions, the Agency has refined its estimates of the numbers of affected entities and the costs per entity. In addition, a further improvement from the voluntary country of origin recordkeeping cost estimates is the use of Bureau of Labor Statistics wage rates for tasks required by producers, distributors, handlers, packers, processors, wholesalers, and retailers for recordkeeping. Similarly, a more appropriate estimate is added to the wage rate to account for total benefits. All of this resulted in the reduction of the total estimated recordkeeping costs under mandatory COOL in comparison to the voluntary guidelines, and the Agency believes this is a more accurate assessment.

Summary of Comments: A commenter said that the assumed administrative hourly rate of $16.05 ignores supervisory, professional, and management time required at the wholesale and retail level. This commenter further stated that if overhead costs are to equate fringe benefits, the rate should be 30–35 percent, not 25 percent.

Agency Response: The Agency believes that the administrative support occupations category represents a reasonable composite of the labor skills that will be involved in recordkeeping activities for wholesalers and retailers. The Agency believes these responsibilities would be assumed under the current supervisory and management structure. For handlers, processors, wholesalers, and other intermediaries as well as retailers the Agency believes the maintenance activities for recordkeeping will include inputting, tracking, and storing country of origin information for each covered commodity. While the Agency acknowledges that supervisory and management input will be required, the Agency also notes that some labor will be supplied by workers receiving lower wages. In some of our visits to retailers, it was indicated that these firms were employing more high school and college students than in the past to reduce their costs.

Bureau of Labor Statistics (BLS) data are used for both the wage and for overhead costs (which include social security, unemployment insurance, workers compensation, and other benefits). In this interim final rule, the wage rates and fringe benefits rate are both updated to 2002 BLS figures, which results in increased wage rates and benefits. The Agency believes this is the most accurate and documented estimate of wages and additional employer paid benefits.

Summary of Comments: A commenter said that USDA has underestimated the number of hours needed for recordkeeping, noting that one hour per week for wholesalers is too low because it will take more than one hour per day. This commenter also stated that one hour per day for retailers is also too low.

Agency Response: For fish and seafood wholesalers, the Agency estimates the maintenance burden for country of origin recordkeeping to be 52 hours per year per establishment, or one hour per week. The Agency recognizes that some of these wholesalers may require more than one hour a week to maintain country of origin information. However, a number of smaller wholesalers and those that do not operate continuously throughout the year will likely require less than an average of one hour per week. Therefore, the Agency believes an average of one hour per week per establishment is a reasonable estimate for these wholesalers. In the case of general line grocery wholesalers, the Agency reduced the maintenance burden from 52 to 12 hours annually per establishment because fish and shellfish represent only a portion of the commodities handled by these establishments.

Taking into account Agency reviews of retailers' operations, the Agency believes that an additional hour of recordkeeping activities for country of origin information will be incurred daily at each retail establishment. The Agency's estimate of one hour per day for retailers is only for the maintenance portion of the recordkeeping of country of origin information. Maintenance activities will include inputting, tracking, and storing country of origin information for each covered commodity.

In summary, this interim final rule adopts the fish and shellfish provissions of the October 30, 2003 (68 FR 61944), proposed rule with the changes discussed herein and with other changes made for purposes of clarity and accuracy.

III. Impact Analysis

Executive Order 12866—Interim Final Regulatory Impact Analysis

USDA has examined the economic impact of this interim final rule as required by Executive Order 12866. In its Preliminary Regulatory Impact Assessment (PRIA), USDA determined that the regulatory action was economically significant, as it was likely to result in a rule that would have an annual effect on the economy of $100 million or more. Although the estimated annual effect on the economy of this interim final rule for fish and shellfish is less than $100 million, it remains an economically significant regulatory action because it would adversely affect in a material way a sector of the economy and therefore has been reviewed by the Office of Management and Budget (OMB). Executive Order 12866 requires that a regulatory benefit-cost analysis be performed on all economically significant regulatory actions.

This interim final regulatory impact assessment reflects revisions to the PRIA (68 FR 61952). Revisions to the PRIA were made as a result of changes to this rule relative to the proposed rule, in responses to comments on the PRIA itself, and as a result of narrowing the scope of covered commodities affected by the rule. Specifically, this interim final rule defines covered commodities as farm-raised and wild fish and shellfish.

The Comments and Responses section lists the comments received on the PRIA and provides the Agency's responses to the comments. Where substantially unchanged, results of the PRIA are summarized herein, and revisions are described in detail. Interested readers are referred to the text of the PRIA for a more comprehensive discussion of the assumptions, data, methods, and results.

Summary of the Economic Analysis

The estimated incremental benefits associated with this interim final rule are difficult to quantify, but current information indicates that they are not likely to be large. The estimated first-year incremental costs for fish and shellfish harvesters, producers, processors, wholesalers, and retailers are $89 million. Maintenance costs beyond the first year are expected to be lower than the combined start up and maintenance costs required in the first year. The estimated cost to the U.S. economy in higher food prices and reduced food production (deadweight loss) in the tenth year after implementation of the rule is $6.2 million, or about two cents per person annually based on the current U.S. population. In other words, the U.S. economy would be worse off after implementing this rule.

Note that this analysis addresses implementation of labeling requirements for fish and shellfish destined for human consumption only. Note also that this analysis does not quantify certain costs of the interim final rule such as the cost of the rule after the first year, or the cost of any supply disruptions or any other "lead-time" issues. Except for the

recordkeeping requirements, there is insufficient information to distinguish between first year start up and maintenance costs versus ongoing maintenance costs for this interim final rule.

USDA finds little evidence that consumers are willing to pay a price premium for country of origin labeling. USDA also finds little evidence that consumers are likely to increase their purchase of food items bearing the U.S. origin label as a result of this rulemaking. Current evidence does not suggest that U.S. producers will receive sufficiently higher prices for U.S.-labeled products to cover the labeling, recordkeeping, and other related costs. The lack of participation in voluntary programs for labeling products of U.S. origin provides evidence that consumers currently are unwilling to pay price premiums sufficient to recoup the costs of labeling.

Statement of Need

Justification for this interim final rule remains unchanged from the PRIA. This rule is the direct result of statutory obligations to implement the COOL provisions of the Farm Bill, which amended the Act by adding Subtitle D—Country of Origin Labeling. There are no alternatives to Federal regulatory intervention for implementing this statutory directive.

The country of origin labeling provisions of the Farm Bill change current Federal labeling requirements for muscle cuts of beef, pork, and lamb; ground beef, ground pork, and ground lamb; farm-raised fish; wild fish; perishable agricultural commodities; and peanuts (hereafter, covered commodities). Under current Federal laws and regulations, COOL is not universally required for covered commodities. Provisions concerning labeling requirements for farm-raised and wild fish are provided herein. Labeling requirements for the remaining covered commodities become effective on September 30, 2006. Therefore, this rule and economic impact analysis address requirements and impacts for farm-raised and wild fish and shellfish only.

As described in the PRIA, the conclusion remains that there does not appear to be a compelling market failure argument regarding the provision of country of origin information. Comments received on the PRIA elicited no evidence of significant barriers to the provision of this information other than private costs to firms in the supply chain and low expected returns. Thus, market mechanisms likely would lead to the provision of the optimal level of country of origin information.

Alternative Approaches

The PRIA noted that many aspects of the mandatory COOL provisions of Pub. L. 107–171 are prescriptive and provide little regulatory discretion for this rulemaking. Some commenters suggested that USDA explore more opportunities for less costly regulatory alternatives. Specific suggestions focused on methods for identifying country of origin, recordkeeping requirements, and the scope of products required to be labeled.

A number of comments on the PRIA suggested that USDA adopt a "presumption of U.S. origin" standard for identifying commodities of U.S. origin. Under this standard, only imported covered commodities would be required to be identified and tracked according to their respective countries of origin. Any covered commodity not so identified would then be considered by presumption to be of U.S. origin. A presumption of origin standard would require mandatory identification of products not of U.S. origin. The law, however, specifically prohibits USDA from using a mandatory identification system to verify the country of origin of a covered commodity. In addition, as discussed in the proposed rule (68 FR 61944), the Agency does not believe that a presumption of U.S. origin standard provides a means of providing country of origin information that is credible and can be verified. Comments on the proposed rule did not identify how to overcome these obstacles. Thus, a presumption of U.S. origin standard is not a viable alternative.

A number of commenters suggested that USDA reduce the recordkeeping burden for the rule. In this interim final rule, the recordkeeping retention period for retailers is reduced from 7 days following the retail sale of the product to the length of time the product is on hand. In addition, the overall recordkeeping retention period for retailers and suppliers is reduced from 2 years to 1 year.

The interim final rule also "streamlines" the required recordkeeping for items that are pre-labeled (*i.e.*, labeled by the manufacturer/first handler) with the required country of origin and method of production (wild and/or farm raised) information. Records that demonstrate the chain of custody (immediate previous source and/or subsequent recipient, as applicable) for all covered items must be maintained, but the underlying records (*e.g.*, invoices, bills of lading, production and sales records, etc.) do not need to identify the country of origin and method of production (wild and/or farm-raised) of these pre-labeled products. For example, if a processor labels the country of origin and method of production on a package of salmon steaks, and the salmon steaks ultimately are sold in that package at retail, then that label may serve as sufficient evidence on which the retailer may rely to establish the product's origin and method of production. Thus, the retailer's records would not need to show country of origin and method of production information for that package of salmon, but the retailer's records would need to include information to allow the source of those salmon steaks to be tracked back through the system to allow the country of origin and method of production claims to be verified at the point in the system at which the claims were initiated. Under the proposed rule, the retailer would have also have been required to identify the country of origin and method of production of the package of salmon within its recordkeeping system; the information provided on the package itself would not have been sufficient. This change in recordkeeping requirements should lessen the number of changes that entities in the distribution chain need to make to their recordkeeping systems and should lessen the amount of data entry that is required.

The interim final rule changes the definition of a processed food item such that a greater number of products are now exempt from country of origin labeling requirements. The fewer the number of products that must be labeled, the lower are implementation and maintenance costs for many affected entities.

Analysis of Benefits and Costs

As in the PRIA, the baseline for this analysis is the present state of the affected industries absent mandatory COOL. USDA recognizes that some affected firms have already begun to implement changes in their operations to accommodate the law and the expected requirements of this interim final rule.

Benefits: The expected benefits from implementation of this rule are difficult to quantify. The Agency's conclusion remains unchanged, which is that the estimated economic benefits will be small and will accrue mainly to those consumers who desire country of origin and method of production information. There clearly is some level of interest by consumers in the country of origin of food. In addition, the Agency received numerous comments expressing an

interest in labeling of fish and shellfish as wild or farm-raised. The rule will provide benefits to these consumers. However, commenters provided no additional substantive evidence to alter the Agency's conclusion that the measurable economic benefits of mandatory COOL will not be large. Additional information and studies cited by commenters were of the same type identified in the PRIA—namely, consumer surveys and willingness-to-pay studies. The Agency does not believe that these types of studies provide a sufficient basis to estimate the quantitative benefits, if any, of COOL.

A number of commenters pointed to recent food safety incidents, suggesting that mandatory COOL would provide food safety benefits to consumers. As discussed in the PRIA, mandatory COOL does not address food safety issues. Appropriate preventative measures and effective mechanisms to recall products in the event of contamination incidents are more comprehensive means of protecting the health of the entire consuming public regardless of the form in which a product is consumed or where it is purchased. In addition, foods imported into the U.S. must meet food safety standards equivalent to those required of products produced domestically.

Costs: To estimate the costs of this rule, we employed a two-pronged approach. First, we estimated implementation costs for firms in the industries directly affected by the rule. The implementation costs on directly affected firms represent increases in capital, labor, and other input costs that firms will incur to comply with the requirements of the rule. These costs are expenses that these particular firms must incur, but are not necessarily costs to the U.S. economy as measured by the value of goods and services that are produced. We then applied the implementation cost estimates to a general equilibrium model to estimate overall impacts on the U.S. economy after a 10-year period of economic adjustment. The model provides a means to estimate the change in overall consumer purchasing power after the economy has adjusted to the requirements of the rule.

Details of the data, sources, and methods underlying the cost estimates are provided in the PRIA. This section provides the interim final cost estimates and describes revisions made to the PRIA.

In the PRIA, we developed a range of estimated implementation costs to reflect the likely range of first-year costs for directly affected firms to comply with the proposed rule. The lower range of incremental cost estimates reflected the costs to modify and maintain current recordkeeping systems, while the upper range of estimates reflected other capital and operational costs to comply with the proposed rule. We concluded in the PRIA that costs likely would fall in the middle to upper end of the range of estimated costs. Taking into account comments received on the proposed rule and the PRIA, this interim final regulatory impact assessment presents only a single set of estimates for anticipated costs. Comments representing affected entities clearly described that compliance with the rule would require changes beyond recordkeeping alone. Thus, the revised incremental cost estimates reflect not only additional recordkeeping costs, but also additional payments by the directly affected firms for capital, labor, and other expenses that will be incurred as a result of operational changes to comply with the rule.

First-year incremental costs for directly affected firms are estimated at $89 million. The large change relative to the estimate of $3.9 billion for the proposed rule is attributable to the fact that this interim final rule covers only fish and shellfish. Costs per firm are estimated at $241 for fish and shellfish harvesters and producers, $1,890 for intermediaries (such as handlers, importers, processors, and wholesalers), and $12,600 for retailers.

To estimate the overall impacts of the higher costs of production resulting from the interim final rule, we used a model of the entire U.S. economy. We adjusted the model by imposing the estimated implementation costs on the directly impacted segments of the economy in a computable general equilibrium model developed by the Economic Research Service (ERS). The model estimates changes in prices, production, exports, and imports as the directly impacted industries adjust to higher costs of production over the longer run (namely, 10 years). Because the model covers the whole U.S. economy, it also estimates how other segments of the economy adjust to changes emanating from the directly affected segments and the resulting change in overall productivity of the economy.

This general equilibrium analysis is developed from the standpoint that only farm-raised and wild fish and shellfish products will be directly affected by the interim final rule. Implementation and economic costs for the other covered commodities are not included in this analysis. Thus, this analysis illustrates the relative scale of the overall impacts of this rule on the U.S. economy, but does not represent the impacts of mandatory COOL requirements for all covered commodities.

Note that a general equilibrium analysis differs from a partial equilibrium analysis in that a partial equilibrium analysis would examine the effects of the mandatory COOL on consumers and producers of fish and shellfish. The general equilibrium approach is a more encompassing analytic approach. However, the gains and losses to consumers and producers of fish and shellfish are not identified separately from the rest of the economy.

Annual costs to the U.S. economy in terms of reduced purchasing power resulting from a loss in productivity after a 10-year period of adjustment are estimated at $6.2 million. Domestic production of fish and shellfish at the producer and retail levels is estimated to be lower and prices to be higher. U.S. exports of fish and shellfish are estimated to decrease, while U.S. imports of fish and shellfish are estimated to increase.

The findings indicate that directly affected industries recover the higher costs imposed by the rule through slightly higher prices for their products. With higher prices, the quantities of their products demanded also decline. Consumers pay slightly more for the products and purchase less fish and shellfish. Overall, however, the fish and shellfish account for a small portion of the U.S. economy and of consumers' budgets. Thus, the "deadweight" economic burden of the rule is considerably smaller than the incremental costs to directly affected firms.

Estimated impacts of this interim final rule are subject to uncertainties inherent in this type of prospective economic analysis. Firms directly affected by this interim final rule differ considerably in size and in their operational characteristics. Actual impacts on individual firms and on the overall economy resulting from the interim final rule may vary from the average estimated impacts presented herein.

The remainder of this section describes in greater detail how we developed the estimated direct, incremental costs and the overall costs to the U.S. economy.

Cost assumptions: This interim final rule directly regulates the activities of retailers (as defined by the law) and their suppliers. Retailers are required by the rule to provide country of origin and method of production (wild and/or farm-raised) information for fish and shellfish products that they sell, and firms that supply these products to these retailers must provide them with

this information. In addition, all other firms in the supply chain for the relevant fish and shellfish products are potentially affected by the rule because country of origin and method of production (wild and/or farm-raised) information will need to be maintained and transferred along the entire supply chain to enable retailers to correctly label the products at the point of final sale.

Number of firms and number of establishments affected: We estimate that approximately 125,000 establishments owned by approximately 91,000 firms would be either directly or indirectly affected by this rule. Table 1 provides estimates of the affected firms and establishments.

TABLE 1.—ESTIMATED NUMBER OF AFFECTED ENTITIES

Type	Firms	Establishments
Fish:		
Farm-Raised Fish and Shellfish	3,540	3,540
Fishing	76,499	76,452
Fresh & Frozen Seafood Processing	582	653
Fish & Seafood Wholesale	2,897	2,980
General Line Grocery Wholesalers	3,183	3,993
Retailers	4,512	37,176
Totals:		
Producers	80,039	79,992
Intermediaries	6,662	7,626
Retailers	4,512	37,176
Grand Total	91,213	124,794

In contrast to the PRIA, the beef, pork, lamb, perishable agricultural commodity and peanut sectors are no longer directly affected by this interim final rule. Thus, entities in these sectors are removed from the estimated number of affected entities. In addition, the numbers of affected entities in the seafood processing industry are lowered. Canned seafood products would have required labeling under the proposed rule, but are exempt under the interim final rule because of the revised definition of a processed food item. While there may be fishing operations that harvest fish destined exclusively for canning, data on the number of such operations are unavailable. In addition, fishing vessels that target a particular species destined for canning often have a by-catch of other species that would be destined for fresh or frozen end uses. Thus, we believe that keeping the estimated number affected fishing operations unchanged is a reasonable assumption. In the PRIA, the seafood product preparation and packing industry included fresh and frozen seafood processing and seafood canning. Because the interim final rule exempts canned seafood products, the number of affected seafood processing firms is reduced from 741 to 582 and the number of establishments from 823 to 653. We assume that all of these remaining fresh and frozen seafood processing firms prepare at least some covered commodities, although there may be some firms that prepare fish and shellfish exclusively into items that would be exempt from this rule under the definition of a processed food item. For example, a firm that produces only breaded shrimp would not be subject to the requirements of this interim final rule.

We assume that all firms and establishments identified in Table 1 will be impacted by the rule, although some may not produce or sell products ultimately within the scope of the rule. While this assumption likely overstates the number of affected firms and establishments, we believe that the assumption is reasonable. Detailed data are not available on the number of entities categorized by the marketing channels in which they operate and the specific products that they sell.

Source of cost estimates: To develop estimates of the cost of implementing this rule, we reviewed the comments received on the voluntary guidelines (67 FR 63367), the comments received on the proposed rule for mandatory COOL (68 FR 61944), and available economic studies. No single source of information, however, provided comprehensive coverage of all economic benefits and costs associated with mandatory COOL. We applied available information and our knowledge about the operation of the supply chains for the covered commodities to synthesize the findings of the available studies about the rule's potential costs.

Cost drivers: This interim final rule is a retail labeling requirement. Retail stores subject to this rule will be required to inform consumers as to the country of origin and method of production (wild and/or farm-raised) of the covered fish and shellfish products that they sell. To accomplish this task, individual package labels or other point-of-sale materials will be required. If products are not already labeled by suppliers, the retailer will be responsible for labeling the items or providing the country of origin and method of production (wild and/or farm-raised) information through other point-of-sale materials. This may require additional retail labor and personnel training. A recordkeeping system will be required to ensure that products are labeled accurately and to permit compliance and enforcement reviews. For most retail firms of the size defined by the statute (*i.e.*, those retailing fresh and frozen fruits and vegetables with an invoice value of at least $230,000), we assume that recordkeeping will be accomplished primarily by electronic means. Modifications to recordkeeping systems will require software programming, but in most cases should not entail additional computer hardware. We expect that retail stores will also undertake efforts to ensure that their operations are in compliance with the interim final rule.

Prior to reaching retailers, most covered fish and shellfish products move through distribution centers or warehouses. Direct store deliveries are an exception. Distribution centers will be required to provide retailers with

country of origin and method of production (wild and/or farm-raised) information. This will require additional recordkeeping processes to ensure that the information passed from suppliers to retail stores permits accurate product labeling and permits compliance and enforcement reviews. Additional labor and training may be required to accommodate new processes and procedures needed to maintain the flow of country of origin and method of production (wild and/or farm-raised) information through the distribution system. There may be a need to further segregate products within the warehouse, add storage slots, and alter product stocking, sorting, and picking procedures.

Processors of covered fish and shellfish products will also need to inform retailers and wholesalers as to the country of origin and method of production (wild and/or farm-raised) of the products that they sell. To do so, their suppliers will need to provide documentation regarding the country of origin and method of production (wild and/or farm-raised) of the products that they sell. Maintaining country of origin and method of production (wild and/or farm-raised) identity through the processing phase is more complex if products from more than one country or from more than one method of production are involved. For example, the identity of wild shrimp from the U.S. and farm-raised shrimp from Thailand entering the same processing facility would need to be maintained throughout the packing operation. The efficiency of operations may be affected if products are segregated in receiving, storage, processing, and shipping operations. For processors handling products from multiple origins, there may also be a need to separate shifts for processing products from different origins, or to split processing within shifts. In either case, costs are likely to increase. Records will need to be maintained to ensure that accurate country of origin and method of production (wild and/or farm-raised) information is retained throughout the process and to permit compliance and enforcement reviews.

Processors handling only domestic origin products or products from a single country of origin and a single method of production may have lower implementation costs compared with processors handling products from multiple origins and methods of production. A processor that already sources products from a single country would not face additional costs associated with product segregation and tracking, provided that the products also have the same method of production (wild or farm-raised). Procurement costs also may be unaffected in this case, if the processor is able to continue sourcing products from the same suppliers. Alternatively, a processor that currently sources products from multiple countries may choose to limit its source to a single country to avoid costs associated with product segregation and tracking. In this case, such cost avoidance would be partially offset by additional procurement costs to source supplies from a single country of origin. Additional procurement costs may include higher transportation costs due to longer shipping distances and higher acquisition costs due to supply and demand conditions for products from a particular country of origin, whether domestic or foreign, and having the same method of production, whether wild or farm-raised.

At the production level, fish producers and harvesters will need to create and maintain records to establish country of origin and method of production (wild and/or farm raised) information for the products they sell. Country of origin and method of production (wild and/or farm-raised) information will need to be transferred to the first handler of their products, and records sufficient to allow the source and method of production of the product to be traced back will need to be maintained as the products move through the supply chains. In general, additional producer and harvester costs include the cost of establishing and maintaining a recordkeeping system for country of origin and method of production (wild and/or farm-raised) information, product identification, and labor and training.

Incremental cost impacts on affected entities: To estimate direct costs of this rule, we focus on units of production that are impacted (Table 2). Relative to the PRIA, estimated quantities are reduced for fish and shellfish at the intermediary and retailer levels.

TABLE 2.—ESTIMATED ANNUAL UNITS OF FISH AND SHELLFISH PRODUCTION AFFECTED BY MANDATORY COUNTRY OF ORIGIN LABELING

	Million pounds
Producer	7,707
Intermediary—	
Fresh and Frozen Fish:	
U.S. Food Disappearance	1,617
Adjustments for Fish Sticks & Portions:	
U.S. Production	−232
Imports	−16
Exports	5
Adjusted Subtotal	1,374
Fresh and Frozen Shellfish:	
U.S. Food Disappearance	1,304
Adjustments for Breaded Shrimp:	
U.S. Production	−152
Imports	−7
Adjusted Subtotal	1,145
Total, Intermediary	2,519
Retailer—	
At-Home Consumption:	
Fish	797

TABLE 2.—ESTIMATED ANNUAL UNITS OF FISH AND SHELLFISH PRODUCTION AFFECTED BY MANDATORY COUNTRY OF ORIGIN LABELING—Continued

%	Million pounds
Shellfish	435
Total	1,232
Total, Affected Retailers	811

For fish producers, production is measured by round weight (live weight) pounds of fish, except mollusks, which excludes the weight of the shell. Wild caught fish and shellfish production is measured by U.S. domestic landings for fresh and frozen human food. The PRIA estimate inadvertently omitted landings of fish for canned human food, which would have required labeling under the proposed rule. Canned fish, however, is exempt from this interim final rule. We assume that fish harvesters generally know whether their catch is destined for fresh and frozen markets, canning, or industrial use. Fish production also includes farm-raised fish. Total estimated fish production is unchanged from the PRIA.

We assume that all sales by intermediaries such as handlers, packers, processors, wholesalers, and importers will be impacted by the rule. Although some product is destined exclusively for foodservice or other channels of distribution not subject to the interim final rule, we assume that these intermediaries will seek to keep their marketing options open for possible sales to subject retailers. Among other adjustments, fish and shellfish production at the intermediary level is reduced by 1.2 billion pounds from the PRIA estimate to account for the removal of canned fish and shellfish (Ref. 1).

Further adjustments to intermediary volume are made to remove other major categories of products exempt from labeling—fish sticks, fish portions, and breaded shrimp. Fish sticks and portions are shaped masses of cohering fish flesh, and are thus defined as a processed food item. The volume of affected fish production is computed separately from shellfish production. As shown in Table 2, U.S. disappearance of fresh and frozen fish is estimated at 1,617 million pounds in 2001 (Ref. 1), which includes imports but excludes exports. This figure is reduced by the estimated U.S. production of fish sticks and portions (232 million pounds, Ref. 2) and by imports of fish sticks (16 million pounds, Ref. 3), as these items would be exempt from the requirements of this rule. Exports of fish sticks (5 million pounds, Ref. 3) are added back to U.S. production to estimate net U.S. supplies of these exempt products (*i.e.*, domestic production plus imports minus exports). Similar calculations are applied to fresh and frozen shellfish to account for breaded shrimp. In the case of shellfish, however, U.S. trade data (Ref. 3) do not identify exports of breaded shrimp. Accordingly, exports of breaded shrimp are treated as zero for purposes of the calculations shown in Table 2.

PRIA estimates of the volume of affect product at the retail level are revised to reflect changes in the definition of a processed food item and to improve the accuracy of the estimates. First, estimated fish and shellfish retailer volume is reduced by 493 million pounds from the PRIA estimate to remove canned fish and shellfish (Ref. 1), which is exempt from the requirements of this rule under the revised definition of a processed food item. Second, revised factors are used to estimate the volume of product requiring labeling at retailers subject to this rule.

In the PRIA, food disappearance figures were multiplied by 0.414 to represent the estimated share of production sold through retailers covered by the proposed rule. To derive this share, the factor of 0.629 was used to remove the 37.1 percent food service quantity share of total food in 2002. This factor was then multiplied by 0.658, which was the share of sales by supermarkets, warehouse clubs and superstores of food for home consumption in 2002. In other words, we assumed supermarkets, warehouse clubs and superstores represent the retailers as defined by PACA, and these retailers were estimated to account for 65.8 percent of retail sales of the covered commodities.

Compared to other food products, greater proportions of fish and shellfish are eaten away from home, and smaller proportions are eaten at home. We estimate that 58 percent of fresh and frozen fish and 38 percent of shellfish are eaten at home. These proportions are based on estimated at-home and away-from-home the National Seafood Consumption Survey conducted by the National Marine Fisheries Service (Ref. 4). Based on these percentages, at-home consumption is estimated at 797 million pounds for covered fresh and frozen fish products and 435 million pounds for covered shellfish products (Table 2). Total at-home consumption of covered fresh and frozen shellfish products is estimated at 1.2 billion pounds. As in the PRIA, 65.8 percent of at-home consumption is estimated to be sold by retailers subject to this rule. As a result, the total volume of fresh and frozen fish and shellfish products affected by this rule is estimated to be 811 million pounds at retail. Total fish and shellfish volume at retail is thus reduced 891 million pounds from the PRIA estimate.

Table 3 summarizes the direct, incremental costs that we believe firms will incur during the first year as a result of this interim final rule. These estimates are derived primarily from the available studies that addressed cost impacts of mandatory COOL, coupled with our estimates of the volume of affected production at each level of the supply chain.

TABLE 3.—ESTIMATES OF FIRST-YEAR IMPLEMENTATION COSTS FOR FISH AND SHELLFISH, PER AFFECTED INDUSTRY SEGMENT

	Million dollars
Producer	19
Intermediary	13
Retailer	57
Total	89

Assumptions and procedures underlying the cost estimates are described fully in the discussion of the upper range estimates presented in the PRIA. Changes from the PRIA estimates are highlighted herein.

As in the PRIA (68 FR 61952), we estimate costs to fish and shellfish producers at $0.0025 per pound. Total costs for fish and shellfish producers are thus estimated at $19 million,

unchanged from the PRIA upper range estimate. As mentioned previously, the PRIA estimated of fish landings inadvertently omitted U.S. domestic landings used for canned human food. Thus, the estimated volume of fish is unchanged at the producer level even though the interim final rule now exempts canned fish. With the same estimate of the number of affected producers, the estimated cost per producer remains unchanged.

Consistent with the PRIA (68 FR 61952), we adopt $0.005 per pound as an estimate of costs for intermediaries in the fish and shellfish sector. Processors will need to collect country of origin and method of production (wild and/or farm-raised) information from producers, maintain this information, and supply this information to other intermediaries or directly to retailers. In addition, there may need to be segregation of the product before and after processing to facilitate tracking of country of origin and method of production (wild and/or farm-raised) identity. There will also be labeling costs associated with providing country of origin and method of production (wild and/or farm-raised) information on consumer-ready packs of frozen and fresh fish that are labeled by processors. Total costs for fish and shellfish intermediaries are thus estimated at $13 million, a reduction of $8 million from the upper range PRIA estimate. The reduction is attributable to the lowered estimate of the volume of production affected by the rule.

As discussed in the PRIA (68 FR 61952), we adopt $0.07 per pound as an estimate of costs for retailers of fish and shellfish. This estimate results in total costs of $57 million for retailers of fish and shellfish, a reduction of $62 million from the PRIA upper range estimate. As with intermediaries, the reduction stems from the lowered estimate of the volume of production affected by the rule.

Total costs for fish and shellfish are estimated at $89 million, $70 million less than the PRIA upper range estimate.

We estimate total incremental costs for this interim final rule of $19 million for fish producers and harvesters, $13 million for intermediaries, and $57 million for retailers for the first year. Total incremental costs for all supply chain participants are estimated at $89 million for the first year. The large reduction from the PRIA upper range estimate of $3.9 billion is attributable to the fact that this interim final rule covers only wild and farm-raised fish and shellfish products. The proposed rule also covered beef, pork, lamb, fruits, vegetable, and peanuts.

There are wide differences in average estimated implementation costs for individual entities in different segments of the supply chain (Table 4). With the exception of a small number of fishing operations, producer operations are single-establishment firms. Thus, average estimated costs per firm and per establishment are the same after rounding to the nearest dollar. In contrast, retailers subject to the rule operate an average of just over eight establishments per firm. As a result, average estimated costs per retail firm also are just over eight times larger than average costs per establishment.

TABLE 4.—ESTIMATED FIRST-YEAR IMPLEMENTATION COSTS PER FIRM AND ESTABLISHMENT

	Firm	Establishment
Producer	$241	$241
Intermediary	1,890	1,650
Retailer	12,600	1,530

Average estimated implementation costs per fish and shellfish producer are relatively small at $241. Costs per fish operation are lowered slightly from the PRIA upper-range estimates due to a correction in the number of fishing operations used to calculate the average cost per operation (the estimated number of operations is unchanged from the PRIA). Estimated costs for intermediaries are substantially larger, averaging $1,890 per firm and $1,650 per establishment. The average cost per firm is much less than the PRIA upper range estimated cost, with the lower cost attributable to the sharp reduction in the volume of production subject to this interim final rule. Similarly, the average cost per intermediary establishment is considerably less than PRIA the upper range estimate. At an average of $12,600 retailers have the highest average estimated costs per firm. This is much less than the PRIA upper range estimate because of the reduction in the estimated volume of production subject to the interim final rule. Retailers also have the highest average estimated costs per establishment, $1,530.

The costs per firm and per establishment represent industry averages for aggregated segments of the supply chain. Large firms and establishments likely will incur higher costs relative to small operations due to the volume of commodities that they handle and the increased complexity of their operations. In addition, different types of businesses within each segment are likely to face different costs. Thus, the range of costs incurred by individual businesses within each segment is expected to be large, with some firms incurring only a fraction of the average costs and other firms incurring costs many times larger than the average.

We believe that the major cost drivers for the rule occur when covered commodities are transferred from one firm to another, when covered commodities are commingled in the production or marketing process, and when products are assembled and then redistributed to retail stores. In part, we believe that some requirements of the rule will be accomplished by firms using essentially the same processes and practices as are currently used, but with information on country of origin and method of production (wild and/or farm-raised) claims added to the processes. This adaptation generally would require relatively small marginal costs for recordkeeping and identification systems. In other cases, however, firms may need to revamp current operating processes to implement the rule. For example, a processing plant may need to sort incoming products by country of origin and method of production (wild and/or farm-raised) in addition to weight, size, color, or other quality factors. This may require adjustments to plant operations, line processing, product handling, and storage. Ultimately, we anticipate that a mix of solutions will be implemented by industry participants to effectively meet the requirements of the rule. Therefore, we anticipate that direct, incremental costs for the interim final rule likely will fall within a reasonable range of the estimated total of $89 million.

In the PRIA, one regulatory alternative considered by AMS would be to narrow the definition of a processed food item, thereby increasing the scope of commodities covered by the rule. This alternative is not adopted in this interim final rule. An increase in the number of commodities that would require COOL would increase implementation costs of the rule with little expected economic benefit. Additional labeling resulting from fewer exempted items may also slow some of the innovation that is occurring with various types of value-added, further processed products.

A converse regulatory alternative would be to broaden the definition of a processed food item, thereby decreasing the scope of commodities covered by the rule. Accordingly, such an alternative would decrease implementation costs for the rule. At the retail level and to a lesser extent at the intermediary level, cost reductions would be at least partly proportional to

the reduction in the volume of production requiring retail labeling. Start-up costs for retailers and many intermediaries likely would be little changed by a narrowing of the scope of commodities requiring labeling because firms would still need to modify their recordkeeping, production, warehousing, distribution, and sales systems to accommodate the requirements of the rule for those commodities that would require labeling. Ongoing maintenance and operational costs, however, likely would decrease in some proportion to a decrease in the number of items covered by the rule. On the other hand, implementation costs for the vast majority of fish and shellfish harvesters and producers would not be affected by a change in the definition of a processed food item. This is because we assume that virtually all affected producers would seek to retain the option of selling their products through supply channels for retailers subject to the rule.

The definition of a processed food item developed for this interim final rule has taken into account comments from potentially affected entities and has resulted in excluding products that would be more costly and troublesome for retailers and suppliers to provide country of origin and method of production (wild and/or farm-raised) information. Total incremental costs for this interim final rule are estimated at $70 million less than the upper range costs estimated in the PRIA for fish and shellfish because of the exemption of canned items under the revised definition of a processed food item.

Another alternative considered by AMS would be to require that suppliers provide an affidavit for each transaction to the immediate subsequent recipient certifying that the country of origin and method of production (wild and/or farm-raised) claims being made are truthful and that the required records are being maintained. We do not have an estimate of the number of transactions that would be impacted. Assuming, however, costs of just $0.001 per pound of product sold by producers and intermediaries, and assuming that commodities are transferred at least twice between intermediaries, costs for fish and shellfish would increase by nearly $13 million, or almost 15 percent, compared to the alternative of having no affidavits. Taking into consideration probable cost impacts, comments received on the proposed rule, and the structure and needs of the industry, we rejected this alternative.

Effects on the economy: The previous section estimated the direct, incremental costs of the interim final rule to the affected firms in the supply chains for the covered commodities. While these costs are important to those directly involved in the production, distribution, and marketing of covered commodities, they do not represent net costs to the U.S. economy or net costs to the affected entities for that matter.

With respect to assessing the effect of this rule on the economy as a whole, it is important to understand that a significant portion of the costs directly incurred by the affected entities take the form of expenditures for additional production inputs, such as payments to others whether for increased hours worked or for products and services provided. As such, these direct, incremental costs to affected entities do not represent losses to the economy but rather transfers of money from one economic agent to another. As a result, the direct costs incurred by the participants in the supply chains for the covered commodities do not measure the impact of this rule on the economy as a whole. Instead, the relevant measure is the extent to which the interim final rule reduces the amount of goods and services that can be produced throughout the U.S. economy from the available supply of inputs and resources.

Even from the perspective of the directly affected entities, the direct, incremental costs do not present the whole picture. Initially, the affected entities will have to bear the full cost of implementing the interim final rule. However, over time as the economy adjusts to the requirements of the interim final rule, the burden facing suppliers will be reduced as their production level and the prices they receive change. What is critical in assessing the effect of this rule on the affected entities over the longer run is to determine the extent to which the entities are able to pass these costs on to others and consequently how the demand for their commodities is affected.

Conceptually, suppose that all the increases in costs from this rule were passed on to consumers in the form of higher prices and that consumers continued to purchase the same quantity of the affected commodities from the same marketing channels. Under these conditions, the suppliers of these commodities would not suffer any net loss from the rule even if the increases in their operating costs were quite substantial. However, other industries might face losses as consumers may spend less on other commodities. It is unlikely, however, absent the rule leading to changes in consumers' preferences for the covered commodities, that consumers will maintain their consumption of the covered commodities in the face of increased prices. Rather, many or most consumers will likely reduce their consumption of the covered commodities. The resulting changes in consumption patterns will in turn lead to changes in production patterns and the allocation of inputs and resources throughout the economy. The net result, once all these changes have occurred, is that the total amount of goods and services produced by the U.S. economy will be less than before.

To analyze the effect of the changes resulting from the rule on the total amount of goods and services produced throughout the U.S. economy in a global context, we utilized a computable general equilibrium (CGE) model developed by ERS. In the PRIA, the ERS CGE model includes all the covered commodities and the products from which they are derived, as well as non-covered commodities that would be indirectly affected by the proposed rule, such as poultry and feed grains. For purposes of this interim final rule, the same model structure is used, but direct, incremental cost increases are assumed to occur for fish and shellfish products only.

The ERS CGE model traces the impacts from an economic "shock," in this case an incremental increase in operating costs, through the U.S. agricultural sector and the U.S. economy to the rest of the world and back through the inter-linking of economic sectors. By taking into account the linkages among the various sectors of the U.S. and world economies, a comprehensive assessment can be made of the economic impact on the U.S. economy of the rule implementing COOL. The model reports resulting economic changes after a ten-year period of adjustment.

The results of this analysis indicate that the interim final rule implementing COOL after the economy has had a period of ten years to adjust will have a more limited impact on the overall U.S. economy than the direct costs for the first year, alone, would suggest. Under the assumption that COOL will not change consumers' preferences for the covered fish and shellfish commodities, we estimate that the overall costs to the U.S. economy of the interim final rule, in terms of a reduction in consumers' purchasing power, will be $6.2 million. This represents the cost to the U.S. economy after all transfers and adjustments in consumption and production patterns have occurred.

Overall costs to the U.S. economy after a decade of adjustment are significantly smaller than the first-year implementation costs to directly affected firms. This result does not imply that the implementation costs for directly affected firms have been substantially reduced from the initial estimates. While some of the increase in their costs will be offset by reduced production and higher prices over the longer term, the suppliers of the covered commodities will still bear direct implementation costs. Prior to full economic adjustment, economic impacts on directly affected firms in the short term are expected to be larger than impacts on the economy after adjustment has taken place.

Our estimates of the overall costs to the U.S. economy are based on our estimates of the incremental increases in operating costs to the affected firms. The model does not permit supply channels for covered commodities that require country of origin and method of production information to be separated from supply channels for the same commodities that do not require COOL. Thus, the direct cost impacts must be adjusted to accurately reflect changes in operating costs for all firms supplying covered commodities. Table 5 reports these adjusted estimates in terms of their percentage of total operating costs for each of the directly impacted sectors. The percentages used are based on our estimate of the percentage change in operating costs for the entire supply channel and are adjusted between the various segments of the fish and shellfish supply chain (harvesters and producers, processors, importers, and retailers) based on our estimate of how the costs of the regulation will be distributed among them. As a result, the cost changes shown in Table 5 only approximate the direct cost estimates previously described.

TABLE 5.—ESTIMATED INCREASES IN FISH AND SHELLFISH INDUSTRY OPERATING COSTS BY SUPPLY CHAIN SEGMENT

	Percent change
Farm Supply:	
Domestic	0.6
Imported	0.6
Processing:	
Domestic	(1)
Imported	(1)
Retail:	
Domestic	0.4
Imported	0.4

[1] Due to the structure of the model, costs increases for the processing segment are included in the retail segment.

In addition, we assume that domestic and foreign suppliers of the affected commodities located at the same level or segment of the supply chain face the same percentage increases in their operating costs. In reality, imported covered commodities likely would enjoy some measure of competitive advantage as a portion of those products already enter the United States with country of origin labels. Labeling and country of origin notification necessary to satisfy existing U.S. Customs and Border Protection requirements could be used to implement the country of origin requirements of this rule, but importers also would need to provide method of production information (wild and/or farm-raised) for covered fish and shellfish commodities destined for retail.

The percentage changes in operating costs reported in Table 5 differ from the percentage changes in operating costs reported for the High Cost scenario as listed in Table 8 in the PRIA. The differences in percentage changes reported in the PRIA and those reported here are attributable to changes in implementation costs of the interim final rule as well as recalibration of our estimates of total operating costs for the various segments of the supply channels of the directly impacted sectors.

As discussed above, consumption and production patterns will change as the incremental increases in operating costs outlined above are passed on, at least partially, to consumers in the form of higher prices by the affected firms. The increases in the prices of the covered fish and shellfish commodities will in turn cause exports and domestic consumption and ultimately domestic production to fall.

The costs of the interim final rule will not be shared equally by all suppliers of the covered commodities. The distribution of the costs of the rule will be determined by several factors in addition to the direct costs of complying with the rule. These are the availability of substitute products not covered by the rule and the relative competitiveness of the affected suppliers with respect to other sectors of the U.S. and world economies.

Table 6 contains the percentage changes in prices, production, exports, and imports for the three main segments of the marketing chain for fish and shellfish. Results for potential substitute products are not shown in Table 6 because impacts of the interim final rule on these products are estimated to be minimal. Percentage changes in U.S. production, prices, exports, and imports of cattle and sheep, broilers, hogs, beef and lamb, chicken, and pork are estimated to be 0.001 percent or less. Because of the negligible impacts on these other commodities, Table 6 shows results for fish and shellfish only.

TABLE 6.—ESTIMATED IMPACT OF INTERIM FINAL RULE ON U.S. PRODUCTION, PRICES AND TRADE OF FISH AND SHELLFISH

Item	Percent Change from the Base Year
Price	0.36
Production	−0.46
Exports	−0.56
Imports	0.18

The rule increases operating costs for the supply chains for the covered fish and shellfish commodities. As shown in Table 6, the increased costs result in higher prices for these products. The quantity demanded at these higher prices falls, with the result that the U.S. production of fish and shellfish decreases.

Demand for U.S. fish production is particularly sensitive to increases in prices in the model, suggesting that U.S. fish suppliers face a degree of competitive disadvantage relative to their foreign counterparts. As a result, fish imports increase as a result of the estimated cost increases, while U.S. production falls. Evidently, U.S. domestic suppliers of fish respond more to changes in their operating costs than do foreign suppliers. The resulting gap between the supply response of U.S. and foreign producers provides foreign suppliers of fish with a competitive advantage in U.S. markets that enables them to increase their exports to the U.S. even though they face similar increases in operating costs.

To put these impacts in more meaningful terms, the percentage changes reported in Table 6 were converted into changes in current prices and quantities produced, imported, and exported (Table 7). The base values in Table 7 differ from those reported in

Table 2 above because they are derived from projected levels reported in the USDA Agricultural Baseline for 2003, while values in Table 2 represent actual reported values for 2002 as compiled by USDA's National Agricultural Statistical Service. Baseline values were used to accommodate the structure of the model.

TABLE 7.—ESTIMATED CHANGES IN U.S. PRODUCTION, PRICES, AND TRADE FOR FISH AND SHELLFISH

Indicator	Units	Base	Change
U.S Production[a]	Mil. Lbs.	10,204	−46.94
U.S. Price[b]	$/Lb.	0.41	0.0015
U.S. Exports	Mil. Lbs.	2,565	−14.36
U.S. Imports	Mil. Lbs.	4,102	7.38

Sources: Changes are derived from applying percentage changes obtained from the ERS CGE model to the base values.
[a] Base values for fish come from Fisheries of the United States, 2001. National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 2002.
[b] Fish price derived by dividing total value of commercial and aquaculture production, excluding other, by total commercial and aquaculture production.

U.S. prices for covered fish and shellfish commodities increase by a very small amount, less than two-tenths of a cent per pound. U.S. production declines by 47 million pounds. The estimated changes in prices and production cause revenues for the fish industry to fall by $4 million. The increase in the price of the affected fish and shellfish commodities cause exports to decline by about 14 million pounds. Imports of fish and shellfish increase and as costs imposed on importers are relatively less than those imposed on domestic producers.

The ERS CGE model assumes that firms behave as though they have no influence on either their input or output prices. On the other hand, for example, a model that assumed that processors could influence their input and output prices could find that prices received by agricultural producers decreased because processors passed their cost increases down to their suppliers rather than increase the price they charged their customers.

The estimates of the economic impact of the interim final rule on the United States are based on the assumption that country of origin and method of production (wild and/or farm-raised) labeling does not shift consumer demand toward the covered fish and shellfish commodities of U.S. origin. This assumption is based on the earlier finding that there was no compelling evidence to support the view that mandatory COOL will increase the demand for U.S. products. An increase in the demand for commodities of U.S. origin increase would have to occur to offset the costs imposed on the economy by the interim final rule.

As previously mentioned, our estimates of the overall economic effects of the interim final rule are derived from a CGE model developed by ERS. The results from this model show the changes in production and consumption patterns after the economy has adjusted to the incremental increase in costs (medium run results). In reality, such changes occur over time and the economy does not adjust instantaneously.

The results of this analysis describe and compare the old production and consumption patterns to the new ones, but do not reflect any particular adjustment process. In addition, these results assume that the only changes that are occurring in the agriculture sector or the economy as a whole are those that are driven by COOL. The purpose of using the ERS CGE model is not to forecast what prices and production will be over any particular time frame, but to explore the implications of COOL on the U.S. economy and capture the direction of the changes.

The ERS CGE model is global in the sense that all regions in the world are covered. Production and consumption decisions in each region are determined within the model following behavior that is consistent with economic theory. Multilateral trade flows and prices are determined simultaneously by world market clearing conditions. This permits prices to adjust to ensure that total demand equals total supply for each commodity in the world.

The general equilibrium feature of the model means that all economic sectors—agricultural and non-agricultural—are included. Hence, resources can move among sectors, thereby ensuring that adjustments in the feed grains and livestock sectors, for example, are consistent with adjustments in the processed sectors.

The model is static and this implies that gains (or losses) from stimulating (or inhibiting) investment and productivity growth are not captured. The model allows the existing resources to move among sectors, thereby capturing the effects of re-allocation of resources that results due to policy changes. However, because the model fixes total available resources it underestimates the long-run effects of policies on aggregate output.

Regulatory Flexibility Analysis

This interim final rule has been reviewed under the requirements of the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.*). The purpose of RFA is to consider the economic impact of a rule on small businesses and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the marketplace. The Agency believes that this rule will have a significant economic impact on a substantial number of small entities. As such, the Agency has prepared the following interim final regulatory analysis of the rule's likely economic impact on small entities pursuant to the RFA. The Comments and Responses section lists the comments received on the preliminary RFA and provides the Agency's responses to the comments.

The interim final rule is the direct result of statutory obligations to implement the COOL provisions of the Farm Bill, which amended the Act by adding Subtitle D—Country of Origin Labeling. The COOL provisions of the Farm Bill require covered fish and shellfish commodities to be labeled beginning September 30, 2004. The intent of this law is to provide consumers with additional information on which to base their purchasing decisions. Specifically, the law imposes additional Federal labeling requirements for covered commodities sold by retailers subject to the law. Covered commodities included in this interim final rule are farm-raised fish and shellfish and wild fish and shellfish.

Under preexisting Federal laws and regulations, COOL is not universally required for the commodities covered by this rule. In particular, labeling of U.S.

origin and method of production (wild and/or farm-raised) is not mandatory, and labeling of imported products at the consumer level is required only in certain circumstances. Thus, the Agency has not identified any Federal rules that would duplicate or overlap with this interim final rule.

Many aspects of the mandatory COOL provisions are prescriptive and provide little regulatory discretion in rulemaking. The law requires a statutorily defined set of food retailers to label the country of origin and method of production (wild and/or farm-raised) of covered commodities. The law also prohibits USDA from using a mandatory identification system to verify the country of origin of covered commodities. However, the interim final rule provides flexibility in allowing market participants to decide how best to implement mandatory COOL in their operations. Market participants other than those retailers defined by the statute may decide to sell products through marketing channels not subject to the rule. Taking into account comments received on the proposed rule, the interim final rule decreases the length of time that records are required to be kept, providing some relief to affected entities both large and small. A complete discussion of the information collection and recordkeeping requirements and associated burdens appears in the Paperwork Reduction Act section below. In addition, the number of products required to be labeled is reduced because the definition of a processed food item has been broadened, thus providing additional regulatory relief.

The objective of the interim final rule is to regulate the activities of retailers (as defined by the law) and their suppliers so that retailers will be able to fulfill their statutory obligations. The interim final rule requires retailers to provide country of origin and method of production (wild and/or farm-raised) information for all of the covered fish and shellfish commodities that they sell. It also requires all firms that supply covered commodities to these retailers to provide the retailers with the information needed to correctly label the covered commodities. In addition, all other firms in the supply chain for the covered commodities are potentially affected by the rule because country of origin and method of production (wild and/or farm-raised) information will need to be maintained and transferred along the entire supply chain. In general, the supply chains for the covered fish and shellfish commodities consist of farms, fishing operations, processors, wholesalers, and retailers. A listing of the number of entities in the supply chains for the covered fish and shellfish commodities can be found in Table 1 above in the Interim Final Regulatory Impact Analysis (IFRIA).

Retailers covered by this interim final rule must meet the definition of a retailer as defined by PACA. The PACA definition includes only those retailers handling fresh and frozen fruits and vegetables with an invoice value of at least $230,000 annually. Therefore, the number of retailers impacted by this rule is considerably smaller than the total number of retailers nationwide. In addition, there is no requirement that firms in the supply chain must supply their products to retailers subject to the interim final rule.

Because country of origin and method of production (wild and/or farm-raised) information will have to be passed along the supply chain and made available to consumers at the retail level, we assume that each participant in the supply chain as identified in Table 1 will likely encounter recordkeeping costs as well as changes or modifications to their business practices. Absent more detailed information about each of the entities within each of the marketing channels, we assume that all such entities will be affected to some extent even though some fish and shellfish harvesters, producers and suppliers may choose to market their products through channels not subject to the requirements of this interim final rule. Therefore, we estimate that nearly 125,000 establishments owned by approximately 91,000 firms will be either directly or indirectly impacted by this rule. Changes from the PRIA are reductions in the numbers of affected firms and establishments due to the exclusion of covered commodities other than wild and farm-raised fish and shellfish in this interim final rule.

This interim final rule potentially will have an impact on all participants in the supply chain, although the nature and extent of the impact will depend on the participant's function within the marketing chain. The rule likely will have the greatest impact on retailers and intermediaries (handlers, processors, wholesalers, and importers), while the impact on individual fish and shellfish harvesters and producers is likely to be relatively small.

As shown in Table 3 and discussed in the Costs section of the IFRIA, we estimate direct incremental costs for the interim final rule at approximately $89 million. The decrease in the direct incremental cost in the interim final rule as compared to the proposed rule is the result of excluding commodities other than fish and shellfish from this interim final rule. In addition, broadening the definition of a processed food item exempts items such as canned fish and shellfish, fish sticks, and breaded shrimp from the labeling requirements of the rule.

There are two measures used by the Small Business Administration (SBA) to identify businesses as small: Sales receipts or number of employees. In terms of sales, SBA classifies as small those grocery stores with less than $23 million in annual sales and specialty food stores with less than $6 million in annual sales (13 CFR 121.201). Warehouse clubs and superstores with less than $23 million in annual sales are also defined as small. SBA defines as small those agricultural producers with less than $750,000 in annual sales and fishing operations with less than $3.5 million in annual sales. Of the other businesses potentially impacted by the interim final rule, SBA classifies as small those manufacturing firms with less than 500 employees and wholesalers with less than 100 employees.

Retailers: While there are many potential retail outlets for the covered commodities, food stores, warehouse clubs, and superstores are the primary retail outlets for food consumed at home. In fact, food stores, warehouse clubs, and superstores account for 82.5 percent of all food consumed at home (Ref. 5). Therefore, the number of these stores provides an indicator of the number of entities potentially impacted by this interim final rule. The 1997 Economic Census (Ref. 6) shows there were 67,916 food store, warehouse club, and superstore firms operated for the entire year. Most of these firms, however, would not be subject to the requirements of this interim final rule.

Retailers covered by this interim final rule must meet the definition of a retailer as defined by PACA. The number of such businesses is estimated from PACA data (Ref. 7). A PACA license is required for all retailers having an invoice cost of fresh and frozen fruits and vegetables exceeding $230,000 in a calendar year. Licensee data is entered and maintained in USDA's PACA database. Among other required information, the PACA license application includes the name of the business and the number of branches where the business handles fruits and vegetables. In the case of retailers, most branch locations represent retail stores. There is an active USDA compliance program to ensure compliance with licensing requirements, and the industry is monitored to keep the licensing data current when there are changes in firms' operations (such as the opening of new

branch locations). Thus, the PACA data provide a reliable estimate of the number of retail firms that would be affected by this regulatory action.

Because the PACA definition of a retailer includes only those retailers handling fresh and frozen fruits and vegetables with an invoice value of at least $230,000 annually, the number of retailers impacted by this rule is considerably smaller than the number of food retailers nationwide. USDA data indicate that there are 4,512 retail firms as defined by PACA that would thus be subject to the interim final rule. As explained below, most small food store firms have been excluded from mandatory COOL based on the PACA definition of a retailer.

The 1997 Economic Census data provide information on the number of food store firms by sales categories. Of the 67,916 food store, warehouse club, and superstore firms, we estimate that there are 66,868 firms with annual sales meeting the SBA definition of a small firm and 1,048 other firms. USDA has no information on the identities of these firms, and the PACA database does not identify firms by North American Industry Classification System code that would enable matching with Economic Census data. USDA assumes, however, that all or nearly all of the 1,048 large firms would meet the definition of a PACA retailer because most of these larger food retailers likely would handle fresh and frozen fruits and vegetables with an invoice value of at least $230,000 annually. Thus, we estimate that 77 percent (3,464 out of 4,512) of the retailers subject to the interim final rule are small. However, this is only 5.2 percent of the estimated total number of small food store retailers. In other words, an estimated 94.8 percent of small food store retailers would not be subject to the requirements of this interim final rule.

As discussed in the Costs section of the IFRIA, we estimate retailer costs under this interim final rule at approximately $57 million (Table 3). Costs are estimated at $12,600 per retail firm and $1,530 per retail establishment (Table 4). These estimated costs are lower than the PRIA upper range estimates because of the exclusion of commodities other than fish and shellfish from this interim final rule and because of the exemption of additional products under the revised definition of a processed food item.

Retailers will face recordkeeping costs, costs associated with supplying country of origin and method of production (wild and/or farm-raised) information to consumers, costs associated with segmenting products by country of origin and method of production (wild or farm-raised), and possibly additional handling costs. These cost increases may result in changes to retailer business practices, such as additional time devoted to labeling and signage needed to provide required information for products sold from in-store seafood department operations. The interim final rule does not specify the systems that affected retailers must put in place to implement mandatory COOL. Instead, retailers will be given flexibility to develop their own systems to comply with this rule. There are many ways in which the interim final rule's requirements may be met and firms will likely choose the least cost method in their particular situation to comply with the interim final rule.

Wholesalers: Any establishment that supplies retailers with one or more of the covered commodities will be required by retailers to provide country of origin and method of production (wild and/or farm-raised) information so that retailers can accurately supply that information to consumers. Of wholesalers potentially impacted by the interim final rule, SBA defines those having less than 100 employees as small. Importers of covered commodities will also be impacted by the interim final rule and are categorized as wholesalers in the data.

The 2000 Statistics of U.S. Businesses (Ref. 8) provides information on wholesalers by employment size. For fish and seafood wholesalers there are a total of 2,897 firms. Of these, 2,837 firms have less than 100 employees. Therefore, approximately 98 percent of the fish and seafood wholesalers could be considered as small firms.

In addition to specialty wholesalers that primarily handle a single covered commodity, there are also general-line wholesalers that handle a wide range of products. For purposes of this analysis, we assume that these general-line wholesalers handle at least some of the covered fish and shellfish commodities. Therefore, we include the number of general-line wholesale businesses among entities affected by the interim final rule. The 2000 Statistics of U.S. Businesses provides information on general-line grocery wholesalers by employment size. There were 3,183 firms in total, and 2,983 firms had less than 100 employees. This results in approximately 94 percent of the general-line grocery wholesalers being classified as small businesses.

In general, 5,820 of 6,080 or 96 percent of the wholesalers are classified as small businesses. This indicates that most of the wholesalers impacted by this interim final rule may be considered as small entities as defined by SBA.

As discussed in the Costs section of the IFRIA, we estimate that intermediaries (importers and domestic wholesalers, handlers, and processors) will incur costs under the interim final rule of approximately $13 million (Table 3). Costs are estimated at $1,890 per intermediary firm and $1,650 per establishment (Table 4). These costs are lower than the upper range costs estimated in the PRIA because of the omission of commodities other than fish and shellfish from this interim final rule and because of the revised definition of a processed food item.

Wholesalers will encounter increased costs in complying with this interim final rule. Wholesalers will likely face increased recordkeeping costs, costs associated with supplying country of origin and method of production (wild and/or farm-raised) information to retailers, costs associated with segmenting products by country of origin and method of production (wild or farm-raised), and possibly additional handling costs. Some of the comments received from wholesalers and retailers on the proposed rule and voluntary guidelines indicated that retailers may choose to source covered commodities from a single supplier that procures the covered commodity from only one country in an attempt to minimize the costs associated with complying with mandatory COOL. In the case of fish and shellfish, this type of change in procurement practices could extend to sourcing products having only one method of production (wild or farm-raised). These changes in business practices could lead to the further consolidation of firms in the wholesaling sector. The interim final rule does not specify the systems that affected wholesalers must put in place to implement mandatory COOL. Instead, wholesalers will be given flexibility to develop their own systems to comply with the interim final rule. There are many ways in which the rule's requirements may be met. In addition, wholesalers have the option of supplying covered commodities to retailers or other suppliers that are not covered by the interim final rule.

Manufacturers: Any manufacturer that supplies retailers or wholesalers with a covered commodity will be required to provide country of origin and method of production (wild and/or farm-raised) information to retailers so that the information can be accurately supplied to consumers. Most manufacturers of covered commodities will likely print country of origin and method of production (wild and/or

farm-raised) information on retail packages supplied to retailers. Of the manufacturers potentially impacted by the interim final rule, SBA defines those having less than 500 employees as small.

The 2000 Statistics of U.S. Businesses (Ref. 8) provides information on manufacturers by employment size. For seafood product preparation and packaging there is a total of 741 firms. Of these, 714 have less than 500 employees and thus, 96 percent are considered to be small firms. This indicates that most of the manufacturers of covered commodities impacted by the interim final rule would be considered as small entities as defined by SBA.

Manufacturers are included as intermediaries and additional costs for these firms are discussed in the previous section addressing wholesalers. Manufacturers of covered commodities will encounter increased costs in complying with this interim final rule. Like wholesalers, manufacturers will likely face increased recordkeeping costs, costs associated with supplying country of origin and method of production (wild and/or farm-raised) information to retailers, costs associated with segmenting products by country of origin and method of production, and possibly additional handling costs. Some of the comments received from manufacturers on the proposed rule and the voluntary guidelines indicated that they may limit the number of sources from which they procure raw products. These changes in business practices could lead to decreased operational efficiency and the further consolidation of firms in the manufacturing sector. The interim final rule does not specify the systems that affected manufacturers must put in place to implement mandatory COOL. Instead, manufacturers will be given flexibility to develop their own systems to comply with the rule. There are many ways in which the interim final rule's requirements may be met.

Producers: Harvesters and producers of the covered fish and shellfish commodities are directly impacted by this interim final rule. These harvesters and producers will more than likely be required by handlers and wholesalers to create and maintain country of origin and method of production (wild and/or farm-raised) information and transfer it to them so that they can readily transfer this information to retailers.

SBA defines a small agricultural producer as having annual receipts less than $750,000. Based on 1998 Census of Aquaculture data (Ref. 9), we estimate that at least 90 percent of the 3,540 fish and shellfish farming operations are small. The manner in which the data are reported, however, does not allow the precise number of small producers to be calculated. Similar information on the size of fishing operations is not known to exist. However, it is assumed that the majority of these producers would be considered small businesses. We estimate that there are 76,499 firms engaged in fishing (Refs. 8 and 10).

At the production level, fish and shellfish producers and harvesters will need to create, if necessary, and maintain records to establish country of origin and method of production (wild and/or farm-raised) information for the products they sell. This information will need to be conveyed as the products move through the supply chains. In general, additional producer costs include the cost of establishing and maintaining a recordkeeping system for the country of origin and method of production (wild and/or farm-raised) information, product identification, and labor and training. Based on our knowledge of the affected industries as well as comments received on the proposed rule and the voluntary guidelines, we believe that producers and harvesters already have much of the information available that could be used to substantiate country of origin and method of production (wild and/or farm-raised) claims.

The costs for producers and harvesters are expected to be relatively limited and should not have a larger impact on small producers than large producers. As discussed in the Costs section of the IFRIA, producer costs are estimated at $19 million (Table 3), or an estimated $241 per firm (Table 4). In the case of producers, the firm and the establishment are considered as one and the same, with the exception of a small number of fishing operations. Thus, costs per firm and per establishment are the same after rounding to the nearest dollar.

Economic impact on small entities: Information on sales or employment is not available for all firms or establishments shown in Table 1. However, it is reasonable to expect that this interim final rule will have a substantial impact on a number of small businesses. At the wholesale and retail levels of the supply chain, the efficiency of these operations may be impacted if products are segregated in receiving, storage, processing, and shipping operations. For processors handling products sourced from multiple countries and multiple methods of production (wild and/or farm-raised), there may also be a need to operate separate shifts for processing products from different origins, or to split processing within shifts. In either case, costs are likely to increase. Records will need to be maintained to ensure that accurate country of origin and method of production (wild and/or farm-raised) information is retained throughout the process and to permit compliance and enforcement reviews. A complete discussion of the recordkeeping burden associated with this rule is contained in the Paperwork Reduction Act section below.

Even if only domestic origin products or products from a single country of origin are handled, there may be additional procurement costs to source supplies from a single country of origin. In the case of fish and shellfish, such "single-sourcing" of products extends to method of production (wild or farm-raised) in addition to country of origin. Additional procurement costs may include higher transportation costs due to longer shipping distances and higher acquisition costs due to supply and demand conditions for products from a particular country of origin, whether domestic or foreign, and with a particular method of production (wild or farm-raised).

These additional costs may result in a number of consolidations within the processor, manufacturer, and wholesaler sectors for these covered fish and shellfish commodities. Also, to comply with the interim final rule, retailers may seek to limit the number of entities from which they purchase covered commodities as a means to simplify recordkeeping and labeling tasks.

Additional alternatives considered: As previously mentioned, the COOL provisions of the Farm Bill leave little regulatory discretion in defining who is directly covered by this rule. The law explicitly identifies those retailers required to provide their customers with country of origin and, if applicable, method of production (wild and/or farm-raised) information for covered commodities (namely, retailers as defined by PACA).

The law also requires that any person supplying a covered commodity to a retailer provide information to the retailer indicating the country of origin and, in the case of fish and shellfish products, method of production (wild and/or farm-raised) of the covered commodity. Again, the law provides no discretion regarding this requirement for suppliers of covered commodities to provide information to retailers.

The interim final rule has no mandatory requirement, however, for any firm other than statutorily defined retailers to make country of origin and method of production (wild and/or farm-raised) claims. In other words, no

harvester, producer, processor, wholesaler, or other supplier is required to make and substantiate a country of origin and method of production (wild and/or farm-raised) claim provided that the commodity is not ultimately sold in the form of a covered commodity at the establishment of a retailer subject to the interim final rule. Thus, for example, a processor and its suppliers may elect neither to maintain country of origin and method of production (wild and/or farm-raised) information nor to make country of origin and method of production (wild and/or farm-raised) claims, but instead sell products through marketing channels not subject to the interim final rule. Such marketing alternatives include foodservice, export, and retailers not subject to the interim final rule. We estimate that about 38 percent of U.S. fresh and frozen fish and about 25 percent of fresh and frozen shellfish sales occur through retailers subject to the interim final rule, with the remainder sold by retailers not subject to the interim final rule or sold as food away from home. Additionally, producers and intermediaries may have opportunities to market their products to export markets, which are not subject to the provisions of the interim final rule. The majority of product sales are not subject to the rule, and there are many current examples of companies specializing in production of commodities for foodservice, export markets, and other channels of distribution that would not be directly affected by the rule.

The effective date of this regulation is six months following the date of publication of this interim final rule. The country of origin statute provides that "not later than September 30, 2004, the Secretary shall promulgate such regulations as are necessary to implement this subtitle." Many of the covered commodities sold at retail are in a frozen or otherwise preserved state (*i.e.*, not sold as "fresh"). Thus, many of these products would already be in the chain of commerce prior to September 30, 2004, and for these products, origin/production information may not be known. Therefore, it is reasonable to delay the effective date of this interim final rule for six months to allow existing inventories to clear through the channels of commerce and to allow affected industry members to conform their operations to the requirements of this rule. During this time period, AMS will conduct an industry education and outreach program concerning the provisions and requirements of this rule. AMS also plans to focus its enforcement resources for the six months immediately following the effective date of this interim final rule on industry education and outreach. After a careful review of all its implications, AMS has determined that its allocation of enforcement resources will ensure that the rule is effectively and rationally implemented. This AMS plan of outreach and education, conducted over a period of one year, should significantly aid the industry in achieving compliance with the requirements of this rule.

The interim final rule does not dictate systems that firms will need to put in place to implement the requirements of the rule. Thus, different segments of the affected industries will be able to develop their own least-cost systems to implement COOL requirements. For example, one firm may depend primarily on manual identification and paper recordkeeping systems, while another may adopt automated identification and electronic recordkeeping systems.

The interim final rule has no requirements for firms to report to USDA. Compliance audits will be conducted at firms' places of business. As stated previously, required records may be kept by firms in the manner most suitable to their operations and may be hardcopy documents, electronic records, or a combination of both. In addition, the interim final rule provides flexibility regarding where records may be kept. If the product is pre-labeled with the necessary country of origin and method of production (wild and/or farm-raised) information, records documenting the immediate previous source and immediate subsequent recipient are sufficient as long as the source of the claim can be tracked and verified. Such flexibility should reduce costs for small entities to comply with the interim final rule.

In effect, the interim final rule is a performance standard rather than a design standard. The interim final rule requires that covered fish and shellfish commodities at subject retailers be labeled with country of origin and method of production (wild and/or farm-raised) information, that suppliers of covered commodities provide such information to retailers, and that retailers and their suppliers maintain records and information sufficient to verify all country of origin and method of production claims. The interim final rule provides flexibility regarding the manner in which the required information may be provided by retailers to consumers. The interim final rule provides flexibility in the manner in which required country of origin and method of production (wild and/or farm-raised) information is provided by suppliers to retailers, and in the manner in which records and information are maintained to substantiate country of origin and method of production claims. Thus, the interim final rule provides the maximum flexibility practicable to enable small entities to minimize the costs of the interim final rule on their operations.

Paperwork Reduction Act

Pursuant to PRA (44 U.S.C. 3501–3520) the information collection provisions contained in this interim final rule have not yet been approved by OMB and will not take effect until such approval is received. The Comments and Responses section lists the comments received on the preliminary PRA analysis and provides the Agency's responses to the comments. A description of these provisions is given below with an estimate of the annual recordkeeping burden.

Title: Recordkeeping and Records Access Requirements for Producers and Food Facilities.

OMB Number: 0581–new.

Type of Request: New collection.

Expiration Date: Three years from the date of approval.

Abstract: The COOL provision in the Farm Bill requires that specified retailers inform consumers as to the country of origin and, in the case of fish and shellfish, method of production (wild and/or farm-raised) of covered commodities. This interim final rule requires that records and other documentary evidence used to substantiate an origin and method of production (wild and/or farm-raised) claim must, upon request, be made available to USDA representatives in a timely manner during normal business hours and at a location that is reasonable in consideration of the products and firm under review. Any person engaged in the business of supplying a covered commodity to a retailer (*i.e.*, including but not limited to harvesters, producers, distributors, handlers, packers, and processors), whether directly or indirectly, must make country of origin and method of production (wild and/or farm-raised) information available to the retailer and must maintain records to establish and identify the immediate previous source and immediate subsequent recipient of a covered commodity, in such a way that identifies the product unique to that transaction by means of a lot number or other unique identifier, for a period of one year from the date of the transaction. For an imported covered commodity, the importer of record as determined by CBP must ensure that

records: provide clear product tracking from the port of entry into the United States to the immediate subsequent recipient, and accurately reflect the country of origin and method of production (wild and/or farm-raised) of the item as identified in relevant CBP entry documents and information systems; and must maintain such records for a period of 1 year from the date of the transaction. Records and other documentary evidence (*e.g.*, shipping receipt from central warehouse) relied upon at the point of sale to establish a product's country of origin and designation of production method (wild and/or farm-raised) must be available during normal business hours to any duly authorized representative of USDA at the facility for as long as the product is on hand. In addition, records that identify the retail supplier, the product unique to that transaction by means of a lot number or other unique identifier, and for products that are not pre-labeled the country of origin and method of production (wild and/or farm-raised) information, must be maintained for a period of one year from the date the origin declaration is made at retail. Such records may be located at the retailer's point of distribution, or at a warehouse, central office or other off-site location.

Description of Recordkeepers: Individuals who supply covered fish and shellfish commodities, whether directly to retailers or indirectly through other participants in the marketing chain, are required to establish and maintain country of origin and method of production (wild and/or farm-raised) information for the covered commodities and supply this information to retailers. As a result, producers, handlers, manufacturers, wholesalers, importers, and retailers of covered fish and shellfish commodities will be impacted by this interim final rule.

Burden: We estimate that nearly 125,000 establishments owned by approximately 91,000 firms would be either directly or indirectly impacted by this rule. Changes from the PRIA are reductions in the numbers of affected entities due to the omission of commodities other than fish and shellfish in this interim final rule.

In general, the supply chain for the covered fish and shellfish commodities includes fish and shellfish producers and harvesters, processors, wholesalers, importers, and retailers. Imported products may be introduced at any level of the supply chain. Other intermediaries, such as markets, may be involved in transferring products from one stage of production to the next. We estimate that the interim final rule's paperwork burden will be incurred by the number and types of firms and establishments listed in Table 8.

TABLE 8.—PAPERWORK BURDEN ESTIMATES

Type	Firms	Initial costs	Establishments	Maintenance costs	Total costs
Producers:					
Farm-Raised Fish & Shellfish	3,540	245,895	3,540	466,876	712,772
Fishing	76,499	5,313,774	76,452	3,360,983	8,674,756
Intermediaries:					
Fresh & Frozen Seafood Processing	582	761,838	653	580,571	1,342,409
Fish & Seafood Wholesale	2,897	3,792,173	2,980	2,649,467	6,441,640
General Line Grocery Wholesalers	3,183	4,166,547	3,993	819,256	4,985,80
Retailers:	4,512	5,906,208	37,176	16,526,275	22,432,483
Totals:					
Producers	80,039	5,559,669	79,992	3,827,859	9,387,528
Handlers, Processors, & Wholesalers	6,662	8,720,558	7,626	4,049,294	12,769,852
Retailers	4,512	5,906,208	37,176	16,526,275	22,432,483
Grand Total	91,213	20,186,435	124,794	24,403,428	44,589,863

The impacted firms and establishments will broadly incur two types of costs. First, firms will incur initial or start-up costs to comply with the interim final rule. We assume that initial costs will be borne by each firm, even though a single firm may operate more than one establishment. Second, enterprises will incur additional recordkeeping costs associated with storing and maintaining records on an ongoing basis. We assume that these activities will take place in each establishment operated by each affected business.

Compared to the proposed rule, this interim final rule reduces the length of time that records must be kept and revises the recordkeeping requirements for pre-labeled products. Any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly, must maintain records to establish and identify the immediate previous source and immediate subsequent recipient of a covered commodity, in such a way that identifies the product unique to that transaction by means of a lot number of other unique identifier, for a period of 1 year from the date of the transaction. Under the proposed rule, records would have been required to be kept for 2 years. For retailers, this interim final rule requires records and other documentary evidence relied upon at the point of sale by the retailer to establish a product's country of origin and method of production, to be available to any duly authorized representatives of USDA for as long as the product is on hand. Under the proposed rule, retailers would have to have maintained these records for 7 days following the sale of the product. For pre-labeled products, the interim final rule provides that the label itself is sufficient evidence on which the retailer may rely to establish a product's origin and method of production (wild and/or farm-raised). The proposed rule would not have provided for this method of substantiation. Under the interim final rule, records that identify the supplier, the product unique to that transaction by means of a lot number or other unique identifier, and for products that are not pre-labeled, the country of origin and the method of production (wild and/or farm-raised) information must be

maintained for a period of 1 year from the date the origin and production designations are made at retail. Under the proposed rule, these records would have been required to be maintained for 2 years.

With respect to initial recordkeeping costs, we believe that most fish and shellfish harvesters and producers currently maintain many of the types of records that would be needed to substantiate country of origin and method of production (wild and/or farm-raised) claims. However, harvesters and producers are not typically required to pass along country of origin and method of production (wild or farm-raised) information to subsequent purchasers. Therefore, harvesters and producers will incur some additional incremental costs to record, maintain, and transfer country of origin and method of production (wild or farm-raised) information to substantiate required claims made at retail. Because much of the necessary recordkeeping is already developed during typical fishing and aquaculture operations, we estimate that the incremental costs for harvesters and producers to supplement existing records with country of origin and method of production (wild or farm-raised) information will be relatively small per firm. Examples of initial or start-up costs would be any additional recordkeeping burden needed to record the required country of origin and method of production (wild or farm-raised) information and transfer this information to handlers, processors, wholesalers, or retailers.

We estimate that producers will need 4 hours to establish a system for organizing records to carryout the purposes of these regulations. This additional time would be required to modify existing recordkeeping systems to incorporate any added information needed to substantiate country of origin claims. Although not all fish and shellfish products ultimately will be sold at retail establishments covered by this interim final rule, we assume that virtually all producers will wish to keep their marketing options as flexible as possible. Thus, we assume that all harvesters and producers of covered fish and shellfish commodities will establish recordkeeping systems sufficient to substantiate country of origin and method of production claims. We also recognize that some operations will require substantially more than 4 hours to establish their recordkeeping systems. Overall, we believe that 4 hours represents a reasonable estimate of the average additional time that will be required across all types of harvesters and producers.

In estimating initial recordkeeping costs, we used 2001 wage rates and benefits published by the Bureau of Labor statistics from the National Compensation Survey. Subsequently, the National Compensation Survey has been updated and 2002 wage rates and benefits are now available. These updated wage rates and benefits are used in estimating the interim final recordkeeping costs and results in an increase in the estimated costs.

For harvesters and producers, we assume that the added work needed to initially set up a recordkeeping system for country of origin and method of production (wild or farm-raised) information is primarily a bookkeeping task. This task may be performed by independent bookkeepers, or in the case of operations that perform their own bookkeeping, will require equivalent skills. The Bureau of Labor Statistics (BLS) (Ref. 11) publishes wage rates for bookkeepers, accounting, and auditing clerks. We assume that this wage rate represents the cost for producers to hire an independent bookkeeper. In the case of producers who currently perform their own bookkeeping, we assume that this wage rate represents the opportunity cost of the producers' time for performing these tasks. The July 2002 wage rate, the most recent data available, is estimated at $13.62 per hour. For this analysis, an additional 27.5 percent is added to the wage rate to account for total benefits which includes social security, unemployment insurance, workers compensation, etc. The estimate of this additional cost to employers is published by the BLS (Ref. 11). At 4 hours per firm and a cost of $17.37 per hour, initial recordkeeping costs to harvesters and producers are estimated at approximately $5.6 million to modify existing recordkeeping systems in order to substantiate country of origin and method of production (wild or farm-raised) claims.

The recordkeeping burden on handlers, processors, wholesalers, and retailers is expected to be more complex than the burden most producers face. These operations will need to maintain country of origin and method of production (wild and/or farm-raised) information on the covered commodities purchased and subsequently furnish that information to the next participant in the supply chain. This will require adding additional information to a firm's bills of lading, invoices, or other records associated with movement of covered commodities from purchase to sale. Similar to harvesters and producers, however, we believe that most of these operations already maintain many of the types of necessary records in their existing systems. Thus, we assume that country of origin and method of production (wild and/or farm-raised) information will require only modification of existing recordkeeping systems rather than development of entirely new systems.

The Label Cost Model Developed for FDA by RTI International (Refs. 12 and 13) is used to estimate the cost of including additional country of origin and method of production (wild and/or farm-raised) information to an operation's records. We assume a limited information, one-color redesign of a paper document will be sufficient to comply with the interim final rule's recordkeeping requirements. The number of hours required to complete the redesign is estimated to be 29 with an estimated cost at $1,309 per firm. While the cost will be much higher for some firms and lower for others, we believe that $1,309 represents a reasonable estimate of average cost for all firms. We thus estimate that the initial recordkeeping costs to intermediaries such as handlers, processors, and wholesalers (importers are included with wholesalers) will be approximately $8.7 million, and initial recordkeeping costs at retail will be approximately $5.9 million. The initial recordkeeping cost to intermediaries declines from the initial recordkeeping cost estimate in the proposed rule due to the reduction in the number of affected intermediaries associated with commodities other than fish and shellfish. The total initial recordkeeping costs for all firms are thus estimated at approximately $20 million.

In addition to these one-time costs to establish recordkeeping systems, enterprises will incur additional recordkeeping costs associated with storing and maintaining records. These costs are referred to as maintenance costs in Table 8. Again, the marginal cost for harvesters and producers to maintain and store any additional information needed to substantiate country of origin and method of production (wild or farm-raised) claims is expected to be relatively small.

For wild fish harvesters, country of origin and method of production (wild) generally is established at the time that the product is harvested, and thus there is no need to track country of origin and method of production information throughout the production lifecycle of the product. This group of producers is estimated to require an additional 4 hours a year, or 1 hour per quarter, to maintain country of origin and method

of production information. Maintenance costs for fish harvesters are estimated to be $3.4 million.

Compared to wild fish harvesters, we expect that fish farmers will incur higher costs to maintain country of origin and method of production (farm-raised) information. Wild fish are generally harvested once and then shipped by the producer to the first handler. In contrast, farm-raised fish and shellfish can and often do move through several geographically dispersed operations prior to final sale for processing. Fish and shellfish may be acquired from other countries by U.S. producers, complicating the task of tracking country of origin and method of production information. Because farmed fish and shellfish may change ownership several times prior to harvest, will need to be maintained to substantiate country of origin information as the animals move through their lifecycle. Thus, we expect that the recordkeeping burden for fish and shellfish farmers will be higher than it will be for harvesters of wild fish and shellfish. We estimate that these producers will require an additional 12 hours a year, or 1 hour per month, to maintain country of origin and method of production records. Again, this is an average for all enterprises. Some will require substantially more time, while others will require little additional time to maintain country of origin and method of production information.

We assume that farm labor will primarily be responsible for maintaining country of origin information at producers' enterprises. NASS data (Ref. 14) are used to estimate average farm wage rates—$8.62 per hour for livestock workers. (Wage rates for fish workers were unavailable, so the average wage rate for livestock workers is used.) Applying the rate of 27.5 percent to account for benefits results in an hourly rate of $10.99 for livestock workers. Assuming 12 hours of labor per year for farmed fish operations results in estimated annual maintenance costs to producers of $467,000 which is slightly higher than the estimated maintenance costs in the proposed rule for this group of producers. The increase in the estimated maintenance cost is due to the higher estimated benefits.

We expect that intermediaries such as handlers, processors, and wholesalers will face higher costs per enterprise to maintain country of origin and method of production (wild and/or farm-raised) information compared to costs faced by producers. Much of the added cost is attributed to the larger average size of these enterprises compared to the average producer enterprise. In addition, these intermediaries will need to track products both coming into and going out of their businesses.

We estimate the maintenance burden hours for country of origin and method of production (wild and/or farm-raised) recordkeeping to be 52 hours per year per establishment for fresh and frozen seafood processors and fish and seafood wholesalers. For general line grocery wholesalers, we estimate the maintenance burden hours to be 12 hours per year per establishment. The burden estimate for general line grocery wholesalers is reduced from the 52 hours estimated in the proposed rule because fish and shellfish represent only a portion of the commodities handled by these establishments.

Maintenance activities will include inputting, tracking, and storing country of origin and method of production (wild and/or farm-raised) information for each covered fish and shellfish commodity. Since this is mostly an administrative task, we estimate the cost using the July 2002 BLS wage rate from the National Compensation Survey for administrative support occupations ($13.41 per hour with an additional 27.5 percent added to cover overhead costs for a total of $17.10 per hour). This occupation category includes stock and inventory clerks and record clerks. Coupled with the assumed hours per establishment, the resulting total annual maintenance costs to handlers, processors, and wholesalers and other intermediaries are estimated at approximately $4.0 million.

Retailers will need to supply country of origin and method of production (wild and/or farm-raised) information for each covered fish and shellfish commodity sold at each store. Therefore, additional recordkeeping maintenance costs are believed to impact each establishment. Because fish and shellfish represent only a portion of the covered commodities included in the proposed rule, estimated recordkeeping maintenance burden is lowered from 365 hours to 26 hours per year per retail establishment. This represents 30 minutes per week. Using the BLS wage rate for administrative support occupations ($13.41 per hour with an additional 27.5 percent added to cover overhead costs for a total of $17.10 per hour) results in total estimated annual maintenance costs to retailers of $16.5 million.

The total maintenance recordkeeping costs for all producer, intermediary, and retail enterprises are thus estimated at approximately $24.4 million.

The total first-year recordkeeping burden is calculated by summing the initial and maintenance costs. The total recordkeeping costs are estimated for harvesters and producers at approximately $9.4 million; for handlers, processors, and wholesalers at approximately $12.8 million; and for retailers at approximately $22.4 million. We estimate the total recordkeeping cost for all participants in the supply chain for covered fish and shellfish commodities at $44.6 million for the first year, with subsequent maintenance costs of $24.4 million per year.

Annual Reporting and Recordkeeping Burden for the First Year (Initial): Public reporting burden for this initial recordkeeping set up is estimated to average 7.1 hours per year per individual recordkeeper.

Estimated Number of Firms Recordkeepers: 91,213.

Estimated Total Annual Burden: 644,202 hours.

Annual Reporting and Recordkeeping Burden (Maintenance):

Public reporting burden for this recordkeeping storage and maintenance is estimated to average 12.4 hours per year per individual recordkeeper.

Estimated Number of Establishments Recordkeepers: 124,794.

Estimated Total Annual Burden: 1,551,696 hours.

AMS is committed to implementation of the Government Paperwork Elimination Act (GPEA) to provide the public with the option to submit or transact business electronically to the extent practicable. This new information collection has no forms and is only for recordkeeping purposes. Therefore, the provisions of an electronic submission alternative is not required by GPEA.

AMS is soliciting comments from all interested parties concerning these recordkeeping requirements. Comments are specifically invited on: (1) Whether the recordkeeping is necessary for the proper operation of this program, including whether the information would have practical utility; (2) the accuracy of USDA's estimate of the burden of the recordkeeping requirements, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the records to be maintained; and (4) ways to minimize the burden of the recordkeeping on those who are to maintain and/or make the records available, including the use of appropriate automated, electronic, mechanical, or other technological recordkeeping techniques or other forms of information technology. Comments concerning the recordkeeping requirements contained in this interim final rule should reference the date and page number of this issue of the **Federal**

Register and should be sent to Country of Origin Labeling Program, Room 2092–S; Agricultural Marketing Service (AMS), USDA; STOP 0249; 1400 Independence Avenue, SW., Washington, DC 20250–0249, or by facsimile to (202) 720–3499, or by e-mail to *cool@usda.gov*.

Comments sent to the above location should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503. All responses to this action will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

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2. NMFS, NOAA, U.S. Dept. of Commerce. Fisheries of the United States 2001. September 2002.

3. FAS, USDA. U.S. Trade Internet System, *http://www.fas.usda.gov/ustrade/*.

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6. U.S. Census Bureau. 1997 Economic Census. Retail Trade Subject Series. Establishment and Firm Size. EC97R44S–SZ. Issued October 2000.

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11. Bureau of Labor Statistics, Department of Labor, National Compensation Survey, 3rd quarter 2003, Employer Cost for Employee Compensation.

12. Food and Drug Administration. "Establishment and Maintenance of Records Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002," proposed rule. May 9, 2003.

13. RTI, International 2000. FDA Labeling Cost Model: Final Report. Revised April 2002.

14. NASS, USDA. Farm Labor, August 15, 2003.

Executive Order 12988

The contents of this rule were reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. States and local jurisdictions are preempted from creating or operating country of origin labeling programs for the commodities specified in the Act and these regulations. With regard to other Federal statutes, all labeling claims made in conjunction with this regulation must be consistent with other applicable Federal requirements. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Civil Rights Review

AMS considered the potential civil rights implications of this rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. This review included persons that are employees of the entities that are subject to these regulations. This interim final rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this rule will not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, Federalism. This Order directs agencies to construe, in regulations and otherwise, a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence to conclude that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute. This rule is required by the Farm Bill. While this statute does not contain an express preemption provision, it is clear from the language in the statute that Congress intended preemption of State law.

Several States have implemented mandatory programs for country of origin labeling of certain commodities. For example, Alabama, Arkansas, Mississippi, and Louisiana have origin labeling requirements for certain seafood products. Other States including Wyoming, Idaho, North Dakota, South Dakota, Louisiana, Kansas, and Mississippi have origin labeling requirements for certain meat products. In addition, the State of Florida and the State of Maine have origin labeling requirements for fresh produce items.

To the extent that these State country of origin labeling programs encompass commodities which are not governed by this regulation, the States may continue to operate them. For those State country of origin labeling programs that encompass commodities which are governed by this regulation, these programs are preempted. In most cases, the requirements contained within this rule are more stringent and prescriptive than the requirements of the State programs. With regard to consultation with States, as directed by the law, AMS has consulted with the States that have country of origin labeling programs. Further, States were expressly invited to comment on the proposed regulation as it related to existing State programs. No States submitted any comments pertaining to this issue.

This interim final rule contains those provisions of the October 30, 2003, (68 FR 61944) proposed rule that pertain to fish and shellfish covered commodities. Modifications to these provisions have been made as discussed herein. The implementation of mandatory COOL for all covered commodities except wild and farm-raised fish and shellfish has been delayed until September 30, 2006. The provisions for the other covered commodities, including muscle cuts of beef (including veal), lamb, and pork; ground beef, ground lamb, and ground pork; perishable agricultural commodities; and peanuts are not made final in this action. In view of the changes made in this interim final rule to fish and shellfish covered commodities, interested persons should examine provisions concerning their respective covered commodities in light of these changes. Assuming that provisions of the interim final rule would be applied to all covered commodities, the Agency specifically invites comments on the issues described below.

In this regard, particular attention is drawn to the changes made for fish and shellfish with respect to definition of a processed food item and recordkeeping. Under this interim final rule, all cooked products (*e.g.*, canned fish) are considered processed food items and are excluded from labeling under this regulation. Cooked products have a character that is different than that of the covered commodity and have a somewhat limited functionality. Also excluded under this interim final rule are breaded products, which in the case of shrimp can account for up to 50 percent of the finished product. In addition, retail items that have been given a distinct flavor (*e.g.*, Cajun marinated catfish) are also considered processed food items. The Agency believes that these exclusions are consistent in that these products all have a limited range of use.

AMS has reduced the recordkeeping retention requirement for suppliers and

centrally-located retail records to one year and reduced the retail level record retention requirement to while the product is on hand. In addition, the interim final rule clarifies that only those suppliers responsible for initiating an origin and method of production claim would have to possess records to substantiate those claims (*e.g.*, where it was harvested). Intermediate suppliers and retailers would be required to have documentation that identifies the product with either a lot number or other unique identifier and illustrates the immediate previous supplier and subsequent recipient (as applicable) of that uniquely identified product. Thus, only origin/production identification must travel with the product either on the product itself, on the shipping container, or in some other fashion. In performing an audit, AMS would be able to track that product back through the marketing chain to the supplier responsible for initiating the origin/production designation claims.

With respect to costs, modifications in this interim final rule resulted in lower estimates of first-year implementation costs for affected entities in the fish and shellfish sector, relative to the upper range estimates of first-year implementation costs presented in the proposed rule. If applied to the other covered commodities, corresponding changes to the proposed rule would result in lowered estimates of first-year implementation costs for those commodities relative to the upper-range estimates presented in the PRIA. In the PRIA, upper-range first-year implementation costs for all covered commodities (including fish and shellfish) were estimated at $3.9 billion. Preliminary analysis suggests that requirements in this interim final rule, if applied to all covered commodities, would result in a reduction on the order of 20 to 30 percent in estimated first-year implementation costs relative to the PRIA upper-range estimate.

This interim final rule is made effective 180 days after the date of publication in the **Federal Register**. The requirements of this rule do not apply to frozen fish or shellfish caught or harvested before December 6, 2004. This will allow existing product to clear through the channels of commerce and permit AMS to conduct an industry education and outreach program concerning the provisions contained within this rulemaking.

Further, pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect. This action is authorized under the Agricultural Marketing Act of 1946, as amended. After issuance of a proposed rule, the Department has decided to provide further opportunity to comment due to the changes made as a result of comments received and the cost associated with this rule. Further, this rule provides for a 90-day comment period.

List of Subjects in 7 CFR Part 60

Agricultural commodities, Fish, Food labeling, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR chapter I is amended by adding part 60 to read as follows:

PART 60—COUNTRY OF ORIGIN LABELING FOR FISH AND SHELLFISH

Subpart A—General Provisions

Definitions

Sec.

Country of Origin Notification

Recordkeeping

Subpart B—[Reserved]

Authority: 7 U.S.C. 1621 *et seq.*

Subpart A—General Provisions

Definitions

§ 60.101 Act.

Act means the Agricultural Marketing Act of 1946, (7 U.S.C. 1621 *et seq.*).

§ 60.102 AMS.

AMS means the Agricultural Marketing Service, United States Department of Agriculture.

§ 60.103 [Reserved]

§ 60.104 Consumer package.

Consumer package means any container or wrapping in which a covered commodity is enclosed for the delivery and/or display of such commodity to retail purchasers.

§ 60.105 Covered commodity.

(a) *Covered commodity* means:

(1) [Reserved]

(2) [Reserved]

(3) Farm-raised fish and shellfish (including fillets, steaks, nuggets, and any other flesh);

(4) Wild fish and shellfish (including fillets, steaks, nuggets, and any other flesh);

(5) [Reserved]

(6) [Reserved]

(b) Covered commodities are excluded from this part if the commodity is an ingredient in a processed food item as defined in § 60.119.

§ 60.106 Farm-raised fish.

Farm-raised fish means fish or shellfish that have been harvested in controlled environments, including ocean-ranched (*e.g.*, penned) fish and including shellfish harvested from leased beds that have been subjected to production enhancements such as providing protection from predators, the addition of artificial structures, or providing nutrients; and fillets, steaks, nuggets, and any other flesh from a farm-raised fish or shellfish.

§ 60.107 Food service establishment.

Food service establishment means a restaurant, cafeteria, lunch room, food stand, saloon, tavern, bar, lounge, or other similar facility operated as an enterprise engaged in the business of selling food to the public. Similar food service facilities include salad bars, delicatessens, and other food enterprises located within retail establishments that provide ready-to-eat foods that are consumed either on or outside of the retailer's premises.

§ 60.108–60.110 [Reserved]

§ 60.111 Hatched.

Hatched means emerged from the egg.

§ 60.112 Ingredient.

Ingredient means a component either in part or in full, of a finished retail food product.

§ 60.113 [Reserved]

§ 60.114 Legibly.

Legibly means text that can be easily read by a consumer.

§ 60.115 [Reserved]

§ 60.116 Person.

Person means any individual, partnership, corporation, association, or other legal entity.

§ 60.117 [Reserved]

§ 60.118 [Reserved]

§ 60.119 Processed food item.

Processed food item means a retail item derived from fish or shellfish that has undergone specific processing resulting in a change in the character of the covered commodity, or that has been combined with at least one other covered commodity or other substantive food component (*e.g.*, breading, tomato sauce), except that the addition of a component (such as water, salt, or sugar) that enhances or represents a further step in the preparation of the product for consumption, would not in itself result in a processed food item. Specific processing that results in a change in the character of the covered commodity includes cooking (*e.g.*, frying, broiling, grilling, boiling, steaming, baking, roasting), curing (*e.g.*, salt curing, sugar curing, drying), smoking (hot or cold), and restructuring (*e.g.*, emulsifying and extruding, compressing into blocks and cutting into portions). Examples of items excluded include fish sticks, surimi, mussels in tomato sauce, seafood medley, coconut shrimp, soups, stews, and chowders, sauces, pates, salmon that has been smoked, marinated fish fillets, canned tuna, canned sardines, canned salmon, crab salad, shrimp cocktail, gefilte fish, sushi, and breaded shrimp.

§ 60.120 [Reserved]

§ 60.121 [Reserved]

§ 60.122 Production step.

Production step means in the case of:

(a) [Reserved]

(b) Farm-raised Fish and Shellfish: Hatched, raised, harvested, and processed.

(c) Wild Fish and Shellfish: Harvested and processed.

§ 60.123 Raised.

Raised means in the case of:

(a) [Reserved]

(b) Farm-raised fish and shellfish as it relates to the production steps defined in § 60.122: the period of time from hatched to harvested.

§ 60.124 Retailer.

Retailer means any person licensed as a retailer under the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(b)).

§ 60.125 Secretary.

Secretary means the Secretary of Agriculture of the United States or any person to whom the Secretary's authority has been delegated.

§ 60.126 [Reserved]

§ 60.127 United States.

United States means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, the Northern Mariana Islands, and any other Commonwealth, territory, or possession of the United States, and the waters of the United States as defined in § 60.132.

§ 60.128 United States country of origin.

United States country of origin means in the case of:

(a) [Reserved]

(b) [Reserved]

(c) Farm-raised fish and shellfish: from fish or shellfish hatched, raised, harvested, and processed in the United States, and that has not undergone a substantial transformation (as established by U.S. Customs and Border Protection) outside of the United States.

(d) Wild-fish and shellfish: from fish or shellfish harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel, and that has not undergone a substantial transformation (as established by U.S. Customs and Border Protection) outside of the United States.

(e) [Reserved]

(f) [Reserved]

§ 60.129 USDA.

USDA means the United States Department of Agriculture.

§ 60.130 U.S. flagged vessel.

U.S. flagged vessel means:

(a) Any vessel documented under chapter 121 of title 46, United States Code; or

(b) Any vessel numbered in accordance with chapter 123 of title 46, United States Code.

§ 60.131 Vessel flag.

Vessel flag means the country of registry for a vessel, ship, or boat.

§ 60.132 Waters of the United States.

Waters of the United States means those fresh and ocean waters contained within the outer limit of the Exclusive Economic Zone (EEZ) of the United States as described in Department of State Public Notice 2237 published in the **Federal Register** volume 60, No. 163, August 23, 1995, pages 43825–43829. The Department of State notice is republished in appendix A to this subpart.

§ 60.133 Wild fish and shellfish.

Wild fish and shellfish means naturally-born or hatchery-originated fish or shellfish released in the wild, and caught, taken, or harvested from non-controlled waters or beds; and fillets, steaks, nuggets, and any other flesh from a wild fish or shellfish.

Country of Origin Notification

§ 60.200 Country of origin notification.

In providing notice of the country of origin as required by the Act, the following requirements shall be followed by retailers:

(a) *General.* Labeling of covered commodities offered for sale whether individually, in a bulk bin, display case, carton, crate, barrel, cluster, or consumer package must contain country of origin and method of production information (wild and/or farm-raised) as set forth in this regulation.

(b) *Exemptions.* Food service establishments as defined in § 60.107 are exempt from labeling under this subpart.

(c) *Exclusions.* A covered commodity is excluded from this subpart if it is an ingredient in a processed food item as defined in § 60.119.

(d) *Designation of Method of Production (Wild and/or Farm-Raised).* Fish and shellfish covered commodities shall also be labeled to indicate whether they are wild and/or farm-raised as those terms are defined in this regulation.

(e) *Labeling Covered Commodities of United States Origin.* A covered commodity may only bear the declaration of "Product of the U.S." at retail if it meets the definition of United States Country of Origin as defined in § 60.128.

(f) *Labeling Imported Products That Have Not Undergone Substantial Transformation in the United States.* An imported covered commodity shall retain its origin as declared to U.S. Customs and Border Protection at the time the product entered the United States, through retail sale, provided that it has not undergone a substantial transformation (as established by U.S.

Customs and Border Protection) in the United States.

(g) *Labeling Imported Products That Have Subsequently Been Substantially Transformed in the United States.*

(1) [Reserved]

(2) Wild and Farm-Raised Fish and Shellfish: If a covered commodity was imported from country X and subsequently substantially transformed (as established by U.S. Customs and Border Protection) in the United States or aboard a U.S. flagged vessel, such product shall be labeled at retail as "From [country X], processed in the United States."

(h) *Blended Products (Commingling of the same covered commodity).*

(1) For imported covered commodities that have not subsequently been substantially transformed in the United States that are commingled with other imported covered commodities that have not been substantially transformed in the United States, and/or covered commodities of U.S. origin and/or covered commodities as described in § 60.200(g), the declaration shall indicate the countries of origin for covered commodities in accordance with existing Federal legal requirements.

(2) For imported covered commodities that have subsequently undergone substantial transformation in the United States that are commingled with other imported covered commodities that have subsequently undergone substantial transformation in the United States (either prior to or following substantial transformation in the United States) and/or U.S. origin covered commodities, the declaration shall indicate the countries of origin contained therein or that may be contained therein.

(i) *Remotely Purchased Products.* For sales of a covered commodity in which the customer purchases a covered commodity prior to having an opportunity to observe the final package (*e.g.*, Internet sales, home delivery sales, etc.), the retailer may provide the country of origin notification and method of production (wild and/or farm-raised) designation either on the sales vehicle or at the time the product is delivered to the consumer.

§ 60.300 Markings.

(a) Country of origin declarations and method of production (wild and/or farm-raised) designations can either be in the form of a placard, sign, label, sticker, band, twist tie, pin tag, or other format that provides country of origin and method of production information. The country of origin declaration and method of production (wild and/or farm-raised) designation may be combined or made separately. Except as provided in § 60.200(g) and 60.200(h) of this regulation, the declaration of the country(ies) of origin of a product shall be listed according to applicable Federal legal requirements. Country of origin declarations may be in the form of a check box provided it is in conformance with other Federal legal requirements. Various forms of the production designation are acceptable, including "wild caught", "wild", "farm-raised", "farmed", or a combination of these terms for blended products that contain both wild and farm-raised fish or shellfish, provided it can be readily understood by the consumer and is in conformance with other Federal labeling laws. Designations such as "ocean caught", "caught at sea", "line caught", "cultivated", or "cultured" are not acceptable substitutes. Alternatively, method of production (wild and/or farm-raised) designations may be in the form of a check box.

(b) The declaration of the country(ies) of origin and method(s) of production (wild and/or farm-raised) (*e.g.*, placard, sign, label, sticker, band, twist tie, pin tag, or other display) must be placed in a conspicuous location, so as to render it likely to be read and understood by a customer under normal conditions of purchase.

(c) The declaration of the country(ies) of origin and the method(s) of production (wild and/or farm-raised) may be typed, printed, or handwritten provided it is in conformance with other Federal labeling laws and does not obscure other labeling information required by other Federal regulations.

(d) A bulk container (*e.g.*, display case, shipper, bin, carton, and barrel), used at the retail level to present product to consumers, may contain a covered commodity from more than one country of origin and/or more than one method of production (wild and farm-raised) provided all possible origins and/or methods of production are listed.

(e) Abbreviations and variant spellings that unmistakably indicate the country of origin, such as "U.K." for "The United Kingdom of Great Britain and Northern Ireland" are acceptable. The adjectival form of the name of a country may be used as proper notification of the country(ies) of origin of imported commodities provided the adjectival form of the name does not appear with other words so as to refer to a kind or species of product. Symbols or flags alone may not be used to denote country of origin.

(f) State or regional label designations are not acceptable in lieu of country of origin labeling.

Recordkeeping

§ 60.400 Recordkeeping requirements.

(a) General.

(1) All records must be legible and may be maintained in either electronic or hard copy formats. Due to the variation in inventory and accounting documentary systems, various forms of documentation and records will be acceptable.

(2) Upon request by USDA representatives, suppliers and retailers subject to this subpart shall make available to USDA representatives, records and other documentary evidence that will permit substantiation of an origin claim and method(s) of production (wild and/or farm-raised), in a timely manner during normal hours of business and at a location that is reasonable in consideration of the products and firm under review.

(b) Responsibilities of Suppliers.

(1) Any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly, must make available information to the buyer about the country(ies) of origin and method(s) of production (wild and/or farm-raised), of the covered commodity. This information may be provided either on the product itself, on the master shipping container, or in a document that accompanies the product through retail sale provided that it identifies the product and its country(ies) of origin and method(s) of production, unique to that transaction by means of a lot number or other unique identifier. In addition, the supplier of a covered commodity that is responsible for initiating a country(ies) of origin and method(s) of production (wild and/or farm-raised) claim must possess records that are necessary to substantiate that claim.

(2) Any intermediary supplier (*i.e.*, not the supplier responsible for initiating a country of origin declaration and designation of wild and/or farm-raised) handling a covered commodity that is found to be designated incorrectly for country of origin and/or method of production (wild and/or farm-raised), shall not be held liable for a violation of the Act by reason of the conduct of another if the intermediary supplier could not have been reasonably expected to have had knowledge of the violation.

(3) Any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly (*i.e.*, including but not limited to harvesters, producers, distributors, handlers, and processors), must maintain records to establish and

identify the immediate previous source (if applicable) and immediate subsequent recipient of a covered commodity, in such a way that identifies the product unique to that transaction by means of a lot number or other unique identifier, for a period of 1 year from the date of the transaction.

(4) For an imported covered commodity (as defined in § 60.200(f)), the importer of record as determined by U.S. Customs and Border Protection, must ensure that records: Provide clear product tracking from the port of entry into the United States to the immediate subsequent recipient and accurately reflect the country of origin and method of production (wild and/or farm-raised) of the item as identified in relevant CBP entry documents and information systems; and must maintain such records for a period of 1 year from the date of the transaction.

(c) Responsibilities of Retailers.

(1) Records and other documentary evidence relied upon at the point of sale to establish a covered commodity's country(ies) of origin and designation of wild and/or farm-raised, must be available during normal business hours to any duly authorized representative of USDA at the facility for as long as the product is on hand. For pre-labeled products, the label itself is sufficient evidence on which the retailer may rely to establish the product's origin and method(s) of production (wild and/or farm-raised).

(2) Records that identify the retail supplier, the product unique to that transaction by means of a lot number or other unique identifier, and for products that are not pre-labeled the country of origin information and the method(s) of production (wild and/or farm-raised) must be maintained for a period of 1 year from the date the declaration is made at retail. Such records may be located at the retailer's point of distribution, warehouse, central offices or other off-site location.

(3) Any retailer handling a covered commodity that is found to be designated incorrectly as to country of origin and/or the method of production (wild and/or farm-raised), or for frozen fish and shellfish covered commodities caught or harvested before December 6, 2004, for the date of harvest, shall not be held liable for a violation of the Act by reason of the conduct of another if the retailer could not have been reasonably expected to have had knowledge of the violation.

Subpart B—[Reserved]

Appendix A to Subpart A—Exclusive Economic Zone and Maritime Boundaries; Notice of Limits

Note: The following notice was originally published at 60 FR 43825–43829, August 23, 1995.

Department of State

[Public Notice 2237]

Exclusive Economic Zone and Maritime Boundaries; Notice of Limits

By Presidential Proclamation No. 5030 made on March 10, 1983, the United States established an exclusive economic zone, the outer limit of which is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.

The Government of the United States of America has been, is, and will be, engaged in consultations and negotiations with governments of neighboring countries concerning the delimitation of areas subject to the respective jurisdiction of the United States and of these countries.

The limits of the exclusive economic zone of the United States as set forth below are intended to be without prejudice to any negotiations with these countries or to any positions which may have been or may be adopted respecting the limits of maritime jurisdiction in such areas. Further, the limits of the exclusive economic zone set forth below are without prejudice to the outer limit of the continental shelf of the United States where that shelf extends beyond 200 nautical miles from the baseline in accordance with international law.

The following notices have been published which have defined the United States maritime boundaries and fishery conservation zone established March 1, 1977: Public Notice 506, **Federal Register**, Vol. 41, No. 214, November 4, 1976, 48619–20; Public Notice 526, **Federal Register**, Vol. 42, No. 44, March 7, 1977, 12937–40; Public Notice 544, **Federal Register**, Vol. 42, No. 92, May 12, 1977, 24134; Public Notice 4710–01, **Federal Register**, Vol. 43, No. 7, January 11, 1978, 1658; Public Notice 585, **Federal Register**, Vol. 43, No. 7, January 11, 1978, 1659; Public Notice 910, **Federal Register**, Vol. 49, No. 155, August 9, 1984, 31973.

This Public Notice supersedes all limits defined in the above Public Notices.

Therefore, the Department of State on behalf of the Government of the United States hereby announces the limits of the exclusive economic zone of the United States of America, within which the United States will exercise its sovereign rights and jurisdiction as permitted under international law, pending the establishment of permanent maritime boundaries by mutual agreement in those cases where a boundary is necessary and has not already been agreed.

Publication of a notice on this subject which is effective immediately upon publication is necessary to effectively exercise the foreign affairs responsibility of the Department of State. (*See* Title 5 U.S.C. 553(a)(1)(B).)

Unless otherwise noted, the coordinates in this notice relate to the Clarke 1866 Ellipsoid and the North American 1927 Datum ("NAD 27"). Unless otherwise specified, the term "straight line" in this notice means a geodetic line.

U.S. Atlantic Coast and Gulf of Mexico

In the Gulf of Maine area, the limit of the exclusive economic zone is defined by straight lines connecting the following coordinates: [1]

1. 44 deg. 46′35.346″ N., 66 deg. 54′11.253″ W.
2. 44 deg. 44′41″ N., 66 deg. 56′17″ W.
3. 44 deg. 43′56″ N., 66 deg. 56′26″ W.
4. 44 deg. 39′13″ N., 66 deg. 57′29″ W.
5. 44 deg. 36′58″ N., 67 deg. 00′36″ W.
6. 44 deg. 33′27″ N., 67 deg. 02′57″ W.
7. 44 deg. 30′38″ N., 67 deg. 02′38″ W.
8. 44 deg. 29′03″ N., 67 deg. 03′42″ W.
9. 44 deg. 25′27″ N., 67 deg. 02′16″ W.
10. 44 deg. 21′43″ N., 67 deg. 02′33″ W.
11. 44 deg. 14′06″ N., 67 deg. 08′38″ W.
12. 44 deg. 11′12″ N., 67 deg. 16′46″ W.
13. 42 deg. 53′14″ N., 67 deg. 44′35″ W.
14. 42 deg. 31′08″ N., 67 deg. 28′05″ W.
15. 40 deg. 27′05″ N., 65 deg. 41′59″ W.

Between points 15 and 16, the limit of the exclusive economic zone is 200 nautical miles seaward from the baseline from which the territorial sea is measured.

In the area of the Blake Plateau, the Straits of Florida, and Eastern Gulf of Mexico, the limit of the exclusive economic zone shall be determined by straight lines connecting the following coordinates: [2]

16. 28 deg. 17′10″ N., 76 deg. 36′45″ W.
17. 28 deg. 17′10″ N., 79 deg. 11′24″ W.
18. 27 deg. 52′54″ N., 79 deg. 28′36″ W.
19. 27 deg. 26′00″ N., 79 deg. 31′38″ W.
20. 27 deg. 16′12″ N., 79 deg. 34′18″ W.
21. 27 deg. 11′53″ N., 79 deg. 34′56″ W.
22. 27 deg. 05′58″ N., 79 deg. 35′19″ W.
23. 27 deg. 00′27″ N., 79 deg. 35′17″ W.
24. 26 deg. 55′15″ N., 79 deg. 34′39″ W.
25. 26 deg. 53′57″ N., 79 deg 34′27″ W.
26. 26 deg. 45′45″ N., 79 deg. 32′41″ W.
27. 26 deg. 44′29″ N., 79 deg. 32′23″ W.
28. 26 deg. 43′39″ N., 79 deg. 32′20″ W.
29. 26 deg. 41′11″ N., 79 deg. 32′01″ W.
30. 26 deg. 38′12″ N., 79 deg. 31′33″ W.
31. 26 deg. 36′29″ N., 79 deg. 31′07″ W.
32. 26 deg. 35′20″ N., 79 deg. 30′50″ W.
33. 26 deg. 34′50″ N., 79 deg. 30′46″ W.
34. 26 deg. 34′10″ N., 79 deg. 30′38″ W.
35. 26 deg. 31′11″ N., 79 deg. 30′15″ W.

[1] The limits of the U.S. exclusive economic zone from points 1 to 12 in areas adjacent to Canada do not correspond to limits of the Canadian fishery zone as defined in the Canada Gazette of January 1, 1977, due to the dispute between the United States and Canada relating to the sovereignty over Machias Seal Island and North Rock. The line defined by points 12 through 15 reflects the International Court of Justice Award of October 14, 1984, establishing a United States-Canada maritime boundary, pursuant to t he Treaty between the Government of Canada and the Government of the United States of America to Submit to Binding Dispute Settlement the Delimitation of the Maritime Boundary in the gulf of Maine Area, TIAS 10204.

[2] The line defined by points 113 through 139 is that line delimited in the maritime boundary treaty signed with Cuba December 16, 1977, Senate Executive H, 96th Cong., 1st Sess. The treaty has been applied provisionally since January 1, 1978.

36. 26 deg. 29′04″ N., 79 deg. 29′53″ W.
37. 26 deg. 25′30″ N., 79 deg. 29′58″ W.
38. 26 deg. 23′28″ N., 79 deg. 29′55″ W.
39. 26 deg. 23′20″ N., 79 deg. 29′54″ W.
40. 26 deg. 18′56″ N., 79 deg. 31′55″ W.
41. 26 deg. 15′25″ N., 79 deg. 33′17″ W.
42. 26 deg. 15′12″ N., 79 deg. 33′23″ W.
43. 26 deg. 08′08″ N., 79 deg. 35′53″ W.
44. 26 deg. 07′46″ N., 79 deg. 36′09″ W.
45. 26 deg. 06′58″ N., 79 deg. 36′35″ W.
46. 26 deg. 02′51″ N., 79 deg. 38′22″ W.
47. 25 deg. 59′29″ N., 79 deg. 40′03″ W.
48. 25 deg. 59′15″ N., 79 deg. 40′08″ W.
49. 25 deg. 57′47″ N., 79 deg. 40′38″ W.
50. 25 deg. 56′17″ N., 79 deg. 41′06″ W.
51. 25 deg. 54′03″ N., 79 deg. 41′38″ W.
52. 25 deg. 53′23″ N., 79 deg. 41′46″ W.
53. 25 deg. 51′53″ N., 79 deg. 41′59″ W.
54. 25 deg. 49′32″ N., 79 deg. 42′16″ W.
55. 25 deg. 48′23″ N., 79 deg. 42′23″ W.
56. 25 deg. 48′19″ N., 79 deg. 42′24″ W.
57. 25 deg. 46′25″ N., 79 deg. 42′44″ W.
58. 25 deg. 46′15″ N., 79 deg. 42′45″ W.
59. 25 deg. 43′39″ N., 79 deg. 42′59″ W.
60. 25 deg. 42′30″ N., 79 deg. 42′48″ W.
61. 25 deg. 40′36″ N., 79 deg. 42′27″ W.
62. 25 deg. 37′23″ N., 79 deg. 42′27″ W.
63. 25 deg. 37′07″ N., 79 deg. 42′27″ W.
64. 25 deg. 31′02″ N., 79 deg. 42′12″ W.
65. 25 deg. 27′58″ N., 79 deg. 42′11″ W.
66. 25 deg. 24′03″ N., 79 deg. 42′12″ W.
67. 25 deg. 22′20″ N., 79 deg. 42′20″ W.
68. 25 deg. 21′28″ N., 79 deg. 42′08″ W.
69. 25 deg. 16′51″ N., 79 deg. 41′24″ W.
70. 25 deg. 15′56″ N., 79 deg. 41′31″ W.
71. 25 deg. 10′38″ N., 79 deg. 41′31″ W.
72. 25 deg. 09′50″ N., 79 deg. 41′36″ W.
73. 25 deg. 09′02″ N., 79 deg. 41′45″ W.
74. 25 deg. 03′53″ N., 79 deg. 42′30″ W.
75. 25 deg. 02′58″ N., 79 deg. 42′57″ W.
76. 25 deg. 00′28″ N., 79 deg. 44′06″ W.
77. 24 deg. 59′01″ N., 79 deg. 44′49″ W.
78. 24 deg. 55′26″ N., 79 deg. 45′58″ W.
79. 24 deg. 44′16″ N., 79 deg. 49′25″ W.
80. 24 deg. 43′02″ N., 79 deg. 49′39″ W.
81. 24 deg. 42′34″ N., 79 deg. 50′51″ W.
82. 24 deg. 41′45″ N., 79 deg. 52′58″ W.
83. 24 deg. 38′30″ N., 79 deg. 59′59″ W.
84. 24 deg. 36′25″ N., 80 deg. 03′52″ W.
85. 24 deg. 33′16″ N., 80 deg. 12′44″ W.
86. 24 deg. 33′03″ N., 80 deg. 13′22″ W.
87. 24 deg. 32′11″ N., 80 deg. 15′17″ W.
88. 24 deg. 31′25″ N., 80 deg. 16′56″ W.
89. 24 deg. 30′55″ N., 80 deg. 17′48″ W.
90. 24 deg. 30′12″ N., 80 deg. 19′22″ W.
91. 24 deg. 30′04″ N., 80 deg. 19′45″ W.
92. 24 deg. 29′36″ N., 80 deg. 21′06″ W.
93. 24 deg. 28′16″ N., 80 deg. 24′36″ W.
94. 24 deg. 28′04″ N., 80 deg. 25′11″ W.
95. 24 deg. 27′21″ N., 80 deg. 27′21″ W.
96. 24 deg. 26′28″ N., 80 deg. 29′31″ W.
97. 24 deg. 25′05″ N., 80 deg. 32′23″ W.
98. 24 deg. 23′28″ N., 80 deg. 36′10″ W.
99. 24 deg. 22′31″ N., 80 deg. 38′57″ W.
100. 24 deg. 22′05″ N., 80 deg. 39′52″ W.
101. 24 deg. 19′29″ N., 80 deg. 45′22″ W.
102. 24 deg. 19′14″ N., 80 deg. 45′48″ W.
103. 24 deg. 18′36″ N., 80 deg. 46 deg. 50″ W.
104. 24 deg. 18′33″ N., 80 deg. 46′55″ W.
105. 24 deg. 09′49″ N., 80 deg. 59′48″ W.
106. 24 deg. 09′46″ N., 80 deg. 59′52″ W.
107. 24 deg. 08′56″ N., 81 deg. 01′08″ W.
108. 24 deg. 03′28″ N., 81 deg. 01′52″ W.
109. 24 deg. 08′24″ N., 81 deg. 01′58″ W.
110. 24 deg. 07′26″ N., 81 deg. 03′07″ W.
111. 24 deg. 02′18″ N., 81 deg. 09′06″ W.
112. 23 deg. 59′58″ N., 81 deg. 11′16″ W.
113. 23 deg. 55′30″ N., 81 deg. 12′55″ W.
114. 23 deg. 53′50″ N., 81 deg. 19′44″ W.
115. 23 deg. 50′50″ N., 81 deg. 30′00″ W.
116. 23 deg. 50′00″ N., 81 deg. 40′00″ W.
117. 23 deg. 49′03″ N., 81 deg. 50′00″ W.
118. 23 deg. 49′03″ N., 82 deg. 00′12″ W.
119. 23 deg. 49′40″ N., 82 deg. 10′00″ W.
120. 23 deg. 51′12″ N., 82 deg. 25′00″ W.
121. 23 deg. 51′12″ N., 82 deg. 40′00″ W.
122. 23 deg. 49′40″ N., 82 deg. 48′54″ W.
123. 23 deg. 49′30″ N., 82 deg. 51′12″ W.
124. 23 deg. 49′22″ N., 83 deg. 00′00″ W.
125. 23 deg. 49′50″ N., 83 deg. 15′00″ W.
126. 23 deg. 51′20″ N., 83 deg. 25′50″ W.
127. 23 deg. 52′25″ N., 83 deg. 33′02″ W.
128. 23 deg. 54′02″ N., 83 deg. 41′36″ W.
129. 23 deg. 55′45″ N., 83 deg. 48′12″ W.
130. 23 deg. 58′36″ N., 84 deg. 00′00″ W.
131. 24 deg. 09′35″ N., 84 deg. 29′28″ W.
132. 24 deg. 13′18″ N., 84 deg. 38′40″ W.
133. 24 deg. 16′39″ N., 84 deg. 46′08″ W.
134. 24 deg. 23′28″ N., 85 deg. 00′00″ W.
135. 24 deg. 26′35″ N., 85 deg. 06′20″ W.
136. 24 deg. 38′55″ N., 85 deg. 31′55″ W.
137. 24 deg. 44′15″ N., 85 deg. 43′12″ W.
138. 24 deg. 53′55″ N., 86 deg. 00′00″ W.
139. 25 deg. 12′25″ N., 86 deg. 33′12″ W.

Between points 139 and 140, the limit of the exclusive economic zone is 200 nautical miles seaward from the baseline from which the territorial sea is measured.

In the central Gulf of Mexico, the limit of the exclusive economic zone is determined by straight lines connecting the following coordinates: [3]

140. 25 deg. 41′56.52.88″ N., 88 deg. 23′05.54″ W.
141. 25 deg. 46′52.00″ N., 90 deg. 29′41.00″ W.
142. 25 deg. 42′13.05″ N., 91 deg. 05′24.89″ W.

Between points 142 and 143, the limit of the exclusive economic zone is 200 nautical miles seaward from the baseline from which the territorial sea is measured.

In the western Gulf of Mexico, the limit of the exclusive economic zone is determined by straight lines connecting the following coordinates:

143. 25 deg. 59′48.28″ N., 93 deg. 26′42.19″ W.
144. 26 deg. 00′30.00″ N., 95 deg. 39′26.00″ W.
145. 26 deg. 00′31.00″ N., 96 deg. 48′29.00″ W.
146. 25 deg. 58′30.57″ N., 96 deg. 55′27.37″ W.

From point 146, the limit of United States jurisdiction is the territorial sea boundary with Mexico established by the United States of America and the United Mexican States in Article V(A) and annexes of the Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado River as the International Boundary, signed at Mexico City, November 23, 1970, and entered into force April 18, 1972, TIAS No. 7313, 23 UST 371.

U.S. Pacific Coast (Washington, Oregon, and California)

In the area seaward of the Strait of Juan de Fuca, the limit of the exclusive economic zone shall be determined by straight lines connecting the points with the following coordinates: [4]

1. 48 deg. 29′37.19″ N., 124 deg. 43′33.19″ W.
2. 48 deg. 30′11″ N., 124 deg. 47′13″ W.
3. 48 deg. 30′22″ N., 124 deg. 50′21″ W.
4. 48 deg. 30′14″ N., 124 deg. 54′52″ W.
5. 48 deg. 29′57″ N., 124 deg. 59′14″ W.
6. 48 deg. 29′44″ N., 125 deg. 00′06″ W.
7. 48 deg. 28′09″ N., 125 deg. 05′47″ W.
8. 48 deg. 27′10″ N., 125 deg. 08′25″ W.
9. 48 deg. 26′47″ N., 125 deg. 09′12″ W.
10. 48 deg. 20′16″ N., 125 deg. 22′48″ W.
11. 48 deg. 18′22″ N., 125 deg. 29′58″ W.
12. 48 deg. 11′05″ N., 125 deg. 53′48″ W.
13. 47 deg. 49′15″ N., 126 deg. 40′57″ W.
14. 47 deg. 36′47″ N., 127 deg. 11′58″ W.
15. 47 deg. 22′00″ N., 127 deg. 41′23″ W.
16. 46 deg. 42′05″ N., 128 deg. 51′56″ W.
17. 46 deg. 31′47″ N., 129 deg. 07′39″ W.

Between point 17 and 18, the limit of the exclusive economic zone is 200 nautical miles seaward from the baseline from which the breadth of the territorial sea is measured. In the area off the Southern California coast, the limit of the exclusive economic zone shall be determined by straight lines connecting the following points: [5]

18. 30 deg. 32′31.20″ N., 121 deg. 51′58.37″ W.
19. 31 deg. 07′58.00″ N., 118 deg. 36′18.00″ W.
20. 32 deg. 37′37.00″ N., 117 deg. 49′31.00″ W.
21. 32 deg. 35′22.11″ N., 117 deg. 27′49.42″ W.

From point 21 to the coast, the limit of United States jurisdiction is the territorial sea boundary with Mexico established by the United States of America and the United Mexican States in Article V(B) and annexes of the Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado River as the International Boundary, signed at Mexico City, November 23, 1970, and entered into force April 18, 1972.

Alaska

Off the coast of Alaska, in the area of the Beaufort Sea, the limit of exclusive economic zone shall be determined by straight lines, connecting the following coordinates: [6]

[3] The lines defined by points 140–142 and 143–146 reflect the exchange of Notes Effecting Agreement on the provisional Maritime Boundary with Mexico done on November 24, 1976, TIAS 8805, 29 UST 196. The U.S.-Mexico Maritime Boundary Treaty, signed on May 4, 1978, Senate Executive F, 96th Congress, 1st Sess., defines boundary using the same turning points.

[4] The limit of the U.S. exclusive economic zone from points 1 to 17 adjacent to Canada in the area seaward of the Strait of Juan de Fuca do not correspond to limits of the Canadian fishery zone as defined in the Canada Gazette of January 1, 1977.

[5] The line defined by points 18 through 21 reflect the Exchange of Note Effecting Agreement on the Provisional Maritime Boundary with Mexico done on November 24, 1976. The U.S.-Mexico Maritime Boundary Treaty, signed on May 4, 1976, defines the boundary using the same turning points.

[6] The limit of the U.S. exclusive economic zone in areas adjacent to Canada in the Beaufort Sea do

Continued

1. 69 deg. 38′48.88″ N., 140 deg. 59′52.7″ W.
2. 69 deg. 38′52″ N., 140 deg. 59′51″ W.
3. 69 deg. 39′37″ N., 140 deg. 59′01″ W
4. 69 deg. 40′10″ N., 140 deg. 58′34″ W.
5. 69 deg. 41′30″ N., 140 deg. 57′00″ W.
6. 69 deg. 46′25″ N., 140 deg. 49′45″ W.
7. 69 deg. 47′54″ N., 140 deg. 47′07″ W.
8. 69 deg. 51′40″ N., 140 deg. 42′37″ W.
9. 70 deg. 09′26″ N., 140 deg. 19′22″ W.
10. 70 deg. 11′30″ N., 140 deg. 18′09″ W.
11. 70 deg. 29′07″ N., 140 deg. 09′51″ W.
12. 70 deg. 29′19″ N., 140 deg. 09′45″ W.
13. 70 deg. 37′31″ N., 140 deg. 02′47″ W.
14. 70 deg. 48′25″ N., 139 deg. 52′32″ W.
15. 70 deg. 58′02″ N., 139 deg. 47′16″ W.
16. 71 deg. 01′15″ N., 139 deg. 44′24″ W.
17. 71 deg. 11′58″ N., 139 deg. 33′58″ W.
18. 71 deg. 23′10″ N., 139 deg. 21′46″ W.
19. 72 deg. 12′18″ N., 138 deg. 26′19″ W.
20. 72 deg. 46′39″ N., 137 deg. 30′02″ W.
21. 72 deg. 56′49″ N., 137 deg. 34′08″ W.

Between point 21 and point 22, the limit of the exclusive economic zone is 200 nautical miles seaward from the baseline from which the territorial sea is measured. In the Chukchi Sea, Bering Strait, and northern Bering Sea, the limit of the exclusive economic zone shall be determined by straight lines connecting the following coordinates: [7]

22. 72 deg. 46′29″ N., 168 deg. 58′37″ W.
23. 65 deg. 30′00″ N., 168 deg. 58′37″ W.
24. 65 deg. 19′58″ N., 168 deg. 21′38″ W.
25. 65 deg. 09′51″ N., 169 deg. 44′34″ W.
26. 64 deg. 59′41″ N., 170 deg. 07′23″ W.
27. 64 deg. 49′26″ N., 170 deg. 30′06″ W.
28. 64 deg. 39′08″ N., 170 deg. 52′43″ W.
29. 64 deg. 28′46″ N., 171 deg. 15′14″ W.
30. 64 deg. 18′20″ N., 171 deg. 37′40″ W.
31. 64 deg. 07′50″ N., 172 deg. 00′00″ W.
32. 63 deg. 59′27″ N., 172 deg. 18′39″ W.
33. 63 deg. 51′01″ N., 172 deg. 38′13″ W.
34. 63 deg. 42′33″ N., 172 deg. 55′42″ W.
35. 63 deg. 34′01″ N., 173 deg. 14′07″ W.
36. 63 deg. 25′27″ N., 173 deg. 32′27″ W.
37. 63 deg. 16′50″ N., 173 deg. 50′42″ W.
38. 63 deg. 08′11″ N., 174 deg. 08′52″ W.
39. 62 deg. 59′29″ N., 174 deg. 26′58″ W.
40. 62 deg. 50′44″ N., 174 deg. 44′59″ W.
41. 62 deg. 41′56″ N., 175 deg. 02′56″ W.
42. 62 deg. 33′06″ N., 175 deg. 20′48″ W.
43. 62 deg. 24′13″ N., 175 deg. 38′36″ W.
44. 62 deg. 15′17″ N., 175 deg. 56′19″ W.
45. 62 deg. 06′19″ N., 176 deg. 13′59″ W.
46. 61 deg. 57′18″ N., 176 deg. 31′34″ W.
47. 61 deg. 48′14″ N., 176 deg. 49′04″ W.
48. 61 deg. 39′08″ N., 177 deg. 06′31″ W.
49. 61 deg. 29′59″ N., 177 deg. 23′53″ W.
50. 61 deg. 20′47″ N., 177 deg. 41′11″ W.
51. 61 deg. 11′33″ N., 177 deg. 58′26″ W.
52. 61 deg. 02′17″ N., 178 deg. 15′36″ W.
53. 60 deg. 52′57″ N., 178 deg. 32′42″ W.
54. 60 deg. 43′35″ N., 178 deg. 49′45″ W.
55. 60 deg. 34′11″ N., 179 deg. 06′44″ W.
56. 60 deg. 24′44″ N., 179 deg. 23′38″ W.
57. 60 deg. 15′14″ N., 179 deg. 40′30″ W.
58. 60 deg. 11′39″ N., 179 deg. 46′49″ W.

Between points 58 and 59 the limit of the exclusive economic zone is 200 nautical miles seaward from the baseline from which the territorial sea is measured. In the southern Bering Sea and north Pacific Ocean, the limit of the exclusive economic zone shall be determined the straight lines connecting the following coordinates:

59. 56 deg. 16′31″ N., 174 deg. 00′19″ E.
60. 56 deg. 15′07″ N., 173 deg. 56′56″ E.
61. 56 deg. 04′34″ N., 173 deg. 41′08″ E.
62. 55 deg. 53′59″ N., 173 deg. 25′22″ E.
63. 55 deg. 43′22″ N., 173 deg. 09′37″ E.
64. 55 deg. 32′42″ N., 172 deg. 53′55″ E.
65. 55 deg. 21′59″ N., 172 deg. 38′14″ E.
66. 55 deg. 11′14″ N., 172 deg. 22′36″ E.
67. 55 deg. 00′26″ N., 172 deg. 06′59″ E.
68. 54 deg. 49′36″ N., 171 deg. 51′24″ E.
69. 54 deg. 38′43″ N., 171 deg. 35′51″ E.
70. 54 deg. 27′48″ N., 171 deg. 20′20″ E.
71. 54 deg. 16′50″ N., 171 deg. 04′50″ E.
72. 54 deg. 05′50″ N., 170 deg. 49′22″ E.
73. 53 deg. 54′47″ N., 170 deg. 33′56″ E.
74. 53 deg. 43′42″ N., 170 deg. 18′31″ E.
75. 53 deg. 32′46″ N., 170 deg. 05′29″ E.
76. 53 deg. 21′48″ N., 169 deg. 52′32″ E.
77. 53 deg. 10′49″ N., 169 deg. 39′40″ E.
78. 52 deg. 59′48″ N., 169 deg. 26′53″ E.
79. 52 deg. 48′46″ N., 169 deg. 14′12″ E.
80. 52 deg. 37′43″ N., 169 deg. 01′36″ E.
81. 52 deg. 26′38″ N., 168 deg. 49′05″ E.
82. 52 deg. 15′31″ N., 168 deg. 36′39″ E.
83. 52 deg. 04′23″ N., 168 deg. 24′17″ E.
84. 51 deg. 53′14″ N., 168 deg. 12′01″ E.
85. 51 deg. 42′03″ N., 167 deg. 59′49″ E.
86. 51 deg. 30′51″ N., 167 deg. 47′42″ E.
87. 51 deg. 22′15″ N., 167 deg. 38′28″ E.

From point 87 to point 88, the limit of the exclusive economic zone is 200 nautical miles from the baseline from which the territorial sea is measured. From point 88, the southern limit of the exclusive economic zone off the coast of Alaska shall be determined by straight lines connecting the following coordinates: [8]

88. 53 deg. 28′27″ N., 138 deg. 45′20″ W.
89. 54 deg. 00′01″ N., 135 deg. 45′57″ W.
90. 54 deg. 07′30″ N., 134 deg. 56′24″ W.
91. 54 deg. 12′45″ N., 134 deg. 25′03″ W.
92. 54 deg. 12′57″ N., 134 deg. 23′47″ W.
93. 54 deg. 15′40″ N., 134 deg. 10′49″ W.
94. 54 deg. 20′33″ N., 133 deg. 49′21″ W.
95. 54 deg. 22′01″ N., 133 deg. 44′24″ W.
96. 54 deg. 30′06″ N., 133 deg. 16′58″ W.
97. 54 deg. 31′02″ N., 133 deg. 14′00″ W.
98. 54 deg. 30′42″ N., 133 deg. 11′28″ W.
99. 54 deg. 30′10″ N., 133 deg. 07′43″ W.
100. 54 deg. 30′03″ N., 133 deg. 07′00″ W.
101. 54 deg. 28′32″ N., 132 deg. 56′28″ W.
102. 54 deg. 28′25″ N., 132 deg. 55′54″ W.
103. 54 deg. 27′23″ N., 132 deg. 50′42″ W.
104. 54 deg. 27′07″ N., 132 deg. 49′35″ W.
105. 54 deg. 26′00″ N., 132 deg. 44′12″ W.
106. 54 deg. 24′54″ N., 132 deg. 39′46″ W.
107. 54 deg. 24′34″ N., 132 deg. 38′16″ W.
108. 54 deg. 24′39″ N., 132 deg. 26′51″ W.
109. 54 deg. 24′41″ N., 132 deg. 24′35″ W.
110. 54 deg. 24′41″ N., 132 deg. 24′29″ W.
111. 54 deg. 24′52″ N., 132 deg. 23′39″ W.
112. 54 deg. 21′51″ N., 132 deg. 02′54″ W.
113. 54 deg. 26′41″ N., 131 deg. 49′28″ W.
114. 54 deg. 28′18″ N., 131 deg. 45′20″ W.
115. 54 deg. 30′32″ N., 131 deg. 38′01″ W.
116. 54 deg. 29′53″ N., 131 deg. 33′48″ W.
117. 54 deg. 36′53″ N., 131 deg. 19′22″ W.
118. 54 deg. 39′09″ N., 131 deg. 16′17″ W.
119. 54 deg. 40′52″ N., 131 deg. 13′54″ W.
120. 54 deg. 42′11″ N., 131 deg. 13′00″ W.
121. 54 deg. 46′16″ N., 131 deg. 04′43″ W.
122. 54 deg. 45′39″ N., 131 deg. 03′06″ W.
123. 54 deg. 44′12″ N., 130 deg. 59′44″ W.
124. 54 deg. 43′46″ N., 130 deg. 58′55″ W.
125. 54 deg. 43′00″ N., 130 deg. 57′41″ W.
126. 54 deg. 42′34″ N., 130 deg. 57′09″ W.
127. 54 deg. 42′27″ N., 130 deg. 56′18″ W.
128. 54 deg. 41′26″ N., 130 deg. 53′39″ W.
129. 54 deg. 41′21″ N., 130 deg. 53′18″ W.
130. 54 deg. 41′05″ N., 130 deg. 49′17″ W.
131. 54 deg. 41′06″ N., 130 deg. 48′31″ W.
132. 54 deg. 40′46″ N., 130 deg. 45′51″ W.
133. 54 deg. 40′41″ N., 130 deg. 44′59″ W.
134. 54 deg. 40′42″ N., 130 deg. 44′43″ W.
135. 54 deg. 40′03″ N., 130 deg. 42′22″ W.
136. 54 deg. 39′48″ N., 130 deg. 41′35″ W.
137. 54 deg. 39′14″ N., 130 deg. 39′18″ W.
138. 54 deg. 39′54″ N., 130 deg. 38′58″ W.
139. 54 deg. 41′09″ N., 130 deg. 38′58″ W.
140. 54 deg. 42′22″ N., 130 deg. 38′26″ W.
141. 54 deg. 42′47″ N., 130 deg. 38′06″ W.
142. 54 deg. 42′58″ N., 130 deg. 37′57″ W.
143. 54 deg. 43′00″ N., 130 deg. 37′55″ W.
144. 54 deg. 43′15″ N., 130 deg. 37′44″ W.
145. 54 deg. 43′24″ N., 130 deg. 37′39″ W.
146. 54 deg. 43′30.15″ N., 130 deg. 37′37.01″ W.

Caribbean Sea

The seaward limit of the exclusive economic zone around the Commonwealth of Puerto Rico and the Virgin Islands of the United States is a line 200 nautical miles from the baseline from which the breadth of the territorial sea is measured, except that to the east, south, and west, the limit of the exclusive economic zone shall be determined by straight lines connecting the following coordinates: [9]

1. 21 deg. 48′33″ N., 65 deg. 50′31″ W.
2. 21 deg. 41′20″ N., 65 deg. 49′13″ W.
3. 20 deg. 58′05″ N., 65 deg. 40′30″ W.
4. 20 deg. 46′56″ N., 65 deg. 38′14″ W.

not correspond to limits of the Canadian fishery zone, as defined in the Canada Gazette of January 1, 1997.

[7] The line defined by points 22–59 and 59–87 is that line delimited in the maritime boundary treaty signed with the former Soviet Union (now applicable to Russia) June 1, 1990, Senate Treaty Doc. 102–22, and applied provisionally pending the exchange of instruments of ratification, by an exchange of notes effective June 15, 1990.

[8] The limit of the U.S. exclusive economic zone in, and seaward of, the Dixon Entrance do not correspond to the limits of the Canadian fishery zone, as defined in the Canada Gazette of January 1, 1977. Where the claimed boundaries published by the United States and Canada leave an unclaimed area within Dixon Entrance, the United States will exercise fishery management jurisdiction to the Canadian claimed line where that line is situated southward of the United States claimed line, until such time as a permanent maritime boundary with Canada is established in the Dixon Entrance.

[9] The line defined by points 1–50 is that line delimited in the maritime boundary treaty signed with the United Kingdom (for the British Virgin Islands) at London on November 4, 1993, Senate Treaty Doc. 103–23, and entered into force on June 1, 1995. The line defined by points 50–51 is that line delimited in the maritime boundary treaty signed with the United Kingdom (for Anguilla) at London on November 4, 1993, Senate Treaty Doc. 103–23, and entered into force June 1, 1995. The line from point 1 to point 51 is on the North American Datum 1983 (NAD 83). The line defined by points 57–78 is that line delimited in the maritime boundary treaty signed with Venezuela at Caracas on March 28, 1978; the treaty entered into force on November 24, 1980, TIAS 9890, 32 UST 3100.

5. 19 deg. 57′29″ N., 65 deg. 27′21″ W.
6. 19 deg. 37′29″ N., 65 deg. 20′57″ W.
7. 19 deg. 12′25″ N., 65 deg. 06′08″ W.
8. 18 deg. 45′14″ N., 65 deg. 00′22″ W.
9. 18 deg. 41′14″ N., 64 deg. 59′33″ W.
10. 18 deg. 29′22″ N., 64 deg. 53′50″ W.
11. 18 deg. 27′36″ N., 64 deg. 53′22″ W.
12. 18 deg. 25′22″ N., 64 deg. 52′39″ W.
13. 18 deg. 24′31″ N., 64 deg. 52′19″ W.
14. 18 deg. 23′51″ N., 64 deg. 51′50″ W.
15. 18 deg. 23′43″ N., 64 deg. 51′23″ W.
16. 18 deg. 23′37″ N., 64 deg. 50′18″ W.
17. 18 deg. 23′48″ N., 64 deg. 49′42″ W.
18. 18 deg. 24′11″ N., 64 deg. 49′01″ W.
19. 18 deg. 24′29″ N., 64 deg. 47′57″ W.
20. 18 deg. 24′18″ N., 64 deg. 47′00″ W.
21. 18 deg. 23′14″ N., 64 deg. 46′37″ W.
22. 18 deg. 22′38″ N., 64 deg. 45′21″ W.
23. 18 deg. 22′40″ N., 64 deg. 44′42″ W.
24. 18 deg. 22′42″ N., 64 deg. 44′36″ W.
25. 18 deg. 22′37″ N., 64 deg. 44′24″ W.
26. 18 deg. 22′40″ N., 64 deg. 43′42″ W.
27. 18 deg. 22′30″ N., 64 deg. 43′36″ W.
28. 18 deg. 22′25″ N., 64 deg. 42′58″ W.
29. 18 deg. 22′27″ N., 64 deg. 42′28″ W.
30. 18 deg. 22′16″ N., 64 deg. 42′03″ W.
31. 18 deg. 22′23″ N., 64 deg. 40′59″ W.
32. 18 deg. 21′58″ N., 64 deg. 40′15″ W.
33. 18 deg. 21′51″ N., 64 deg. 38′22″ W.
34. 18 deg. 21′22″ N., 64 deg. 38′16″ W.
35. 18 deg. 20′39″ N., 64 deg. 38′32″ W.
36. 18 deg. 19′16″ N., 64 deg. 38′13″ W.
37. 18 deg. 19′07″ N., 64 deg. 38′16″ W.
38. 18 deg. 17′24″ N., 64 deg. 39′37″ W.
39. 18 deg. 16′43″ N., 64 deg. 39′41″ W.
40. 18 deg. 11′34″ N., 64 deg. 38′58″ W.
41. 18 deg. 03′03″ N., 64 deg. 38′03″ W.
42. 18 deg. 02′57″ N., 64 deg. 29′35″ W.
43. 18 deg. 02′52″ N., 64 deg. 27′03″ W.
44. 18 deg. 02′30″ N., 64 deg. 21′08″ W.
45. 18 deg. 02′31″ N., 64 deg. 20′08″ W.
46. 18 deg. 02′01″ N., 64 deg. 15′39″ W.
47. 18 deg. 00′12″ N., 64 deg. 02′29″ W.
48. 17 deg. 59′58″ N., 64 deg. 01′02″ W.
49. 17 deg. 58′47″ N., 63 deg. 57′00″ W.
50. 17 deg. 57′51″ N., 63 deg. 53′53″ W.
51. 17 deg. 56′37″ N., 63 deg. 53′20″ W.
52. 17 deg. 39′48″ N., 63 deg. 54′54″ W.
53. 17 deg. 37′15″ N., 63 deg. 55′11″ W.
54. 17 deg. 30′28″ N., 63 deg. 55′57″ W.
55. 17 deg. 11′43″ N., 63 deg. 58′00″ W.
56. 17 deg. 05′07″ N., 63 deg. 58′42″ W.
57. 16 deg. 44′49″ N., 64 deg. 01′08″ W.
58. 16 deg. 43′22″ N., 64 deg. 06′31″ W.
59. 16 deg. 43′10″ N., 64 deg. 06′59″ W.
60. 16 deg. 42′40″ N., 64 deg. 08′06″ W.
61. 16 deg. 41′43″ N., 64 deg. 10′07″ W.
62. 16 deg. 35′19″ N., 64 deg. 23′39″ W.
63. 16 deg. 23′30″ N., 64 deg. 45′54″ W.
64. 15 deg. 39′31″ N., 65 deg. 58′41″ W.
65. 15 deg. 30′10″ N., 66 deg. 07′09″ W.
66. 15 deg. 14′06″ N., 66 deg. 19′57″ W.
67. 14 deg. 55′48″ N., 66 deg. 34′30″ W.
68. 14 deg. 56′06″ N., 66 deg. 51′40″ W.
69. 14 deg. 58′27″ N., 67 deg. 04′19″ W.
70. 14 deg. 58′45″ N., 67 deg. 05′17″ W.
71. 14 deg. 58′58″ N., 67 deg. 06′11″ W.
72. 14 deg. 59′10″ N., 67 deg. 07′00″ W.
73. 15 deg. 02′32″ N., 67 deg. 23′40″ W.
74. 15 deg. 05′07″ N., 67 deg. 36′23″ W.
75. 15 deg. 10′38″ N., 68 deg. 03′46″ W.
76. 15 deg. 11′06″ N., 68 deg. 09′21″ W.
77. 15 deg. 12′33″ N., 68 deg. 27′32″ W.
78. 15 deg. 12′51″ N., 68 deg. 28′56″ W.
79. 15 deg. 46′46″ N., 68 deg. 26′04″ W.
80. 17 deg. 21′30″ N., 68 deg. 17′53″ W.
81. 17 deg. 38′01″ N., 68 deg. 16′46″ W.
82. 17 deg. 50′24″ N., 68 deg. 16′11″ W.
83. 17 deg. 58′07″ N., 68 deg. 15′52″ W.
84. 18 deg. 02′28″ N., 68 deg. 15′40″ W.
85. 18 deg. 06′10″ N., 68 deg. 15′27″ W.
86. 18 deg. 07′27″ N., 68 deg. 15′33″ W.
87. 18 deg. 09′12″ N., 68 deg. 14′53″ W.
88. 18 deg. 17′06″ N., 68 deg. 11′28″ W.
89. 18 deg. 19′20″ N., 68 deg. 09′40″ W.
90. 18 deg. 22′42″ N., 68 deg. 06′57″ W.
91. 18 deg. 24′39″ N., 68 deg. 04′58″ W.
92. 18 deg. 25′25″ N., 68 deg. 04′09″ W.
93. 18 deg. 28′08″ N., 68 deg. 00′59″ W.
94. 18 deg. 31′27″ N., 67 deg. 56′57″ W.
95. 18 deg. 32′58″ N., 67 deg. 55′07″ W.
96. 18 deg. 34′34″ N., 67 deg. 52′53″ W.
97. 18 deg. 54′37″ N., 67 deg. 46′21″ W.
98. 19 deg. 00′42″ N., 67 deg. 44′25″ W.
99. 19 deg. 10′00″ N., 67 deg. 41′24″ W.
100. 19 deg. 19′03″ N., 67 deg. 38′19″ W.
101. 19 deg. 21′20″ N., 67 deg. 38′01″ W.
102. 19 deg. 59′45″ N., 67 deg. 31′52″ W.
103. 20 deg. 00′59″ N., 67 deg. 31′35″ W.
104. 20 deg. 01′17″ N., 67 deg. 31′29″ W.
105. 20 deg. 02′49″ N., 67 deg. 31′04″ W.
106. 20 deg. 03′30″ N., 67 deg. 30′52″ W.
107. 20 deg. 09′28″ N., 67 deg. 29′11″ W.
108. 20 deg. 48′18″ N., 67 deg. 17′50″ W.
109. 21 deg. 22′48″ N., 67 deg. 02′34″ W.
110. 21 deg. 30′18″ N., 66 deg. 59′05″ W.
111. 21 deg. 33′47″ N., 66 deg. 57′30″ W.
112. 21 deg. 51′24″ N., 66 deg. 49′30″ W.

Navassa Island. The limits of the exclusive economic zone around Navassa Island remain to be determined.

Central and Western Pacific

Northern Mariana Islands and Guam. The seaward limit of the exclusive economic zone is 200 nautical miles from the baseline from which the breadth of the territorial sea is measured, except that to the north of the Northern Mariana Islands, the limit of the exclusive economic zone shall be determined by straight lines connecting the following points: [10]

1. 23 deg. 53′35″ N., 145 deg. 05′46″ E.
2. 23 deg. 44′32″ N., 144 deg. 54′05″ E.
3. 23 deg. 33′52″ N., 144 deg. 40′23″ E.
4. 23 deg. 16′11″ N., 144 deg. 17′47″ E.
5. 22 deg. 50′13″ N., 143 deg. 44′57″ E.
6. 22 deg. 18′13″ N., 143 deg. 05′02″ E.
7. 21 deg. 53′58″ N., 142 deg. 35′03″ E.
8. 21 deg. 42′14″ N., 142 deg. 20′39″ E.
9. 21 deg. 40′08″ N., 142 deg. 18′05″ E.
10. 21 deg. 28′21″ N., 142 deg. 03′45″ E.
11. 20 deg. 58′24″ N., 141 deg. 27′33″ E.
12. 20 deg. 52′51″ N., 141 deg. 20′54″ E.

and, except that to the south of Guam, the limit of the exclusive economic zone shall be determined by straight lines connecting the following points:

13. 11 deg. 38′25″ N., 147 deg. 44′42″ E.
14. 11 deg. 36′53″ N., 147 deg. 31′03″ E.
15. 11 deg. 31′48″ N., 146 deg. 55′19″ E.
16. 11 deg. 27′15″ N., 146 deg. 25′34″ E.
17. 11 deg. 22′13″ N., 145 deg. 52′36″ E.
18. 11 deg. 17′31″ N., 145 deg. 22′38″ E.
19. 11 deg. 13′32″ N., 144 deg. 57′26″ E.
20. 11 deg. 13′23″ N., 144 deg. 56′29″ E.
21. 10 deg. 57′03″ N., 143 deg. 26′53″ E.
22. 10 deg. 57′30″ N., 143 deg. 03′09″ E.
23. 11 deg. 52′33″ N., 142 deg. 15′28″ E.
24. 12 deg. 54′00″ N., 141 deg. 21′48″ E.
25. 12 deg. 54′17″ N., 141 deg. 21′33″ E.
26. 12 deg. 57′34″ N., 141 deg. 19′17″ E.
27. 13 deg. 06′32″ N., 141 deg. 12′53″ E.

Hawaii and Midway Island. The seaward limit of the exclusive economic zone is 200 nautical miles from the baselines from which the territorial sea is measured.

Johnston Atoll. The seaward limit of the exclusive economic zone is 200 nautical miles from the baselines from which the territorial sea is measured.

American Samoa. The seaward limit of the exclusive economic zone shall be determined by straight lines connecting the following points: [11]

1. 11 deg. 02′17″ S., 173 deg. 44′48″ W.
2. 10 deg. 46′15″ S., 173 deg. 03′53″ W.
3. 10 deg. 25′26″ S., 172 deg. 11′01″ W.
4. 10 deg. 17′50″ S., 171 deg. 50′58″ W.
5. 10 deg. 15′17″ S., 171 deg. 15′32″ W.
6. 10 deg. 10′18″ S., 170 deg. 16′10″ W.
7. 10 deg. 07′52″ S., 169 deg. 46′50″ W.
8. 10 deg. 01′26″ S., 168 deg. 31′25″ W.
9. 10 deg. 12′44″ S., 168 deg. 31′02″ W.
10. 10 deg. 12′49″ S., 168 deg. 31′02″ W.
11. 10 deg. 52′31″ S., 168 deg. 29′42″ W.
12. 11 deg. 02′40″ S., 168 deg. 29′21″ W.
13. 11 deg. 43′53″ S., 168 deg. 27′58″ W.
14. 12 deg. 01′55″ S., 168 deg. 10′24″ W.
15. 12 deg. 28′40″ S., 167 deg. 25′20″ W.
16. 12 deg. 41′22″ S., 167 deg. 11′01″ W.
17. 12 deg. 57′51″ S., 166 deg. 52′21″ W.
18. 13 deg. 11′25″ S., 166 deg. 37′02″ W.
19. 13 deg. 14′03″ S., 166 deg. 34′03″ W.
20. 13 deg. 21′25″ S., 166 deg. 25′42″ W.
21. 13 deg. 35′44″ S., 166 deg. 09′19″ W.
22. 13 deg. 44′56″ S., 165 deg. 58′44″ W.
23. 14 deg. 03′30″ S., 165 deg. 37′20″ W.
24. 15 deg. 00′09″ S., 165 deg. 22′07″ W.
25. 15 deg. 14′04″ S., 165 deg. 18′29″ W.
26. 15 deg. 38′47″ S., 165 deg. 12′03″ W.
27. 15 deg. 44′58″ S., 165 deg. 16′36″ W.
28. 16 deg. 08′42″ S., 165 deg. 34′12″ W.
29. 16 deg. 18′30″ S., 165 deg. 41′29″ W.
30. 16 deg. 23′29″ S., 165 deg. 45′11″ W.
31. 16 deg. 45′30″ S., 166 deg. 01′39″ W.
32. 17 deg. 33′28″ S., 166 deg. 38′35″ W.
33. 17 deg. 31′45″ S., 166 deg. 42′07″ W.
34. 16 deg. 56′20″ S., 168 deg. 26′05″ W.
35. 16 deg. 37′55″ S., 169 deg. 18′19″ W.
36. 16 deg. 37′36″ S., 169 deg. 19′12″ W.
37. 16 deg. 34′58″ S., 169 deg. 55′59″ W.
38. 16 deg. 39′17″ S., 170 deg. 19′09″ W.
39. 16 deg. 48′46″ S., 171 deg. 12′29″ W.
40. 16 deg. 49′33″ S., 171 deg. 17′03″ W.
41. 16 deg. 13′29″ S., 171 deg. 37′41″ W.
42. 16 deg. 04′47″ S., 171 deg. 42′37″ W.

[10] The line defined by points 1–12 constitutes the line of delimination between the maritime zones of the United States and Japan as reflected in an Exchange of Notes effective July 5, 1994. Points 1–12 are on the World Geodetic System 1984 (WGS 84). In this regard, users should be aware that the Government of Japan defines points 1–12 on the Tokyo Datum and the coordinate values will differ slightly from those published in this Notice.

[11] The line defined by points 1–8 is that line delimited in the maritime boundary treaty with New Zealand (for Tokelau) signed at Atafu on December 2, 1980; this treaty entered into force on September 3, 1983, TIAS 10775. The line defined by points 8–32 is that line delimited in the maritime boundary treaty with the Cook Islands signed at Rarotonga on June 11, 1980; this treaty entered into force on September 8, 1983, TIAS 10774. Points 1–32 are on the World Geodetic System 1972 (WGS 72).

43. 15 deg. 58′20″ S., 171 deg. 46′06″ W.
44. 15 deg. 50′48″ S., 171 deg. 50′23″ W.
45. 15 deg. 50′12″ S., 171 deg. 50′44″ W.
46. 15 deg. 14′19″ S., 171 deg. 37′37″ W.
47. 15 deg. 01′58″ S., 171 deg. 31′37″ W.
48. 14 deg. 46′48″ S., 171 deg. 24′21″ W.
49. 14 deg. 27′02″ S., 171 deg. 14′46″ W.
50. 14 deg. 06′18″ S., 171 deg. 04′48″ W.
51. 14 deg. 03′28″ S., 171 deg. 03′06″ W.
52. 14 deg. 03′27″ S., 171 deg. 03′05″ W.
53. 14 deg. 03′05″ S., 171 deg. 02′53″ W.
54. 13 deg. 56′54″ S., 170 deg. 59′34″ W.
55. 13 deg. 54′30″ S., 170 deg. 58′20″ W.
56. 13 deg. 53′43″ S., 170 deg. 57′57″ W.
57. 13 deg. 50′40″ S., 170 deg. 56′24″ W.
58. 13 deg. 13′56″ S., 170 deg. 44′20″ W.
59. 13 deg. 09′05″ S., 170 deg. 42′39″ W.
60. 12 deg. 36′18″ S., 170 deg. 30′44″ W.
61. 12 deg. 36′11″ S., 170 deg. 31′35″ W.
62. 12 deg. 35′21″ S., 170 deg. 36′26″ W.
63. 12 deg. 29′47″ S., 171 deg. 08′24″ W.
64. 12 deg. 27′27″ S., 171 deg. 17′25″ W.
65. 12 deg. 23′34″ S., 171 deg. 25′18″ W.
66. 12 deg. 17′36″ S., 171 deg. 37′14″ W.
67. 12 deg. 14′01″ S., 171 deg. 44′25″ W.
68. 12 deg. 13′49″ S., 171 deg. 44′47″ W.
69. 12 deg. 05′27″ S., 172 deg. 00′55″ W.
70. 11 deg. 54′06″ S., 172 deg. 22′53″ W.
71. 11 deg. 53′57″ S., 172 deg. 23′09″ W.
72. 11 deg. 40′49″ S., 172 deg. 48′17″ W.
73. 11 deg. 26′56″ S., 173 deg. 08′46″ W.
74. 11 deg. 22′08″ S., 173 deg. 15′50″ W.
75. 11 deg. 02′28″ S., 173 deg. 44′37″ W.
76. 11 deg. 02′17″ S., 173 deg. 44′48″ W.

Palmyra Atoll-Kingman Reef. The seaward limit of the exclusive economic zone is 200 nautical miles from the baseline from which the territorial sea is measured, except that to the southeast of Palmyra Atoll and Kingman Reef the limit of the exclusive economic zone shall be determined by straight lines connecting the following points:

1. 7 deg. 55′04″ N., 159 deg. 22′29″ W.
2. 7 deg. 31′05″ N., 159 deg. 39′30″ W.
3. 7 deg. 09′43″ N., 159 deg. 54′35″ W.
4. 6 deg. 33′40″ N., 160 deg. 19′51″ W.
5. 6 deg. 31′37″ N., 160 deg. 21′18″ W.
6. 6 deg. 25′31″ N., 160 deg. 25′40″ W.
7. 6 deg. 03′05″ N., 160 deg. 41′42″ W.
8. 5 deg. 44′12″ N., 160 deg. 55′13″ W.
9. 4 deg. 57′25″ N., 161 deg. 28′19″ W.
10. 4 deg. 44′38″ N., 161 deg. 37′18″ W.
11. 3 deg. 54′25″ N., 162 deg. 12′56″ W.
12. 2 deg. 39′50″ N., 163 deg. 05′14″ W.

Wake Island. The seaward limit of the exclusive economic zone is 200 nautical miles from the baseline from which the territorial sea is measured, except that to the south of Wake Island the limit of the exclusive economic zone shall be determined by straight lines connecting the following points:

1. 17 deg. 56′15″ N., 169 deg. 54′00″ E.
2. 17 deg. 46′02″ N., 169 deg. 31′18″ E.
3. 17 deg. 37′47″ N., 169 deg. 12′53″ E.
4. 17 deg. 11′18″ N., 168 deg. 13′30″ E.
5. 16 deg. 41′31″ N., 167 deg. 07′39″ E.
6. 16 deg. 02′45″ N., 165 deg. 43′30″ E.

Jarvis Island. The seaward limit of the exclusive economic zone is 200 nautical miles from the baseline from which the territorial sea is measured, except that to the north and east of Jarvis Island, the limit of the exclusive economic zone shall be determined by straight lines connecting the following points:

1. 2 deg. 01′00″ N., 162 deg. 22′00″ W.
2. 2 deg. 01′42″ N., 162 deg. 01′35″ W.
3. 2 deg. 03′20″ N., 161 deg. 41′33″ W.
4. 2 deg. 02′30″ N., 161 deg. 36′20″ W.
5. 2 deg. 00′13″ N., 161 deg. 22′24″ W.
6. 1 deg. 50′18″ N., 160 deg. 20′42″ W.
7. 1 deg. 45′46″ N., 159 deg. 52′59″ W.
8. 1 deg. 43′31″ N., 159 deg. 39′27″ W.
9. 0 deg. 58′53″ N., 158 deg. 59′04″ W.
10. 0 deg. 46′58″ N., 158 deg. 48′24″ W.
11. 0 deg. 12′36″ N., 158 deg. 18′06″ W.
12. 0 deg. 00′17″ S., 158 deg. 07′27″ W.
13. 0 deg. 24′23″ S., 157 deg. 49′44″ W.
14. 0 deg. 25′44″ S., 157 deg. 48′43″ W.
15. 0 deg. 58′15″ S., 157 deg. 24′52″ W.
16. 2 deg. 13′26″ S., 157 deg. 49′01″ W.
17. 3 deg. 10′40″ S., 158 deg. 10′30″ W.

Howland and Baker IslandS., The seaward limit of the exclusive economic zone is a line 200 nautical miles from the baseline from which the territorial sea is measured, except to the southeast and south of Howland and Baker Islands the limit of the exclusive economic zone shall be determined by straight lines connecting the following points:

1. 0 deg. 14′30″ N., 173 deg. 08′00″ W.
2. 0 deg. 14′32″ S., 173 deg. 27′28″ W.
3. 0 deg. 43′52″ S., 173 deg. 45′30″ W.
4. 1 deg. 04′06″ S., 174 deg. 17′41″ W.
5. 1 deg. 12′39″ S., 174 deg. 31′02″ W.
6. 1 deg. 14′52″ S., 174 deg. 34′48″ W.
7. 1 deg. 52′36″ S., 175 deg. 34′51″ W.
8. 1 deg. 59′17″ S., 175 deg. 45′29″ W.
9. 2 deg. 17′09″ S., 176 deg. 13′58″ W.
10. 2 deg. 32′51″ S., 176 deg. 38′59″ W.
11. 2 deg. 40′26″ S., 176 deg. 51′03″ W.
12. 2 deg. 44′49″ S., 176 deg. 58′01″ W.
13. 2 deg. 44′53″ S., 176 deg. 58′08″ W.
14. 2 deg. 56′33″ S., 177 deg. 16′43″ W.
15. 2 deg. 58′45″ S., 177 deg. 26′00″ W.

Dated: August 10, 1995.

David A. Colson,

Deputy Assistant Secretary for OceanS.,

Dated: September 30, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–22309 Filed 9–30–04; 3:00 pm]

BILLING CODE 3410–02–P

Federal Register

Tuesday,
October 5, 2004

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 91
Flight Limitation in the Proximity of Space Flight Operations; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2004–19246; Amendment Nos. 91–284]

RIN 2120–AI40

Flight Limitation in the Proximity of Space Flight Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action makes editorial changes to current FAA regulations regarding temporary flight restrictions near space flight operations. Specifically, this action removes references to the "Department of Defense (DOD) Manager for Space Transportation System Contingency Support Operations." This action does not change the intent of the existing rule.

DATES: This action is effective on November 4, 2004.

FOR FURTHER INFORMATION CONTACT: Sheri Edgett-Baron, Airspace and Rules, Office of Systems Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9354.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Justification for Proceeding Without a Notice

The FAA is issuing this action without notice and opportunity to comment under the authority of Section 4(a) of the Administrative Procedure Act, 5 United States Code (U.S.C.) 553(b). Section 553(b) allows the FAA to issue a final rule without notice and comment when the agency, for good cause, finds that notice and public procedure are "impracticable, unnecessary or contrary to the public interest." In this instance, public comment and notice are unnecessary. The change in this final rule merely removes a reference to a department now out of existence. This change will not have a negative effect on safety and does not change the original intent of the rule. Because this is an editorial change, the FAA believes the public will not have a substantial interest in this rulemaking.

Background and Discussion of the Rule

Currently, regulations prohibit aircraft from operating within certain areas except when authorized by Air Traffic Control (ATC) or the DOD Manager for Space Transportation System Contingency Support Operations. These temporary flight restricted areas are designated according to 14 CFR 91.143 and the information made available through the Notice to Airmen (NOTAM) system. Site launch operators and launch licensees are required through the conditions of their license, or their regulations, to comply with all FAA rules and NOTAMs. During the times that a Space Flight Operation NOTAM is in effect, ATC may authorize aircraft to fly in the designated space flight area. Any such authorization could result in a hold for a launch operator. The ATC, as a matter of practice, will coordinate with the entity managing the space flight operation. Entities conducting the space flight operation may be private or federal.

This action is an administrative update and merely removes a reference to the Department of Defense (DOD) manager for space transportation system contingency support operations. We have been informed by the DOD that this office no longer exists.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advise about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our site, *http://www.gov/avr/arm/sbrefa.htm.* For more information on SBREFA, e-mail us at *9–AWA–SBREFA#@faa.gov.*

Paperwork Reduction Act

There are no new requirements for information collection associated with this amendment. 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 Office of Management and Budget (OMB) control number.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practical. We have determined there are no ICAO Standards and Recommended Practices that correspond to these this rule.

Economic Assessment, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

We determined this rule (1) has benefits which do justify its costs, is not a "significant regulatory action" as defined in the Executive Order and is not "significant" as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) will reduce barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or

tribal governments, or on the private sector.

However, for regulations with an expected minimal impact the above-specified analyses are not required. The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the rule does not warrant a full evaluation, a statement to that effect and the basis for it is included in the rule. Since this rule is strictly administrative in nature involving editorial changes that do not change the intent of the existing rule, the expected outcome is to have a minimal impact.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980, establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis in not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This rule is an administrative change only involving editorial changes that do not change the intent of existing rules. It deletes a reference to the "Department of Defense (DOD) Manager for Space Transportation System Contingency Support Operations" which no longer exists. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on distributing power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this final rule qualifies for the categorical exclusion identified in paragraph 4(j) and involves no extraordinary circumstances.

Energy Impact

The energy impact has been assessed in accordance with the Energy Policy and Conservation Act (EPCA Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1). It has been determined that this final rule is not a major regulatory action under the provision of the EPCA.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Part 91 of Title 14 Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506'46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

■ 2. Section 91.143 is revised to read as follows:

§ 91.143 Flight limitation in the proximity of space flight operations.

When a Notice to Airmen (NOTAM) is issued in accordance with this section, no person may operate any aircraft of U.S. registry, or pilot any aircraft under the authority of an airman certificate issued by the Federal Aviation Administration, within areas designated in a NOTAM for space flight operation except when authorized by ATC.

Issued in Washington, DC, on September 29, 2004.

Marion Blakely,

Administrator.

[FR Doc. 04–22375 Filed 10–4–04; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Tuesday,
October 5, 2004

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Parts 71 and 97
Revision of Incorporation by Reference Provisions; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 97

[Docket No. FAA–2004–19247; Notice No. 04–12]

RIN 2120–AI39

Revision of Incorporation by Reference Provisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing to remove the incorporation by reference of certain FAA Orders and terminal aeronautical charts from the provisions of 14 CFR part 97 and incorporate by reference instead instrument procedures that are documented on FAA forms. The FAA also proposes a conforming amendment in 14 CFR part 71. This change would ensure that the appropriate material is incorporated in the FAA's regulations.

DATES: Send your comments on or before November 4, 2004.

ADDRESSES: You may send comments identified by docket number FAA–200X–XXXXX using any of the following methods:

- *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 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Thomas E. Schneider, AFS–420, Federal Aviation Administration, P.O. Box 25082, Oklahoma City, OK 73125; telephone (405) 954–5852; facsimile (405) 954–2528; e-mail *Thomas.Schneider@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The FAA also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA asks that you send two copies of written comments.

The FAA will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing 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.*

Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed late if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. The FAA will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm*; or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Be sure to identify the docket number, notice number, or amendment number of this rulemaking.

Background

On December 17, 2002, the FAA published a Notice of Proposed Rulemaking (NPRM) titled "Area Navigation (RNAV) and Miscellaneous Amendments" (67 FR 77326; Dec. 17, 2002). In that NPRM, the FAA proposed to revise § 97.20 to remove the incorporation by reference (IBR) of standard instrument approach procedures as described on FAA Forms 8260–3, 8260–4 and 8260–5. The FAA instead proposed to incorporate by reference into § 97.20 FAA Orders 8260.3B, *United States Standard for Terminal Instrument Procedures (TERPS)* and 8260.19C, *Flight Procedures and Airspace*, and terminal aeronautical charts. Incorporating a publication by reference into the Code of Federal Regulations means that the information contained in that publication in fact becomes regulatory. Any subsequent modification is a rule change and is accomplished by rulemaking under the Administrative Procedures Act.

On April 8, 2003, the FAA adopted the final rule titled "Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points" (68 FR 16943; April 8, 2003), which adopted the proposed amendments to 14 CFR 97.20. Upon staff review, the FAA concluded that the incorporation by reference of FAA Orders 8260.3B and 8260.19C and the terminal aeronautical charts was in error and resulted in the inappropriate designation of certain material as regulatory.

Section 97.20

Specifically, FAA Order 8260.3 provides agency policy and standardized methods for designing instrument flight procedures. The FAA follows this policy for the preparation, approval, and promulgation of terminal instrument procedures. FAA Order 8260.19, provides guidance for administering the Flight Procedure and Airspace Program. It also defines responsibilities, establishes criteria and provides standards to assure effective and orderly processing of all types of procedure actions.

Section 91.175(a) requires a pilot to use an instrument procedure prescribed in part 97, unless otherwise authorized by the FAA, when it is necessary to conduct an instrument letdown to a civil airport. Consistent with this requirement, the FAA, via rulemaking, adopts instrument procedures by amending § 97.20. While the adopted instrument procedures become part of § 97.20, the agency policy and criteria for designing, preparing and approving the procedure should not become part of § 97.20, as they are not regulatory actions and should not be incorporated by reference into part 97. Similarly, it is not appropriate to incorporate by reference terminal aeronautical charts, as those charts merely depict the instrument procedures for use by the pilot.

The FAA is proposing to revise § 97.20 by removing the IBR of FAA Orders 8260.3 and 8260.19. Additionally, the IBR of terminal aeronautical charts would be removed. The FAA instead would incorporate by reference the instrument procedures detailed on FAA Forms 8260–3, 8260–4, 8260–5 and 8260–15A into § 97.20.

The proposed text for § 97.20 would set forth the FAA Forms that contain the instrument procedures that would be IBR, and provide information to the public as to where the procedures may be examined. It also provides information on the availability of aeronautical charts depicting standard instrument procedures.

The FAA currently coordinates all new and revised TERPS criteria and procedures in Orders 8260.3 and 8260.19 with those organizations affected, both public and private, in accordance with the coordination process contained in FAA Order 1320.1, *FAA Directives Systems*. In addition, the agency coordination process for these two orders includes any person requesting the opportunity to comment.

Section 71.11

The FAA proposes to delete paragraph (b), and the existing paragraph (c) would be redesignated as paragraph (b). This section would conform to § 97.20, which would remove the IBR of FAA Orders 8260.3 and 8260.19.

The Director of the Federal Register must approve all rules that incorporate by reference material into the Code of Federal Regulations. If this rule is adopted as proposed, the FAA will submit a final rule to the Director of the Federal Register seeking approval to incorporate by reference into § 97.20 the instrument procedures on FAA forms.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new information collection requirement associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by private sector, of $100 million or more annually (adjusted for inflation).

We determined this proposed rule (1) has benefits that justify its costs, is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant economic impact on a substantial number of small entities; (3) will not have any effect on barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

However, for regulations with an expected minimal impact the above-specified analyses are not required. The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect and the basis for it is included in proposed regulation. Since this NPRM is administrative in nature removing inappropriate interpretation by reference material from FAA regulations and adding appropriate incorporation by reference material, these changes will not impact the integrity of existing rules. As a result, this proposed rule will have a minimal economic impact. The FAA requests comments with supporting justification regarding the FAA determination of minimal impact.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected

to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This proposed rule is administrative in nature correcting an earlier action that resulted in an inappropriate designation of certain material as regulatory. Consequently, the FAA certifies the proposed rule will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking and has determined that it will impose the same costs on domestic and international entities and thus have a neutral trade impact.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation adjusted value of $120.7 million in lieu of $100 million.

This NPRM does not contain such a mandate. The requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action 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, and therefore would not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The FAA has determined that it is not a significant energy action under the executive order because it is not a significant regulatory action under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 71

Airspace, Navigation (air).

14 CFR Part 97

Air traffic control, Airports, Navigation (air), Weather.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations, as follows:

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

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

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

§ 71.11 [Amended]

2. Amend § 71.11 by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

3. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106. 40113, 40114, 40120, 44502, 44514, 44701, 44719, and 44721–44722.

4. Revise § 97.20 to read as follows:

§ 97.20 General.

(a) This subpart prescribes standard instrument procedures based on the criteria contained in FAA Order 8260.3, U.S. Standard for Terminal Instrument Procedures (TERPs), and other related Orders in the 8260 series that also address instrument procedure design criteria.

(b) Standard instrument procedures and associated supporting data adopted by the FAA are documented on FAA Forms 8260–3, 8260–4, 8260–5, and 8260–15A, and were approved for incorporation by reference by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR Part 51. The standard instrument procedures are available for examination at the Rules Docket (AGC–200) and at the National Flight Data Center, 800 Independence Avenue, SW., Washington, DC 20590, and at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(c) Standard instrument procedures are depicted on aeronautical charts published by the FAA National Aeronautical Charting Office and these charts are available for purchase from the FAA's National Aeronautical Charting Office, Distribution Division, 6303 Ivy Lane, Suite 400, Greenbelt, MD 20770.

Issued in Washington, DC, on September 29, 2004.

John M. Allen,

Acting Director, Flight Standards Service.

[FR Doc. 04–22376 Filed 10–4–04; 8:45 am]

BILLING CODE 4910–13–P

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Tuesday, October 5, 2004

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H.R. 5149/P.L. 108–308

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